

COLORADO

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1–Dec. 31, 2013)

Topics

I. Discrimination

Job Protection and Civil Rights Enforcement Act of 2013: allows the additional remedies of compensatory and punitive damages in employment discrimination cases brought under state law against employers where intentional discrimination is proven. These damages are in addition to those allowed under current law. The amount of compensatory and punitive damages is limited to the amounts specified in the federal Civil Rights Act of 1991, but the following limits on damage awards apply to the following employers: employers with 1-4 employees - \$1,000; employers with 5-14 employees - \$25,000. The act also removes the maximum age limit for purposes of age discrimination, permitting persons 70 years of age or older to pursue a claim based on age discrimination.

The remedies under the act apply to causes of action alleging discriminatory or unfair practices accruing on or after January 1, 2015. (HB 13-1136, Ch. 168, effective August 7, 2013).

II. Pre-Employment Inquiry Guidelines

With respect to Colorado's employment eligibility verification requirements, Colorado employers must use the State Division of Labor's affirmation form dated 9/10/2012 for all new hires on or after October 1, 2012.

Permissible Use of Credit Information by Employers: Colorado law was amended to restrict the use of consumer credit information by employers. Employers may not request a prospective or current employee's credit information or use such consumer credit information to evaluate the employee unless the person being evaluated is currently, or will be, in a management position related to financial information or a contract involving national security. In addition, an employer using consumer credit information to evaluate a prospective or current employee must offer the employee an opportunity to explain adverse credit information, and the employer that takes adverse action on the basis of such information must disclose this use. The Division of Labor, Colorado Department of Labor and Employment (CDLE) will enforce these provisions. The CDLE must

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investigate complaints, hold a hearing on each complaint, and issue findings within 30 days of the hearing. Civil penalties up to \$2,500 may be awarded to aggrieved employees. (SB 13-018, Ch. 125, effective July 1, 2013).

Employee User Name Password Privacy Protection: An employer is now prohibited from requesting or requiring an employee or applicant to disclose any user name, password, or other means for accessing his or her personal account or service through the employee's or applicant's electronic communication device. State and local law enforcement agencies are excluded. There will be a complaint and review function within CDLE; the department is tasked with investigating complaints and issuing findings within 30 days after a hearing, and is authorized to promulgate rules regarding penalties. Penalties may include a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. (HB 13-1046, Ch. 195, effective May 11, 2013).

III. Family and Medical Leave

Family Care Act Family Medical Leave Eligibility for Civil Union or Domestic Partner: allows an employee to use expanded FMLA leave to care for a partner with a serious health condition. An employer can require an employee seeking to take expanded FMLA leave to provide the same certification as the employer can require under the federal FMLA. An employee who uses 12 weeks of leave under the federal FMLA cannot also take expanded leave within the same 12-month period. Employees may recover damages and equitable relief in court should an employer deny leave to care for the employee's partner in a civil union or domestic partnership. (HB 13-1222, Ch. 157, effective August 7, 2013)

IV. Wage and Hour Laws

The standard minimum wage increased from \$7.64 to \$7.78 per hour (effective Jan. 1, 2013). The minimum wage for tipped employees increased from \$4.62 to \$4.76 per hour (effective Jan. 1, 2013).

No new laws or regulations enacted in 2013.

V. Drug Testing

No new laws or regulations enacted in 2012 or 2013.

VI. Noncompete and Other Employment Agreements

An employer's continued employment of a current at-will employee provides sufficient consideration for a noncompete agreement entered into after the inception of employment (*Lucht's Concrete Plumbing Inc. v. Horner*, 09SC627, May 21, 2011).

No new laws or regulations enacted in 2012 or 2013.

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VII. Workplace Safety

No new laws or regulations enacted in 2012 or 2013.

VIII. Workers' Compensation

No new laws or regulations enacted in 2011 or 2012.

Workers' Compensation Law: changes were made to the law regarding requirements for reimbursement for claims, recalculation of wages, requests for attorneys' fees and costs, request for independent medical examiner, and appropriations. (SB 13-285, Ch. 301, effective July 1, 2013).

Workers' Compensation Liability Statutory Employer: presumes that a buyer of goods is not liable as a statutory employer for the payment of workers' compensation benefits when a person who is not an employee of the buyer is injured while he or she is delivering goods to the buyer but is not on the buyer's premises. The presumption may be overcome by a showing that the person delivering goods was performing a job function that would normally be performed by an employee of the buyer of the goods. (SB 13-147, Ch. 389, effective June 5, 2013).

Miscellaneous

The state modified requirements for jury service acknowledgments and made conforming changes to provisions concerning employer compensation to jurors (H. 1153, Col. Rev. Stat. 13-71-132, effective Aug. 10, 2011).

In response to request from current or prospective employer, former employers of individuals working with the developmentally disabled may disclose information concerning mistreatment of disabled persons. Moreover, the disclosing employer is exempt from civil liability for this disclosure and its response is not considered blacklisting (S. 193, effective July 1, 2011).