

Equal Pay For Equal Work Act and Guidance

I. Background

[The Equal Pay for Equal Work Act](#) (SB 19-085 - C.R.S. § 8-5-101et seq.) was signed into law by Colorado Governor Polis on May 22, 2019. Effective January 1, 2021, this Act amends Colorado law and provides new wage discrimination and employer provisions that differ from federal law and other state equal pay laws.

This law aims to increase pay equity and transparency, imposes new notice and recordkeeping requirements, and encourages companies to regularly self-audit their compensation practices.

Colorado's Equal Pay Act applies to **all employers and employees in the state of Colorado**, both public and private. Employer is defined as the state or any political subdivision, commission, department, institution, or school district thereof, and every other person employing a person in the state. Employee is defined as a person employed by an employer. MSU Denver and its employees are covered by Colorado Equal Pay Act.

Among other things, Colorado's Equal Pay Act provides:

1. Prohibits an employer from discriminating between employees on the basis of sex, or on the basis of sex in combination with another protected status, by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work (based on a composite of skill; effort, which may include consideration of shift work; and responsibility), regardless of job title. A wage rate differential is permissible if at least one of the following factors accounts for the entire wage rate differential:
 - a. A seniority system;
 - b. A merit system;
 - c. A system that measures earnings by quantity or quality of production;
 - d. The geographic location where the work is performed;
 - e. Education, training, or experience to the extent that they are reasonably related to the work in question; or
 - f. Travel, if the travel is a regular and necessary condition of the work performed.
2. Requires the employer **to keep records of job descriptions and wage history** for each employee for the duration of employment plus two years after the end of employment.
3. Requires the employer to provide **notice of job openings and promotional opportunities**, including the hourly/salary or range, and a general description of all the benefits and other compensation offered to the hired applicant.

4. **Prohibits using pay history for prospective employees. Employers cannot discuss salary/wage history with applicants** prior to offer or during the hiring process, or rely on the wage or salary history, of a prospective employee to determine a salary offer. Discrimination or retaliation against a prospective employee for failing to disclose wage history is prohibited under the Act.

II. Recommendations to Comply

1. New Hire

- a. **Definition:** A potential employee is being offered a job with Metropolitan State University of Denver via a search. The employee may be internal or external to MSU Denver.
- b. **Example:** Jane Smith has applied and interviewed for a position at Metropolitan State University of Denver and the Hiring Manager is ready to extend an offer.
- c. **Compliance:** No change in current process in order to comply with the Act. Hiring Managers and Search Committees will need to work closely with the Talent Team and the Total Rewards Team to ensure compliance with this act.

2. Promotions

- a. **Definition:** A current employee moves to a different position that is vacant and is in a higher grade.
- b. **Example:** Jane Smith applies for a vacant or new position in her department. She is the final candidate after a competitive search process. Her new salary will be reviewed based on the new job description and her current education and experience.
- c. **Compliance:** A promotional opportunity needs to be posted when the position is new or vacant and seeking internal or external candidates. If the position is new or vacant and seeking internal or external candidates, the position will need to be posted internally for a minimum of 10 days or externally for minimum of 10 days.

3. Adjustment to Job Duties

- a. **Definition:** A current employee has assumed new or added duties in their current position requiring a review of the position to determine appropriate career level. The title may or may not change and in many cases a pay adjustment may be warranted.
- b. **Example:** Jane Smith has assumed new duties in her position. She possesses the requirements and the University supports the move (in her current position) within Accounting from a Sr. Specialist, Accounting to an Associate Analyst, Accounting, which moves Jane from a grade 14 to grade 16. Jane may be eligible for a pay increase.

- c. **Compliance:** When duties are updated or added requiring a review to the next career level or adjustment in pay, the change in position must be announced in an internal format. This action does not require a search, but the changes to the position must be announced in a format for other employees to view. This allows for transparency and notifies employees of potential opportunities for future career movement. The announcement must be available internally for three business days. In order for a position to be considered under this category, the current position will need to be the next logical step in career level and MSU Denver's compensation structure. Departments will no longer be able to use the same single position to, for example, promote someone from an administrative assistant to an assistant director. Again, current encumbered positions must follow the next logical career level in order to bypass a search. For current encumbered positions that have been elevated to a higher grade, the position must stay within the same position number, fall within the same Area of the compensation structure that the previous position was classified to, and typically cannot surpass more than two career stages. Hiring Managers will need to work with the Total Rewards Team for guidance to ensure compliance with this act.

4. **Interim Appointments**

- a. **Definition:** An interim appointment is defined as an appointment of an employee, internal or external, to perform the duties of a vacant or soon to be vacant career position.
- b. **Example – external interim:** The Total Rewards Benefits Team needs additional help for open enrollment. The hiring manager has identified a candidate to bring into the interim benefit-eligible position. The hiring manager, with the appropriate justification and approval from the VP of the area and HR, can bypass the search process and hire the identified individual for 6 months. During this time a search will need to be initiated for the vacancy or new position.
- c. **Example – internal interim:** Academic Affairs has a vacant Dean position. They have identified an internal employee to assume the duties while a search is conducted. The employee identified will remain in the encumbered position with their current title and can receive a salary supplement for assuming the additional duties. Hiring Managers will need to work with the Total Rewards team to determine the amount to be paid on the salary supplement to ensure equity in pay as it relates to compliance under this act.
- d. **Compliance:** It is being recommended that interim appointments can continue, however only for a maximum of six months unless a current employee is assuming the duties. Hiring managers will need to run a search alongside the interim appointment. Employees assuming duties of a vacant positions while conducting a search are not considered an interim and will not assume the title of the vacant position. If employees are assuming duties of a vacant position, a

search will need to be conducted and the employee can continue to perform these duties until the position is filled.

5. **Direct Appointments**

- a. **Definition:** An employee either internal or external is appointed to a vacant or new position without a search process.
- b. **Example:** The Hiring Manager has been recommended a strong candidate, John Franklin, with exceptional experience for a vacant position. The Hiring Manager would like to hire John Franklin directly into this vacant position without conducting a search.
- c. **Compliance:** It is being recommended that we no longer allow direct appointments, as it goes against the very thing this Act is ensuring we comply with.

6. **Demotions**

- a. **Definition:** A current employee is moved to a different position that is in a lower grade. This may be employee or employer initiated.
- b. **Example:** Joe Taylor no longer wants the high-stress job and wants to move to different position that is in a lower grade. The University supports the request. A pay decrease may be warranted.
- c. **Compliance:** No Change, however pay changes will need to be reviewed and determined by the Total Rewards Benefits Team to ensure compliance with this act. Also, if the position the current employee is moving to is vacant, there may be a requirement to post the position internally or externally.

7. **Lateral position changes**

- a. **Definition:** A current employee is moved to a different position at the same grade. This may be through a search process or employee or employer initiated.
- b. **Example:** Jane Doe has applied and accepted another position at MSU Denver at the same grade. A pay increase or decrease may be warranted depending on the employee's education and experience as it relates to the new position.
- c. **Compliance:** No change, however, pay changes will need to be reviewed and recommended by the Total Rewards Team to ensure compliance with this act.

8. **Salary Negotiations**

- a. **Definition:** A current or new external hire has been offered a position and would like to negotiate a higher salary.

- b. **Example:** A search in ITS has reached the finalist stage. Based on the salary recommendation from Human Resources, a verbal offer has been made. The prospective hire (whether internal or external) responded requesting a higher salary.
- c. **Compliance:** Colorado's Equal Pay for Equal Work Act prohibits employers from basing pay on a current or prospective employee's current or past pay. Pay stubs will not serve as justification to match, raise or lower the offered salary. The act requires equitable pay for similarly situated positions across the institution. Therefore, negotiation of a single salary could call for salary adjustments of some or all similarly situated positions across the institution. VPs and AVPs no longer have the ability to approve negotiated salaries based strictly on budget. If a department would like to negotiate the salary on an offer, Human Resources must first conduct an equity review and approve all negotiations. Additionally, verbal offers may not be made at an amount lower than what was recommended by Human Resources.

III. Frequently Asked Questions

Q. Who does the Equal Pay Act apply to?

Colorado's Equal Pay Act applies to **all employers and employees in the state of Colorado**, both public and private. Employer is defined as the state or any political subdivision, commission, department, institution, or school district thereof, and every other person employing a person in the state. Employee is defined as a person employed by an employer.

Q. What does Colorado's Equal Pay Act require?

There are several components to Colorado's Equal Pay Act. Some of the provisions are:

- a. Prohibits wage discrimination by requiring that an employer shall not discriminate between employees on the basis of sex, or on the basis of sex in combination with another protected status, by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work (based on a composite of skill; effort, which may include consideration of shift work; and responsibility), regardless of job title. A wage rate differential is permissible if at least one of the following factors accounts for the entire wage rate differential:
 - I. A seniority system;
 - II. A merit system;
 - III. A system that measures earnings by quantity or quality of production;
 - IV. The geographic location where the work is performed;
 - V. Education, training, or experience to the extent that they are reasonably related to the work in question; or
 - VI. Travel, if the travel is a regular and necessary condition of the work performed.

- b. MSU Denver can't prevent employees from discussing their own compensation information with other employees or require employees to sign a waiver preventing them from discussing their compensation.
- c. The law also requires MSU Denver to post a salary range or a range we reasonable feel we will pay on every posting.
- d. The Act requires the employer to keep records of job descriptions and wage rate history for each employee for the duration of employment plus two years after the end of employment.
- e. The Act requires providing notice of job openings and promotional opportunities, including the hourly or salary rate or range, and a general description of all of the benefits and other compensation offered to the hired applicant.
- f. Prohibits using pay history for prospective employees by requiring that an employer shall not seek the wage rate history, or rely on the wage rate history, of a prospective employee to determine a wage rate. Discrimination or retaliation against a prospective employee for failing to disclose wage rate history is prohibited.

Q. Does MSU Denver have a Compensation Philosophy?

Metropolitan State University of Denver's Compensation Philosophy is to compliment the strategic plan of the organization by hiring, engaging and retaining the right talent that support the University's Vision, Role & Mission and Core Values.

This is accomplished by:

- Offering a competitive base pay structure that meets the market;
- Designing a base pay structure that allows for flexibility to exceed the market where individual factors warrant it;
- Making pay decisions consistently and fairly, based upon such factors as experience (in position), proficiency, performance and competitive market indicators;
- Designing our compensation programs to be externally competitive, by utilizing multiple resources, and internally equitable.

Q. As a hiring manager, if I extend an offer to a candidate and the candidate counter offers, what should I do?

Hiring managers will be required to re-engage with a member of the Total Rewards Team, should a candidate counteroffer. This is to ensure a new base pay form and internal equity review is completed.

Q. How long will we need to keep job descriptions and salary history records?

Job descriptions and salary history records need to be kept by the employer for the lifecycle of the employee plus 2 years after. All of our faculty and staff position descriptions are archived in our applicant tracking system, so departments don't need to maintain those.

Q. Will we still be able to set a new hire's salary based on their experience?

Yes.

Q. What is a promotional opportunity that will be posted under this new law?

A promotional opportunity that needs to be posted is one where the position is new or vacant and seeking internal or external candidates.

Q. May I ask a candidate what they currently make?

The Equal Pay for Equal Work Act **prohibits using pay history for prospective employees** by requiring that an employer shall not seek the wage rate history, or rely on the wage rate history, of a prospective employee to determine a wage rate. Discrimination or retaliation against a prospective employee for failing to disclose wage rate history is prohibited.

Q. With current employees, will HR be looking to make sure their employees are at least at the minimum salary of the pay grade for their position? Is this part of the Colorado Equal Pay Act?

This is not part of the equal pay act. The equal pay act does not require pay ranges and does not dictate where an employee is paid in a range.

Q. Will it be required to post all temporary staff job openings? How does this affect hiring retirees?

Yes, the law requires us to post all openings and this includes temporary staff and retirees. However, we are looking at how to do this the best way possible for our campus with minimal impact on hiring time.

Q. Will I be required to announce the salary range on all postings?

Yes, each job-vacancy posting will have to disclose the hourly wage or salary, or the hourly wage or salary range, along with a general description of all benefits and other compensation offered.

Q: Will we be required to add salary to all position posted in 2021?

Essentially salary information and benefit information will be required on all MSU Denver postings starting 2021. This includes any posting from 2020 still posted on the career website.