

How does the new-ish Colorado statute requiring disclosure of salary information for job postings affect non-Colorado employers?

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Raise your hand if you are a human resources professional who has had it up to the proverbial HERE with sifting through state law requirements for remote workers? This post is for you! Today we are taking a closer look at Colorado's Equal Pay for Equal Work Act and how its pay transparency provisions apply to multi-state employers.

Here's the scenario:

My company is based in Minnesota (or some other state that isn't Colorado). We are posting a position online (e.g. Indeed, LinkedIn). The position will be 100% remote and we will accept applicants from all 50 states, including Colorado. Does my posting have to comply with Colorado law?

The answer depends on a couple of factors.

First, does the company currently have at least one employee in Colorado? If yes, then the company is a covered employer as defined by the Act. If the company does not have any employees in Colorado, the company is not covered by the statute. Next ask, could the position potentially be filled by a Colorado resident? Employers should take a broad read of this question. In other words, unless it is an absolute certainty that the company will *not* hire a Colorado resident, the answer to this second question is probably "yes."

Did you answer "yes" to both of these questions? If so, then your company is a covered employer and any job posting accessible by Colorado residents that could potentially be filled by a Colorado resident must comply with the Act.

So what is a compliant posting? Job postings must include: (1) the rate of compensation (e.g. salary or hourly rate), but a range of the lowest to the highest pay the company actually believes it might pay is acceptable; (2) a general description of bonuses, commissions, or other compensation, if any; and (3) a general description of *all* benefits offered with the position (e.g. health insurance, retirement plan, paid time off). Regarding the third point, the description of benefits may be general, but must be complete. What

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does that mean? Employers cannot use terms like “etc.” or “and more.” “All benefits” means *all* benefits.

But wait, we aren’t done yet! What about the Act’s provisions requiring covered employers to post promotional opportunities to existing employees? If the company is a covered employer, then the company is required to notify its Colorado employee(s) of all promotional opportunities, *including* for positions to be performed outside Colorado. However, notices of promotional opportunities for jobs to be performed *entirely outside* Colorado need not include compensation and benefits information. Likewise, multi-state employers are *not* required to notify their non-Colorado employees of promotional opportunities in Colorado (or elsewhere, unless required by state law).

Bottom line: If an employer has even one employee in Colorado, and is posting a new position or promotional opportunity that can be performed from anywhere (including Colorado), the posting needs to include the requisite compensation and benefits information.

As a parting note, keep in mind there are other states and localities that require some form of pay transparency including California, Connecticut, Maryland, Nevada, New York City, Rhode Island, and Washington. Contact your favorite outside employment counsel with questions on pay transparency laws and any other remote worker compliance issues.