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**DENVER METRO CHAMBER OF COMMERCE
ALL COMMITTEE MEETING
2022 EMPLOYMENT LAW UPDATE**

DECEMBER 10, 2021

A LexMundi Member

OVERVIEW

- 2022 Publication and Yearly Calculation of Adjusted Labor Compensation Order (PAY CALC Order)
- COMPS Order # 38
- Wage Protection Rules
- State Unemployment Insurance Tax Increases
- Gender Identity/Expression Anti-Discrimination
- Healthy Families and Workplaces Act (“HFWA”)
- Colorado Equal Pay for Equal Work Act (“CEPEWA”)

2022 PUBLICATION AND YEARLY CALCULATION OF ADJUSTED LABOR COMPENSATION ORDER (“PAY CALC ORDER”)

- 7 CCR 1103-14; effective January 1, 2022
 - New set of rules that publishes pay and income levels for minimum wage and various exemptions
- 2022 minimum wage increase
 - State of Colorado: \$12.56/hour and \$9.54/hour for tipped employees
 - Adjusted by Colorado Consumer Price Index (CPI) each year going forward
 - City and County of Denver: \$15.87/hour and \$12.85/hour for tipped employees

2022 PUBLICATION AND YEARLY CALCULATION OF ADJUSTED LABOR COMPENSATION ORDER (“PAY CALC ORDER”)

- Salary thresholds for exemptions
 - Minimum pay levels for the executive, administrative, or professional (“EAP”) exemption:
 - \$865.38/week (\$45,000/year)
 - \$961.54/week in 2023 (\$50,000/year)
 - \$1,057.69/week in 2024 (\$55,000/year).
 - Federal law currently:
 - \$684.00/week



COMPS ORDER # 38

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- 7 CCR 1103-1; effective January 1, 2022
- Includes the highly compensated employee exemption (7 CCR 1103-1 § 2.2.11)
 - Exemption for employees earning two and one-quarter times (2.25x) the rounded annual salary for the EAP exemption (as specified in the PAY CALC Order)
 - In 2022, this amount will be \$101,250
 - Employee must also regularly perform any one of the exempt duties and responsibilities of an EAP employee and primary duty must be office or nonmanual work

COMPS ORDER # 38

- Regular pay rate calculation (7 CCR 1103 § 1.8.3)
 - If an employee has multiple, hourly pay rates (e.g. working two or more non-exempt jobs for the same employer), and there is no written agreement between the employee and the employer as to the method of calculating the regular rate of pay in advance of performing the work, the rate will be calculated based on the “weighted average” method
 - “Weighted average” method
 - Rate is determined by adding together all wages earned performing each job, divided by the total number of hours worked in all jobs.
 - Also used for calculating rate of pay for leave under the HFWA

WAGE PROTECTION RULES

- 7 CCR 1103-7; effective January 1, 2022
- New Definition of “Vacation Pay” (7 CCR 1103-7 § 2.17)
 - “Pay for leave, regardless of its label, that is usable at the employee’s discretion (other than procedural requirements such as notice and approval of particular dates), rather than leave usable only upon occurrence of a qualifying event (for example, a medical need, caretaking requirement, bereavement, or holiday).”
 - Includes leave under PTO or other leave that does not require any qualifying event for use
 - Employees may not forfeit “Vacation Pay” either at year-end under a use-it-or-lose it policy or at separation.

STATE UNEMPLOYMENT INSURANCE (“SUI”) TAX INCREASES

- 2022 SUI Tax Rate
 - Higher rate schedule in 2022 than in 2021
 - 2021 rates: 0.71% to 9.64% for experience-rated employers
 - 2022 rates
 - 0.75% to 4.41% for employers with a positive-rating
 - 5.68% to 10.39% for negative-rated employers

- S.B. 20-207; passed on July 14, 2020
 - Legislation incrementally increases taxable wage base to \$30,600 by calendar year 2026
 - 2021 taxable wage base: \$13,600
 - 2022 taxable wage base: \$17,000
 - Also requires that employers not be assessed a solvency surcharge for calendar years 2021 and 2022



GENDER IDENTITY/EXPRESSION ANTI-DISCRIMINATION

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- H.B. 21-1108; passed on May 20, 2021
 - Amends the current definition of Sexual Orientation along with adding the terms Gender Identity & Gender Expression into the 48 areas of state law that prohibit discrimination against members of a protected class
 - Follows Supreme Court's ruling in *Bostock v. Clayton County* (June 15, 2020)



HEALTHY FAMILIES AND WORKPLACES ACT (“HFWA”)

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- Effective January 1, 2022, all employers, regardless of size, must provide 48 hours of paid sick and safe time (“PSST”)
 - In 2021, requirement limited to employers with 16 or more employees
- Public Health Emergency (“PHE”) leave
 - Separate requirement to provide 32 hours of supplemental leave (in addition to 48 hours of PSST) for reasons related to a PHE until four weeks after the official termination or suspension of a PHE
 - As of October 18, 2021, the US Secretary of HHS extended the federal PHE declaration until January 16, 2022
 - HFWA PHE leave requirements will be in place – at least – until February 13, 2022



COLORADO EQUAL PAY FOR EQUAL WORK ACT (“CEPEWA”)

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- Effective January 1, 2021, and contains two parts:
 - Part I (C.R.S. §§ 8-5-101 – 8-5-104) creates a private cause of action broader than the federal Equal Pay Act (the “EPA”); and
 - Part II (C.R.S. §§ 8-5-201 – 8-5-203) is designed to provide employees with transparency about promotional opportunities and pay ranges for job openings.
 - Majority of employer questions in 2021 concern Part II

COLORADO EQUAL PAY FOR EQUAL WORK ACT (“CEPEWA”)

- Internal Postings
 - An employer must announce, post, or otherwise make known all opportunities for promotion to all current Colorado employees on the same calendar day and prior to making a promotion decision
 - Posting must include the job title and means for application; compensation for the job opening; and a description of benefits
 - A “promotional opportunity” is a vacancy in an existing or new position that could be considered a promotion for one or more employee(s) in terms of compensation, benefits, status, duties, or access to further advancement
 - Includes most changes in title and material changes in authority, duties, or opportunities
 - Excludes change of title to add an externally obtained degree or certification (e.g., CPA or LCSW) and change of pay

COLORADO EQUAL PAY FOR EQUAL WORK ACT (“CEPEWA”)

- External postings
 - Same content requirements as internal postings (rate of compensation or range thereof, general description of benefits)
 - Applies to Colorado jobs as well as jobs that could be performed in Colorado in a remote capacity
 - Employer not required to post *any* jobs externally, but must comply with content requirements if it does so
 - A “posting” is “any written or printed communication (whether electronic or hard copy) that the employer has a job available or is accepting job applications.”
 - Includes job descriptions sent to a recruiter for selective placement/recruitment
 - Word of mouth recruitment does not apply

QUESTIONS?

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