

# THE EMPLOYER'S ADVISORY

A PERIODICAL HIGHLIGHTING  
CURRENT EMPLOYMENT-LAW ISSUES

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## THERE'S A NEW SHERIFF IN TOWN CDLE RELEASES COMPS #39

Another year, another COMPS (i.e., Colorado Overtime and Minimum Pay Standards) Order. Recently, the CDLE released COMPS #39. This Order replaces COMPS #38, which replaced, no, not COMPS #37 (that would be too sequential), it replaced COMPS #38.

Frankly, the new COMPS #39 looks a lot like the old COMPS except for the following:

- The effective date in the upper-right hand side says, “effective January 1, 2024” instead of saying “effective January 1, 2023.”
- The minimum wage is now identified as \$14.42 per hour.
- The salary-threshold amount for exempt employees is set at \$55,000.00. Next year, that amount will be adjusted based on Colorado inflation.

Despite there not being a lot of changes between COMPS #38 and COMPS #39, Colorado employers still have to undertake a number of steps now that the new COMPS is out.

First, COMPS requires that “every employer publishing or distributing to employees any handbook, manual, or written or posted policies shall

include a copy of the COMPS Order, or a COMPS Order poster published by the Division, with any such handbook, or manual...” So, this means that if you have an Employee Handbook, the new COMPS #39 needs to be part of that Handbook (i.e., it needs to replace COMPS #38).

Additionally, COMPS also requires that if the organization requires employees to sign any handbook, manual, or policy, the organization must “have the employee sign an acknowledgement of being provided the COMPS Order or the COMPS Order poster.” So, this means that all Colorado organizations need to have all employees sign the Order, even if the employee has signed the previous Order.

## RESOLUTIONS FOR 2024

It's that time of year again. Time for checking snow forecasts (so far, not as good as the skiers would like), counting down to Spring Training (a little more than 40 days to go), and, of course, New Year's resolutions. So, to join in this long-standing tradition, the Employer's Advisory created the following HR resolutions, which are in no particular order:

### #1. **Legislation, legislation, legislation.**

To borrow an oft-repeated expression, “if you don't get involved in legislation before it's passed (e.g., write emails to your representatives/senators; participate in local governmental/legislative committees), you lose the right to complain about it after it's passed.” The 2024 Colorado legislative session is

certain to be a very active one regarding employment laws. So, now is the time to get involved in shaping how those laws will look.

**#2. Ensure that you've implemented all the changes based on the amendments to Colorado's Equal Pay for Equal Work Act.** The Colorado Legislature was extremely active last session in passing changes to Colorado's Equal Pay for Equal Work Act, which has only been in place since January 1, 2021. In sum, Colorado organizations need to ensure that their postings for job openings are consistent with these new changes. For example:

The initial version of the Equal Pay Act required a company to internally post certain information before the company made an employment decision on any "opportunities for promotion." The 2023 amendments changed that language to require postings for each "job opportunity," which the law now defines as a "current or anticipated vacancy for which the employer is considering a candidate or candidates or interviewing a candidate or candidates or that the employer externally posts."

Along those same lines, the amendments require that employers internally post the following information before a selection decision for a job opportunity is made (a) the hourly or salary compensation or the range of the hourly or salary compensation; (b) a general description of the benefits and other compensation applicable to the job opportunity; (c) the date the application window is anticipated to close. While the first two are consistent with the initial version of the Act, the third requirement is new.

The amendments now require that information be posted internally after a selection is made. That is, employers must make reasonable efforts to announce, post, or otherwise make known the following information to, at least, the coworkers of the selected candidate (a) the name of the candidate selected for the job opportunity; (b) the selected candidate's former job title if selected while already employed by the company; (c) the selected candidate's new job title; and (d) information regarding how employees may demonstrate interest in similar job

opportunities in the future, including identifying individuals or departments to whom the employees can express interest in similar job opportunities.

This information must be posted within thirty (30) calendar days after the selected candidate begins working in the position.

Finally, you've still got a couple of more days to ensure that your company completes a "thorough and comprehensive pay audit" of your workforce. This audit was identified in the initial version of the Act as a way for organizations to show that they were acting in good faith. The Act identified that companies must undertake such a process every two years.

**#3. Ensure that your handbook policies identify the new basis for leave under the Healthy Families and Workplaces Act ("HFWA").** In summer 2023, the Colorado legislature passed legislation that expanded the reasons an employee can take HFWA Leave. Those new reasons are for when an employee needs:

- to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member;
- to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care; or
- to evacuate the Employee's place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the Employee's residence.

So, employers should endeavor to include these new reasons in the Employee Handbook.

**#4. Make sure employees understand the importance of letting your organization know when the employee is applying for FAMLI.** There's certainly a lot that the next year will bring on Colorado's new leave -- Family and Medical Leave Insurance Leave. One of the important aspects that needs to be communicated to all employees is the requirement for the employee to let the organization know when the employee applies for FAMLI Leave with the CDLE so that the organization can plan. That is, some employees may think that they aren't required to let the organization know when the employee submits a claim to take FAMLI Leave since the application process is through the Colorado Department of Labor and Employment, not the employer, or the employee may think that the organization will immediately receive notice that the employee applied for FAMLI Leave.

This misconception could mean that employees may fail to call in to let the organization know that the employee will be missing work. So, it's important to let employees know that it's also required to let the organization know when the employee is applying for such leave as the employee would for other absences.

Accordingly, it's important to convey that requirement to all employees.

**#5. Posters. Posters. And more Colorado Posters.** The list of Colorado posters employers should post seem to get longer and longer every year. For example, the following are required by the Colorado Department of Labor: (1) COMPS; (2) HFWA; (3) Colorado Anti-Discrimination; (4) Colorado Employment Security Act; (5) Notice to Employer of Injury; and (6) Notice of Paydays.

**#6. Maintain the POWR Repository of Complaints.** The recently passed Protecting Opportunities And Workers' Rights Act ("POWR") requires all Colorado employers to maintain "an accurate, designated repository of all written or oral complaints of discriminatory, harassing, retaliatory, or unfair employment practices that includes, but is not limited to: (a) the date of the complaint; (b) the

identity of the complaining party, if the complaint was not made anonymously; (c) the identity of the alleged perpetrator; and (d) the substance of the complaint." Where that information is kept is up to the company. But wherever that is, it must be kept by every Colorado company.

**#7. Change your Harassment Policy.** And speaking of POWR.... As you'll recall, POWR obviated the long-standing standard of "severe and pervasive conduct" in harassment claims. So, employers should ensure that all Handbook policies no longer reference such a standard.

**#8. Make sure job descriptions accurately describe the duties you want the employee to perform.** Job descriptions not only convey to employees what they should be accomplishing, but they are invaluable to identify in unemployment claims, EEOC charges, litigations, etc. what the employer considers to be the essential functions of the position. Additionally, these job descriptions are absolutely essential in defending a claim under the Equal Pay Act. So, don't overlook these critical documents.

**#9. Distribute policies and conduct training regarding the requirement that nonexempt employees may not perform work off-the-clock.** Class-action lawsuits regarding employees claiming that they performed work off-the-clock continue to increase and increase and increase. In an attempt to limit liability in such claims, organizations should ensure that they take steps to require nonexempt employees to document all time worked and that they are diligent in reminding employees to track ALL time worked.

**#10. Make sure supervisors receive training regarding the organization's policies and procedures.** Do your supervisors understand the finer points of the POWR requirements when their subordinates talk to them about concerns about "unfair treatment"? Are your supervisors ready for the upcoming FAMLI Leave and all the reasons an employee can request leave? These are just a couple examples of training that supervisors should receive from organizations.

**#11. Si sus trabajadores hablan varios idiomas, las políticas de la compañía deben estar en varios idiomas.** If you didn't understand that, perhaps you shouldn't expect employees who predominantly speak Spanish to understand the organization's English-only policies. In short, consider having your key employment policies translated into Spanish for workers that predominantly speak Spanish.

So, with these resolutions (and other(s)) now prepared, we can look forward to the coming year!!! And we here at the Employer's Advisory wish everyone "Happy Holidays" and a wonderful start to the new year.

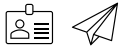
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#### EDITORS

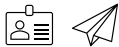
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