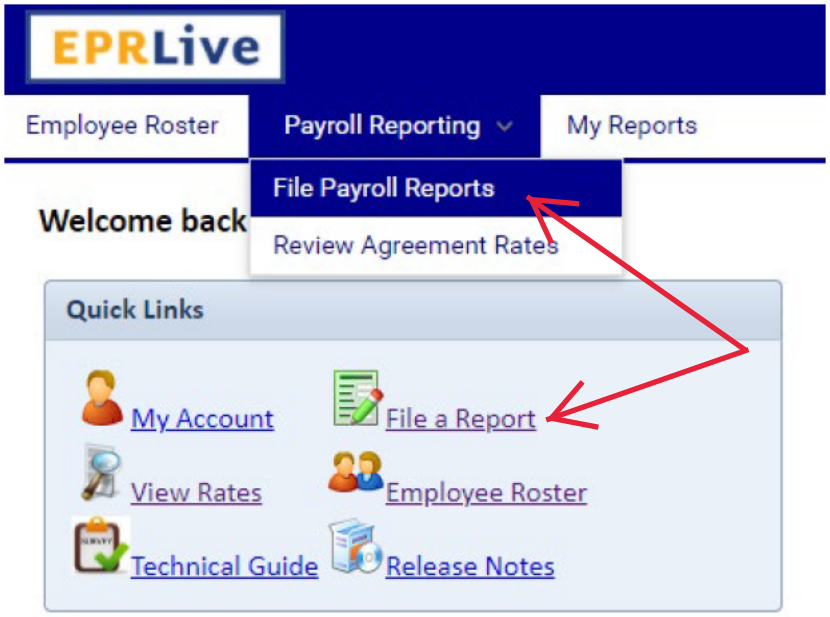
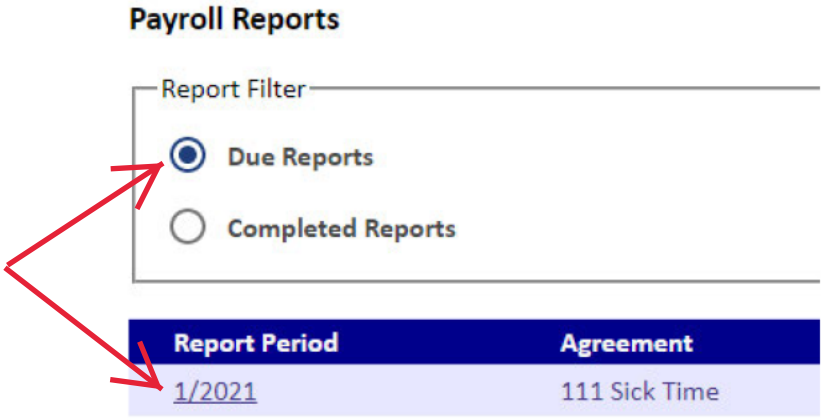
Colorado Sick Time Reports



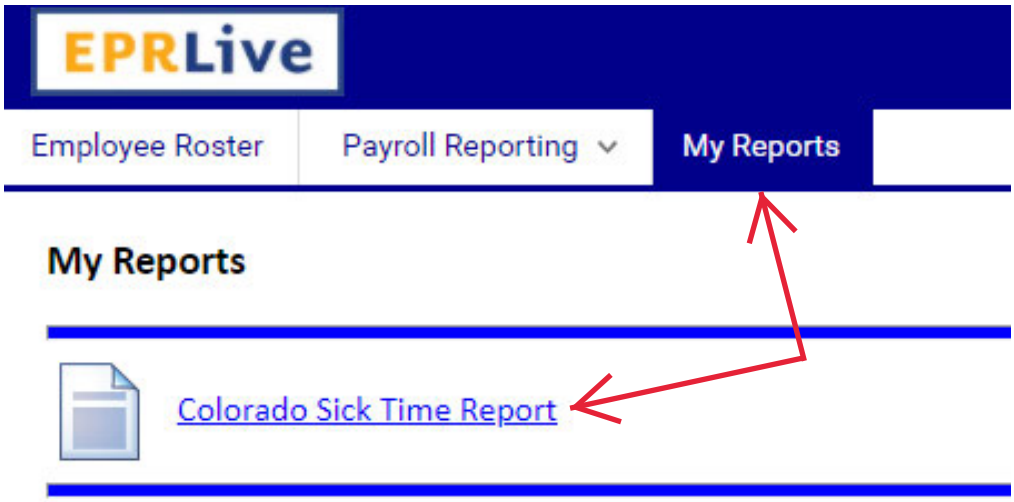


Payroll Report (111 Sick Time: 1/2021)

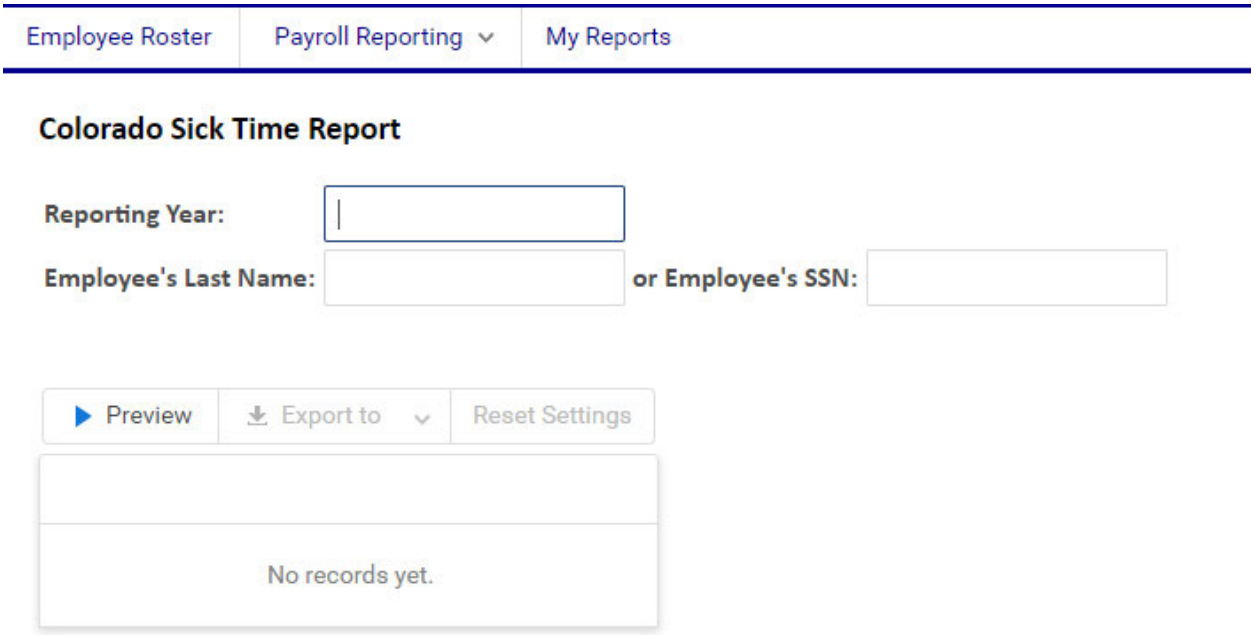
Sturgeon Electric Co., EIN: 840681206

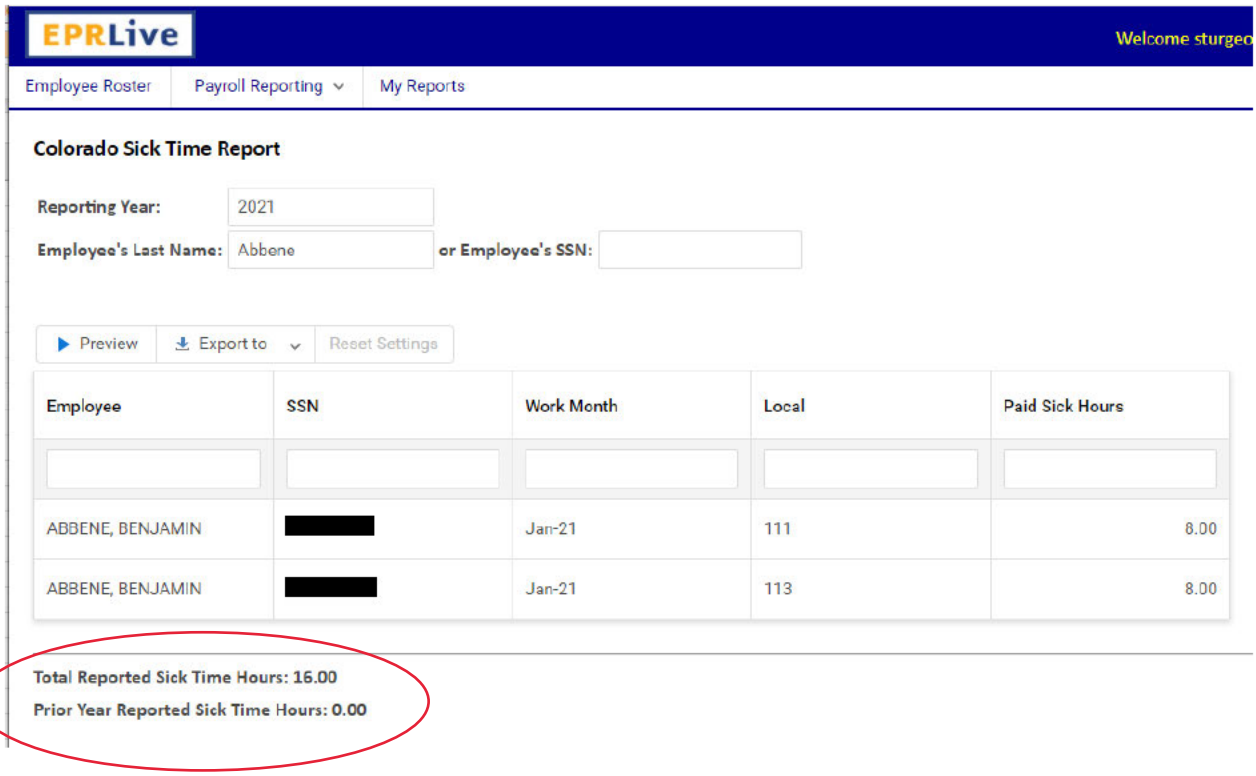
Do you have problems or questions with this payroll report? Call 801-566-8600.

	Employee	SSN	Classification	Hours Worked	Gross Wages	Miscellaneous
New	ABBENE, BENJAMIN H	[redacted]	11:Fitter	8.00	197.60	$0.00
				8.00	$197.00	$0.00



- Enter Reporting Year (2021)
- Search by Social Security Number or Last Name
- Click Preview





Colorado Sick Time is accrued at 1 hour for every 30 hours worked, with a maximum accrual of 48 hours per year. Any unused Sick Time may be carried over to the next year with the maximum still at 48 hours per year.

Interpretive Notice & Formal Opinion ("INFO") # 6B:

Paid Leave under the Healthy Families and Workplaces Act ("HFWA"), as of Jan. 1, 2021

Overview

This INFO covers paid leave, ***as of January 1, 2021***, under the "Healthy Families and Workplaces Act" (S.B. 20-205, July 14, 2020). "HFWA" fully took effect July 15, 2020, with narrower 2020 coverage (see INFO #6A).[1]

All Employers and Employees Are Covered by HFWA, with the Following Exceptions:

Employers with 15 or fewer employees are HFWA-exempt in 2021 but covered in 2022, and were not exempt from the 2020 HFWA requirement of COVID-related leave (see INFO #6A). (C.R.S. 8-13.3-402(5)(b).)[2]

"Employee" and "employer" generally have the same meanings as in existing wage law. HFWA adds that while the federal government is not covered, other government employers are, and employees covered by the federal "Railroad Unemployment Insurance Act" are not covered. HFWA also clarifies when employers are liable for paid leave owed by other employers they acquire. (C.R.S. 8-13.3-402(4),(5),(12).)

An employer that, under a collective bargaining agreement ("CBA"), already provides "equivalent or more generous" paid leave is exempt from other HFWA requirements, as long as the ways the CBA differs from HFWA would not diminish employee rights to "equivalent" paid leave. Wage Protection (WP) Rules, 7 CCR 1103-7, Rule 3.5.8.

When Employees Must Have Paid Leave, and For What Conditions and Needs:

An employer must provide paid leave for various health- and safety-related needs (C.R.S. 8-13.3-404(1)):

(1) a mental or physical **illness, injury, or health condition that prevents work**;

(2) obtaining **preventive medical care**, or a **medical diagnosis, care, or treatment**, of any mental or physical illness, injury, or health condition;

(3) being a victim of **domestic abuse, sexual assault, or criminal harassment** who needs leave for medical attention, mental health care or other counseling, victim services (including legal), or relocation; or

(4) **care for a family member** who has a mental or physical illness, injury, or health condition, or who needs the sort of care listed in category (2) or (3);[3]

(5) due to a **public health emergency**, a public official **closed** the employee's (A) **place of business**, or (B) child's **school or place of care**, requiring the employee to care for the child.[4]

How Much Paid Leave Employers Must Provide:

One hour of paid leave for every 30 hours worked ("accrued leave"), up to 48 hours per year, is what

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[1] From March 11 to July 14, 2020, paid leave for various COVID-related needs was required by the Colorado Health Emergency Leave with Pay ("Colorado HELP") Rules, which still apply to situations during that time period.

[2] For the rules as to how to count the number of employees, see Wage Protection Rule 2.7.4, 7 CCR 1103-7.

[3] Qualifying "family" members are (a) immediate family (related by blood, adoption, marriage, or civil union), or (b) anyone else the employee is responsible for providing or arranging health- or safety-related care for.

[4] Only COVID-related needs were covered in 2020, but covered needs as of 2021 need *not* be COVID-related.

employees must receive, starting their first day of work, unless an employer offers more. (C.R.S. 8-13.3-403.)[5] Overtime-exempt employees accrue leave as if they work 40 hours weekly, even if they work more -- but non-exempt employees accrue paid leave equally for all hours worked, overtime or not.

> **Examples:** An employee working 150 hours a month (35 a week) accrues just over 1 hour's leave every week they work -- which totals 5 hours a month, reaching the yearly 48-hour maximum after about 9½ months. An employee working 20 hours a week accrues 1 hour's leave every 1½ weeks, reaching 32 hours by year's end (based on 48 workweeks, excluding holidays and unpaid time off).

For fee-for-service employees without tracked hours, use a best estimate of all "time worked" defined by the Colorado Overtime and Minimum Payment Standards (COMPS) Order, 7 CCR 1103-1, Rule 1.9. Adjunct faculty in higher education who are paid per credit, or per course, are deemed to work three hours total for each in-class hour.

Leave must be paid at "the same hourly rate or salary and with the same benefits … the employee normally earns during hours worked." The pay rate must be at least the applicable minimum wage, but need *not* include overtime, bonuses, or holiday pay. For employees with non-hourly pay, leave must be paid at the employee's "regular rate" (over the 14 days the employee worked prior to qualifying for leave), as defined by COMPS Order, 7 CCR 1103-1, Rule 1.8. Employees paid commissions or other sales-based pay must receive the greater of: (A) their hourly or salary rate; or (B) minimum wage. (C.R.S. 8-13.3-402(8).) An employer cannot deem employee regular hours "cut" to a lower number due to taking leave. Leave must be paid on the same schedule (payday) as regular wages.

But during a public health emergency (PHE),[6] employers must immediately provide each employee additional paid leave -- supplementing whatever HFWA leave the employee accrued before the PHE with enough supplemental leave to assure the employee can take leave in the following amounts:

(1) for employees normally working 40 or more hours in a week, 80 hours of total leave; and

(2) for employees normally working under 40 hours in a week, the greater of the number of hours the employee (a) is scheduled for work or paid leave in the upcoming fourteen-day period, or (b) actually worked on average in the fourteen-day period prior to the declaration of the public health emergency.

Employees can use this supplemental leave immediately upon the declaration of the PHE, until four weeks after the end of the PHE, for any of the below purposes (C.R.S. 8-13.3-405(3)):

(1) needing to self-isolate due to either being diagnosed with, or having symptoms of, a communicable illness that is the cause of the PHE;

(2) seeking a diagnosis, treatment, or care (including preventive care) of such an illness;

(3) being excluded from work by a government health official, or by an employer, due to the employee having exposure to, or symptoms of, such an illness (whether or not they are actually diagnosed with the illness);

(4) being unable to work due to a health condition that may increase susceptibility or risk of such an illness; or

(5) caring for a child or other family member in category (1), (2), or (3), or whose school, child care provider, or other care provider is unavailable, closed, or providing remote instruction due to the emergency.

Employees retain their accrued leave rights during a public health emergency. They continue earning accrued leave at their regular rate, up to 48 hours per year. And they may use supplemental leave for any of the above-listed qualifying conditions before using accrued leave, if the reason for leave would qualify for both.

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[5] The "year" paid leave accrues is a *calendar* year unless (A) an employer tells employees in writing, in advance, it will use a different annual cycle, and (B) switching to that cycle doesn't diminish HFWA rights.

[6] "Public health emergency" is defined by C.R.S. 8-13.3-402(9), and includes a range of pandemic, infectious disease, or other disaster emergencies declared by the Governor or a federal, state, or local health agency.

Employer Policies on Paid Leave:

"Reasonable documentation" allowable if leave is 4+ days. HFWA lets employers require documentation from employees to show leave is for a HFWA purpose, but with several limits.

(1) Documentation can be required **only** if leave is **four or more consecutive days** the employee would've ordinarily worked (not just four calendar days), and can't be required for **public health emergency leave**.

(2) Only "reasonable documentation" can be required, not more than needed to show a valid reason for leave.

(A) For leave for **health-related needs**: If the employee received services (including remotely) from a provider for the HFWA need, a document from the provider indicating a HFWA-qualifying purpose will suffice. If they did not receive provider services, or cannot obtain a provider document in time or without added expense, they can provide their own writing that leave was for a HFWA need.

(B) For leave for **safety-related needs** (domestic abuse, sexual assault, or criminal harassment): The same rules explained in (2)(A) above apply, except that also, if applicable, an employee can provide a legal document indicating a safety need for the leave (*e.g.*, a restraining order or police report).

(C) Employers may not require that documents have a signature, be notarized, or be in any particular format. Documentation may be submitted by any reasonable method, including electronically.

(3) Employers may not require an employee to disclose **details about health or safety information**. Any such information that employers receive must be treated as confidential medical records, kept in separate files from other personnel documents, and may not be disclosed to others unless the employee consents in writing in advance.

(4) Documentation cannot be required *to take* leave, but can be required as soon as the employee can provide it after returning, or separating from employment if they do not return, whichever is sooner.

(5) If an employer reasonably deems an employee's documentation deficient, without imposing a requirement of providing more documentation than is permitted, the employer must: (A) notify the employee within seven days of either receiving the documentation or the employee's return to work (or separation, if the employee does not return), and (B) provide at least seven days to cure the deficiency after being notified.[7]

Employee notice "as soon as practicable" is required, but only when needing leave is "foreseeable," such as for an appointment scheduled in advance, unless the employer is closed. (C.R.S. 8-13.3-405(4)(a).) An employer "written policy" may adopt "reasonable procedures" on notice for "foreseeable" leave, but "shall not deny paid sick leave to the employee based on noncompliance with such a policy." (C.R.S. 8-13.3-404(2).)

Paid leave cannot be counted as an "absence" that may lead to firing or other action against the employee, and an on-leave employee can't be required to find a "replacement worker." (C.R.S. 8-13.3-404(4), 407(2)(b).)

Any unused accrued leave, up to 48 hours per benefit year, carries forward for use in a later year -- but an employer is not required to allow use of more than 48 hours in any one year. (C.R.S. 8-13.3-403(3)(b).)

Employees may use leave immediately upon accrual, but employers may correct accrual calculations if, in the ordinary course of business and in good faith, it verifies employee hours within a month after work is performed, and adjusts accrued leave to correct any inaccuracy, as long as it notifies the employee in writing.

Use of leave in hourly or smaller increments. An employer may require use of HFWA leave in hourly increments, or may require or allow smaller increments. If an employer does not specify a minimum increment in writing, employees may use leave in increments of a tenth of an hour, *i.e.*, six minutes.

Policies can be more generous. An employer can offer more than 48 hours' leave, and can let employees accrue leave more quickly -- for example, letting employees start with 24 or 48 hours' leave, or providing 1

[7] C.R.S. 8-13.3-404(6), 405(4)(b), 412(1),(2); WP Rules, 7 CCR 1103-7, Rule 3.5.6.

hour of leave per 20 hours worked (rather than per 30). Offering more generous leave (or letting employees take leave in advance of fully earning it) is optional, though it may become binding if offered in a way that makes it a contractual commitment. (C.R.S. 8-13.3-403(2)(a),(b), -403(6), -413.)

Policies by any name can comply. HFWA does not require additional leave if an employer policy provides fully paid time off, often called a "PTO" policy, for both HFWA and non-HFWA purposes (*e.g.*, sick time and vacation) and makes clear to employees, in a writing distributed in advance of an actual or anticipated leave request, that:

(A) its leave policy provides PTO --

(1) in at least an amount of hours and with pay sufficient to satisfy HFWA and applicable rules (including but not limited to the supplemental leave required during a qualifying public health emergency),

(2) for all the same purposes covered by HFWA and applicable rules, not a narrower set of purposes, and

(3) under all the same conditions as in HFWA and applicable rules, not stricter or more onerous conditions (*e.g.*, accrual, use, payment, annual carryover of unused accrued leave, notice and documentation requirements, and anti-retaliation and anti-interference rights); and

(B) additional HFWA leave need not be provided if employees use all their PTO for non-HFWA reasons (*e.g.*, vacation), except during a "public health emergency," an employer must still provide supplemental leave.[8]

Employer records of paid leave hours. An employer "shall retain records for each employee for a two-year period, documenting hours worked, paid sick leave accrued, and paid sick leave used" (C.R.S. 8-13.3-409(1)). Employees may request, and employers must provide in writing or electronically, documents showing the then-current amount of paid leave the employee has (1) available for use and (2) already used during that benefit year (both accrued and supplemental public health emergency leave). Employees may make such requests no more than once per month, except they may make an additional request when a need for HFWA leave arises. Employers may choose a reasonable system for fulfilling such requests.

No paid leave is required if an entire business is completely closed, unless a workplace is closed due to a temporary government quarantine or isolation order that triggers paid leave.

No waiver allowed in a policy or agreement. Any agreement "to waive the employee's rights" under HFWA "is void" (C.R.S. 8-13.3-418), just as wage law generally voids any agreement "to waive or to modify" rights to payment of any "wages" due (C.R.S. 8-4-121). The one exception is the waiver of specific paid leave rules in collective bargaining agreements that do not diminish the amount or availability of paid leave, as noted above.

Retaliation or Interference with HFWA Rights:

Unlawful acts under HFWA include denying paid leave that an employee has a right to take, as well as any threat or adverse action (which includes firing, demoting, reducing hours, suspending, disciplining, etc.) that is done to retaliate against, or interfere with, either (C.R.S. 8-13.3-402(10), 8-13.3-407):

- requesting or taking paid leave under HFWA, or attempting to exercise other HFWA rights;
- informing another person about, or supporting their exercise of, their HFWA rights; or
- filing a HFWA complaint, or cooperating in any investigation or other proceeding about HFWA rights.

HFWA disallows acting against employees for *incorrect* complaints or information, as long as the employee's belief was reasonable and in good faith. (C.R.S. 8-13.3-407(3).) Employers *can* impose consequences (firing or otherwise) for misusing paid leave, dishonesty, or other leave-related misconduct. (C.R.S. 8-13.3-408.)

Example: An employer denies an employee paid leave for a "life coach" appointment. The employee files

[8] C.R.S. 8-13.3-403(4), 8-13.3-415; WP Rules, 7 CCR 1103-7, Rule 3.5.4.

a complaint at the Division, and tells coworkers the employer is wrongly denying paid leave. The Division rules that this appointment was *not* HFWA-covered. That means the employer did nothing wrong by denying leave. But without evidence the employee's belief that HFWA covered the appointment was unreasonable or in bad faith, the employer *can't* take action against the employee for requesting leave, filing a complaint, or telling co-workers she believed the employer violated HFWA.[9]

Example: An employer grants an employee request for paid leave for a blood test and physical exam. The employer then learns the employee went bowling and never really had that appointment, so it (A) denies the request for paid leave and (B) fires the employee for dishonest misuse of leave. The employee files a complaint claiming (A) denial of paid leave and (B) retaliation against using HFWA rights. The employer did nothing wrong: (A) leave was not for an HFWA purpose, and (B) the firing was not retaliation because by taking leave with no HFWA purpose, the employee did not act reasonably or in good faith.

See the Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("WARNING Rules"), 7 CCR 1103-11, for more on retaliation and interference protections.

Employee Complaint Rights:

HFWA paid leave counts as "wages" under Colorado law (C.R.S. 8-13.3-402(8)).[10] An employee denied paid leave can file a complaint with the Division for unpaid wages up to $7,500. An employee can instead file a lawsuit in court if they prefer, but only after sending the employer a written demand and giving the employer at least 14 days to respond. (C.R.S. 8-13.3-411(4).) For more on the Division wage claim process, see INFO #2.

An employee can file a complaint for unlawful retaliation or interference with rights, either with the Division or (after sending the employer a written demand and giving the employer at least 14 days to respond) in court. If retaliation or interference is proven, the employer may be ordered to pay the employee any lost pay (for the leave and/or for a firing or other action that cost the employee any pay), reinstate the employee (if the violation ended the employee's job), and/or pay fines or penalties under Colorado statutes for non-compliance. (C.R.S. 8-13.3-407, 411.) While the Division investigates *all* claims of *unpaid wages*, it investigates only *some* retaliation claims -- but will inform any employees whose claim it doesn't investigate. (C.R.S. 8-13.3-407(4).)

Employer Posting and Written Notice Duties:

HFWA requires employers to both (1) notify employees in writing of the right to take paid leave, in the amounts and for the purposes in HFWA, without retaliation, and (2) display an informational Division poster. (C.R.S. 8-13.3-408.)

- Requirement #1 (notice) can be satisfied by giving employees versions of the latest version of this INFO *or* the poster (on paper or electronically). Requirement #2 (posting) is satisfied by displaying the Division poster "in a conspicuous and accessible" place in "each establishment" where employees work. Employers should provide (A) notice to new employees promptly, no later than other onboarding documents or work policies are provided, and (B) any updated notices and posters for current employees by the end of the calendar year, after the Division's publishing of any annual updates by December 1st.
- Both requirements are waived during any time an employer's business is closed due to a public health-related emergency. For employees working remotely, and for all employees of employers without a physical workspace, complying with requirement #1 (notice) is enough, and can be done electronically.
- Employers must provide notices and posters in "any language that is the first language spoken by at least five percent" of its workforce; versions in other languages (including Spanish) are available on the Division

[9] The Division is not now deciding whether the "mental ... condition" or "preventative care" categories *could* cover certain life coaching. The example just shows a category that, without more explanation, *may not* qualify.

[10] Employers need not provide pay or reimbursement for unused leave to departing employees, except an individual may recover pay for leave they did not get to take due to unlawful retaliation or interference.

INFO page.

- Before providing notices or postings, check the Division INFO page for the latest INFO and poster versions. **As of January 1, 2021, INFO #6B and the 2021 poster replace INFO #6A and the 2020 poster.**

For Additional Information:

Visit the Division website, call 303-318-8441, or email cdle_labor_standards@state.co.us.

COLORADO
Department of Labor and Employment

Division of Labor Standards and Statistics
633 17th Street, Denver, CO 80202-2107
(303) 318-8441 | www.coloradolaborlaw.gov

Interpretive Notice & Formal Opinion ("INFO") # 9:

Equal Pay for Equal Work Act, Part 2: Transparency in Pay and Opportunities for Promotion and Advancement

Overview

This INFO #9 addresses employee rights and employer obligations under Part 2, "Transparency in Pay and Opportunities for Promotion and Advancement," of the Equal Pay for Equal Work Act ("the Act") (C.R.S. § 8-5-101 *et seq.*), as well as under the Equal Pay Transparency Rules ("EPT Rules") (7 CCR 1103-13) promulgated under Part 2. The Act and the EPT Rules, both effective January 1, 2021, detail employer requirements to include compensation in job postings, notify employees of promotional opportunities, and keep job description and wage rate records. Both also detail employee rights and remedies for non-compliance.

Coverage

The Act covers individual and entity "employers," public or private, that employ at least one person in Colorado, and all employees of such employers.[1] Entities merely sharing or re-posting the jobs of other employers — a business operating a website that posts jobs from employers, or a government or non-profit agency that connects job-seekers with jobs, etc. — are not liable for non-compliant postings under Part 2 or the EPT Rules.

Disclosing Compensation in Job Postings: § 201(2) of the Act

Covered Postings. The Act requires disclosing compensation and benefits "in each posting for each job."[2] 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. If a 2020 job posting extends past January 1, 2021, the Division will deem it *not* a 2021 posting covered by Part 2, unless it remains posted on or after February 1, 2021.

Compensation and Benefits to Disclose. Employers must include in each job posting (1) the rate of compensation (or a range thereof), including salary and hourly, piece, or day rate compensation; (2) a general description of any bonuses, commissions, or other compensation; and (3) a general description of all benefits the employer is offering for the position.[3] Benefits that must be generally described include health care, retirement benefits, paid days off, and any tax-reportable benefits, but not minor "perks" like use of an on-site gym or employee discounts.[4] At a minimum, employers must describe the nature of these benefits and what they provide, not specific details or dollar values — such as listing that the job comes with "health insurance," without needing to detail premium costs or coverage specifics.

Posting a "Range." Where an employer posts a range of possible compensation, the range may extend from the lowest to the highest pay the employer actually believes it might pay for the particular job, depending on circumstances including employee qualifications, employer finances, and other operational considerations.[5] An employer may ultimately pay more or less than the posted range, as long as the posted range, at the time of the posting, was what the employer genuinely believed it would be willing to pay for the job.[6]

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[1] C.R.S. § 8-5-101(4),(5).
[2] C.R.S. § 8-5-201(2); EPT Rule 4.1.
[3] C.R.S. § 8-5-201(2); EPT Rule 4.1.1.
[4] EPT Rule 4.1.1(C).
[5] EPT Rule 4.1.2.
[6] EPT Rule 4.1.2.

Last updated December 2020

Examples:

- An employer cannot post the same $30,000-$100,000 range for janitor and accountant jobs alike, if it does not genuinely anticipate offering an accountant the low end, or a janitor the high end.
- An employer cannot post a $70,000-$100,000 range for a *junior* accountant position just because it pays *senior* accountants at the high end of that range. But it can post $70,000-$100,000 for an accountant if it does not limit the posting to junior or senior accountants, and genuinely might offer as low as $70,000 for a junior accountant, or as much as $100,000 for a senior one.

Exceptions and Limitations as to Employer Duties to Post Compensation and Benefits.

Hiring Can Occur Without a Job Posting. Employers are *not* required to "post" jobs, or have job postings, except as needed to announce promotional opportunities to existing employees (covered below). Compensation and benefits must be disclosed only if an employer *chooses* to have a job posting.

Electronic Postings May Link Compensation and Benefit Information. In electronic postings (*e.g.*, webpages or emails), employers need not include all required compensation and/or benefits if such information is hyperlinked or accessible via a URL provided within the electronic posting, with a clear indication in the posting that the hyperlink or URL provides access to compensation and/or benefits specific to that position. Similarly, where an electronic posting is accessible only via another posting with compensation information — *e.g.*, a webpage listing multiple jobs (with compensation and benefits) that links to an application page for each job (without compensation and benefits) — compensation and benefits need not be included on the second or subsequent posting. It is the employer's responsibility to assure continuous compliance with functionality of links, up-to-date information, and information that applies to the specific job posting (*e.g.*, not a single pay "range," or identical benefits, for multiple jobs for which the actual pay ranges or benefits would be different).

Out-of-State Jobs Are Excluded. Employers need not disclose compensation for jobs *to be performed* entirely outside Colorado (which includes non-Colorado jobs that may include modest travel to Colorado), even if the job posting is in, or reaches, Colorado.[7] Remote jobs for a covered employer (*i.e.*, an employer with any Colorado employees), as of the posting, are not out-of-state jobs, and therefore are not excluded.

Out-of-State Postings Are Excluded. Employers need not disclose compensation in job postings made entirely outside Colorado.[8] For example, compensation and benefits need not be included in a printed advertisement or posting entirely in another state, but must be included in an online posting accessible by Colorado residents.

Reasonable Effort to Notify All Current Employees of All Promotional Opportunities: § 201(1) of the Act

Under the Act, employers must "make reasonable efforts to announce, post, or otherwise make known all opportunities for promotion to all current employees on the same calendar day and prior to making a promotion decision."[9] EPT Rule 4.2 addresses what "reasonable efforts" entail.

When a "Promotional Opportunity" Exists. A "promotional opportunity" exists "when an employer has or anticipates 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."[10]

Vacancy in an Existing Position. An employer "has or anticipates a vacancy" when an existing position that the employer intends to fill is open, or is held by a departing employee. For example, an employer "anticipates a vacancy" when an employee gives notice of resignation, and the employer intends to hire a replacement.

Vacancy in a New Position. A vacancy in a new position exists when an employer: (1) adds a position; or (2) gives an existing employee a new position, including by changing their title, and/or materially changing their authority, duties, or opportunities, but not merely by changing their pay or by adding to their title an externally obtained degree or certification such as "CPA" or "LCSW." A vacancy in a new position thus includes a lateral job change, or a promotion along a fixed, in-line career trajectory, for which a current employee is eligible.

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[7] EPT Rule 4.3(B).

[8] EPT Rule 4.3(B).

[9] C.R.S. § 8-5-201(1).

[10] EPT Rule 4.2.1.

Example: An employer automatically advances every Apprentice 1 to an Apprentice 2 when the employee passes a competency test. An Apprentice 2 has more advanced duties, higher pay, and access to future promotions unavailable to an Apprentice 1. This advancement is a promotion to a new position because the employer is creating an Apprentice 2 position each time it advances an Apprentice 1. However, if the promotion is promised in writing upon hiring in conformity with EPT Rule 4.2.5(B), it may be exempt from the duty to provide notice of the promotional opportunity to other employees.

When a Vacancy Is a "Promotional Opportunity." A vacancy is a promotional opportunity so long as the job is superior to another job held by one or more employees of the same employer in terms of compensation, benefits, status, duties, opportunities, or access to further career advancement.

Examples:

- An employer has a vacancy for a Customer Service Representative ("CSR"). While not *all* CSR jobs pay more than Administrative Assistant jobs, *most* CSR jobs are paid more. The CSR job would be considered a promotional opportunity for Administrative Assistants.
- An employer plans to restructure a team to give an employee a supervisory role, without any pay increase. The higher title and authority create a new position that is a promotional opportunity.
- An employer has an entry-level vacancy in its accounting division, which, unlike other divisions at the employer, has a tiered promotion track that gives employees scheduled promotions based on seniority and satisfactory performance. Because the entry-level accounting job gives more access to advancement, it would be considered a promotional opportunity for employees in other divisions.

Contents of Notice. All notices of promotional opportunities are considered "job postings" and therefore must include the compensation and benefit information required for any job posting.[11] Notices must also include the job title of the position and the means by which employees may apply for the position.[12]

Manner of Notice. Notice of a promotional opportunity must be made: (1) in writing; (2) by any method(s) reaching all employees;[13] (3) to all employees for whom it may be a promotion, on the same calendar day;[14] and (4) sufficiently in advance of the hiring or promotion decision that employees receiving notice may apply. Employers must notify all employees for whom a vacant position would be a promotion, and may not limit notice to those it deems qualified for the position.[15] Employers may state that applications are open to only those with certain qualifications, and may screen or reject candidates based on such qualifications.[16]

An employer satisfies its obligation to notify employees of a promotional opportunity if it (1) chooses a method by which all covered employees can access the promotional opportunity notice within their regular workplace; and (2) tells employees where to find the notice.[17] If a particular method reaches some but not all employees, such as an online posting not accessible to those lacking internet access, alternative methods must be used when needed to assure that each employee is informed how to, and can, access the information.[18]

Example: If some of employees work remotely and some in an office, the employer may physically post promotional opportunities on an on-site bulletin board *and* provide notices by email to remote employees. The employer may also use email or an online job board to provide notices to both remote and in-office employees, as long as all employees have internet access.

Employers may combine multiple promotions into one notice, as long as the notice is provided to employees at a time when employees may apply for all positions in that notice.

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[11] EPT Rules 4.1, 4.2.2.

[12] EPT Rule 4.2.2.

[13] EPT Rules 4.2.1-4.

[14] C.R.S. § 8-5-201(1).

[15] EPT Rule 4.2.4.

[16] EPT Rule 4.2.4.

[17] EPT Rule 4.2.3.

[18] EPT Rule 4.2.3.

Timing of Notice. "Reasonable efforts" to notify employees of promotional opportunities require providing notice sufficiently in advance of the promotion decision for employees to apply. If notice is posted rather than provided to employees, it must be posted for long enough that employees can reasonably access it.

Where an employer continuously — at least once per month — either (1) hires for a specific position that would qualify as a promotional opportunity for any current employees, or (2) automatically promotes employees in an in-line job progression upon completing set requirements (*e.g.*, a certification or number of service hours): Such an employer may provide a single notice of such promotional opportunities, rather than a notice for each individual promotion. Such notice may be provided: (1) directly to employees (*e.g.*, by email) in a periodic notice of the promotional opportunity that is frequent enough to give employees time to apply, but at least monthly; or (2) in a static notice, such as a physical or intranet posting, or an employee handbook, (a) that is continuously accessible to employees, (b) that employees are told contains notice of promotional opportunities, and (c) that is updated promptly whenever any aspect of the promotional opportunity changes (*e.g.*, compensation, benefits, qualifications, job description, or application process).

Examples:

- An employer promotes Junior Haberdashers to Senior Haberdashers upon completion of 500 hats. The employer include a notice of this promotional opportunity (including compensation and benefits, and how Junior Haberdashers apply for the promotion by indicating their completion of 500 hats) in its employee handbook, notifying current and new employees that a promotional opportunity notice is in their handbook, and updating the handbook promptly upon any change to the Senior Haberdasher pay, qualifications (*e.g.*, a change to 510 hats), or application process (*e.g.*, a change to how Junior Haberdashers report hat statistics that qualify or promotion).
- An employer is continuously accepting applications for (and hiring at least monthly) salespeople, a position that would be a promotion for some of its employees. The employer may send an monthly email to employees, on the last day of each month, with a notice of the promotional opportunity.
- An employer does not *continuously* accept salesperson applications, but is a large company that always hires multiple salespeople each month to fill vacancies; when a vacancy arises, it opens a 15-day application period. A monthly email, on the last day of each month, would not suffice, because it would not notify employees in time to apply openings arising in the first half of each month. The employer can (A) send a *weekly* email *or* (B) provide notice as *each* opening arises.

Exceptions and Limitations as to Employer Duties to Notify Employees of Promotional Opportunities.

Promotions to Replace Incumbent Employees Unaware of Their Separation. No notice is required where a promotional opportunity is to replace an incumbent employee who, for reasons other than avoiding job posting requirements, is not yet aware of their impending separation.[19] If the need for confidentiality ends before the application deadline (*e.g.*, because the departing employee learns of the separation), the employer must then promptly comply with all notice and posting requirements. If any employees are told of the opportunity, all employees must be told who either (1) meet the minimum qualifications or (2) have a job "substantially similar" (within the meaning of C.R.S. § 8-5-102) to any employees being told of the opportunity.[20] However, because personnel decisions are often made collaboratively, an employer may disclose the planned termination to certain employees with a bona fide human resources, decision-making, or deliberative role in the termination, or in the hiring of the replacement employee, without triggering the obligation to inform other employees.

Automatic Consideration for Promotion Within One Year. No notice is required where consideration for the promotion automatically follows a trial period of one year or less, and the commitment to consider the employee for promotion is memorialized in some writing (*e.g.*, offer letter, contract, or employer handbook) and based solely on the employee's own performance and/or the employer's needs.[21]

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[19] EPT Rule 4.2.5(A).

[20] EPT Rule 4.2.5(A).

[21] EPT Rule 4.2.5(B).

Temporary, Acting, or Interim Positions. Notice is not required for temporary, acting, or interim positions lasting up to six months.[22] Before hiring someone to hold the position for more than six months, the employer must provide notice of the promotional opportunity in time for employees to apply for the permanent position.[23]

Employees Outside Colorado. Multi-state employers are not required to notify non-Colorado employees of promotional opportunities in Colorado or elsewhere.[24]

Jobs Performed Outside Colorado. Multi-state employers need not include compensation or benefits in notices to Colorado employees for positions outside of Colorado, but must notify Colorado employees of such promotional opportunities.[25] As with job postings generally, remote jobs do not qualify for this exclusion; promotional opportunity notices for such jobs must include compensation and benefits.

Employer Recordkeeping Obligations

For each employee, an employer must keep records of the employee's job description and compensation, including salary or hourly wage, benefits, and all bonuses, commissions, and other compensation received.[26] Records must include any changes to job description or compensation over time.[27] The employer must maintain these records for the duration of the employee's employment plus two years thereafter.[28]

Complaints, Investigations, and Remedies

The Division's investigation typically includes the following stages and procedures.

(1) A complainant files a complaint with the Division,[29] *or* the Division receives information,[30] that an employer may have violated, or retaliated against an employee for exercising rights under, Part 2 of the Act and/or applicable EPT Rules.[31] Any person who is "aggrieved by" (*i.e.* witnessed, suffered, or was injured by) a perceived violation of Part 2, or who believes they were retaliated against, may file a complaint within one year after learning of the alleged violation.[32] The complaint must be on a Division form if one is available, and must include a short and plain statement of its grounds; it may also include or attach relevant documents or information.[33] The complainant must timely respond to Division informational or investigatory requests, or the complaint may be dismissed.[34] The Division may initiate an investigation based on information it receives without a formal complaint (a "direct investigation"), including from anonymous complaints[35] that the Division treats as tips it investigates discretionarily, without mandatory complainant notice or participation.[36]

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[22] EPT Rule 4.2.5(C).

[23] EPT Rule 4.2.5(C).

[24] EPT Rule 4.3(A).

[25] EPT Rule 4.3(A).

[26] *See* C.R.S. § 8-5-202 (employers must keep records of employees' "job descriptions and wage rate history").

[27] *See* C.R.S. § 8-5-202.

[28] C.R.S. § 8-5-202.

[29] EPT Rule 3.2 (Part 2 violations); Colorado Whistleblower, Anti-Retaliation, Non-Interference, and Notice-Giving Rules ("WARNING Rules") (7 CCR 1103-11), Rule 3.2 (retaliation for opposing Part 2 violations).

[30] Direct Investigation Rules ("DI Rules") (7 CCR 1103-8), Rule 3.1 (non-complaint investigations).

[31] Complaint investigations under Part 2 are governed by the EPT Rules; retaliation complaint investigations are governed by the WARNING Rules. Direct (*i.e.*, non-complaint-based) investigations of both types are governed by the DI Rules.

[32] C.R.S. § 8-5-203(2)(a); EPT Rule 3.2.1 (Part 2); *see* WARNING Rules 1.1 and 1.2 (retaliation).

[33] EPT Rules 3.2.2 (Part 2); WARNING Rule 3.2.1 (retaliation).

[34] EPT Rule 3.2.3 (Part 2); WARNING Rule 3.2.2 (retaliation).

[35] DI Rule 3.1.

[36] EPT Rule 3.2.5 (Part 2); WARNING Rule 3.2.3 (retaliation).

(2) The Division begins an investigation by sending the employer a "Notice of Complaint" (in a complaint investigation) or "Notice of Investigation" (in a direct investigation) (both called a "Notice").[37] After learning of an investigation (whether upon or before receiving the Notice), an employer must preserve all relevant evidence through the duration of the investigation and any appeal, until the expiration of the period when an aggrieved person may sue in court.[38] The employer's response to a Notice of a potential Part 2 violation must be received by the Division (not just sent) within 14 days of the date the Notice was sent (unless an extension is granted),[39] or 28 days in a retaliation investigation.[40] The response must include all requested documents and information, and any other documents and information the employer believes to be relevant to the investigation. An employer's failure to respond may result in a finding against the employer and/or fines.[41]

(3) Throughout the investigation, all parties must promptly notify the Division of any change in contact information, including mailing address, email address, and phone number.[42]

(4) After reviewing all relevant evidence, the Division issues a determination that, if it finds a violation, may order (1) the employer to undertake actions to bring itself into compliance and remedy the violation, and/or (2) fines of $500 to $10,000 for each violation of Part 2.[43] Failure to include compensation and benefit information in one or more postings for a job (under § 201(2)) is one violation regardless of the number of postings listing the job. Failure to notify employees of one promotional opportunity (under § 201(1)) is one violation regardless of how many employees were not notified. Failure to keep records of employee job descriptions and wage rate history (under § 202) is one violation per employee. Other fines may apply for non-compliance with Division orders[44] or information demands.[45] The Division may waive or reduce particular fines for good cause shown.

(5) Either party may appeal a Division determination in a complaint investigation;[46] the employer may appeal in a direct investigation.[47] An appealing party must explain the error(s) in the determination,[48] and must ensure that the Division receives the appeal within 35 calendar days of the date the determination was sent.[49]

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[37] EPT Rule 3.4.3 (Part 2); WARNING Rule 3.3.4 (retaliation); DI Rule 3.6 (direct investigations).

[38] EPT Rule 3.4.4 (Part 2); WARNING Rule 3.3.5 (retaliation).

[39] EPT Rule 3.4.3.

[40] WARNING Rule 3.3.4.

[41] *See* C.R.S. § 8-1-140(2).

[42] EPT Rule 3.1 (Part 2) and WARNING Rule 3.1 (retaliation), both incorporating the requirement to ensure the Division has current contact information from Wage Protection Rule 4.6; DI Rule 3.12 (direct investigations).

[43] C.R.S. §§ 8-5-203(1),(4); EPT Rule 3.5 (Part 2); WARNING Rule 3.5 (retaliation); DI Rule 5.1 (direct investigations).

[44] *E.g.*, C.R.S. § 8-1-140(2).

[45] *E.g.*, C.R.S. § 8-1-117.

[46] EPT Rule 3.7.1 (Part 2); WARNING Rule 3.7.1 (retaliation).

[47] DI Rule 6.1.

[48] EPT Rule 3.7.1 (Part 2) and WARNING Rule 3.7.1 (retaliation), both incorporating the requirement to describe a clear error from Wage Protection Rule 6.1.1 (11 CCR 1103-7); DI Rule 6.1.1.

[49] EPT Rule 3.7.1 (Part 2), incorporating 35-day appeal deadline from C.R.S. § 8-4-111.5(1) and Wage Protection Rule 6.1.2; WARNING Rule 3.7.1 (retaliation), incorporating 35-day appeal deadline from Wage Protection Rule 6.1.2; DI Rule 6.1.2 (direct investigations).

[Company Name/Logo]

Date: _____ Job/Position Title: _____

Pay Rate/Pay Range: _____

General description of all other benefits/compensation offered: _____ [Or refer to CBA, employee handbook, or other source where benefits information may be described and provide where to find it]

How to apply: _____

Please note that applications are open to only those with certain qualifications. [Employer Name] is an equal opportunity employer. [Along with whatever other information the employer typically includes in job postings]

This is from the Rocky Mtn – Inside Chapter NECA

This is not how WLCC is proposing to handle the Colorado Equal Pay for Equal Work Act per discussions with our attorney.

that you make sure that you utilize the correct classification so that our records are accurate.

0068 Inside-HFWA Paid Leave
0068 Inside-FFCRA Sick Leave

0068 Inside-Federal Paid Leave JW

Lastly, the Colorado Equal Pay Act also takes effect on January 1, 2021. Among other requirements, employers must now make reasonable efforts to announce or post promotion opportunities for all current employees. This means Foreman and General Foreman level positions too, which is a significant change for how you historically have been operating. Despite the fact the Collective Bargaining Agreement dictates you are required to appoint a Foreman, the new laws says you must first POST that job. It is important to note that the posting has to occur only so employees get advance notice. Under the new regulations, employers may post, and then immediately place the most qualified employee in the position. There is no defined time frame for which the posting must be made available before the position is filled, so it can be a very brief decision-making process. The posting must be placed wherever employees have access, such as the main office where all employee postings can be found, the job trailer, email/ text, Intranet, or any combination of those approaches so long as designed to reach all employees. Moreover, the postings can be very simple, provided that they include the job title, compensation, benefits, and instructions for how to apply. Here is a helpful article from the law firm Fisher Phillips

outlining the new requirements. A model posting is also attached here.

May the holiday season fill your home with joy,
your heart with love, and your life with laughter.

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RMC NECA Apps are here!