

EMPLOYMENT: NORTH AMERICA

USA - Colorado



Employment: North America

Quick reference guide enabling side-by-side comparison of key considerations, emerging issues and reform proposal for each state; the employment relationship; hiring; wage and hour laws; discrimination, harassment and family leave; privacy in the workplace; trade secrets and restrictive covenants; labour relations; and discipline and termination procedures.

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STATE SNAPSHOT

Key considerations

Which issues would you most highlight to someone new to your state?

Colorado is an employment-at-will state, in the absence of an explicit contract to the contrary.

The highlights of some key differences between state and federal law include:

- Overtime pay is required for non-exempt employees who work more than 40 hours in a single workweek or 12 hours in a single workday.
- The minimum salary thresholds for employees exempt from overtime under Colorado law are now higher than federal thresholds.
- Sexual orientation, including gender identity, is a protected category under the Colorado Anti-Discrimination Act.
- With limited exceptions, employers may not discriminate based on an employee's lawful activities during non-working hours.
- Employers with more than 25 employees may not discharge or refuse to hire an individual on the basis that he or she is married to or plans to marry another employee of the same company.
- All employers must provide up to 48 hours of paid sick leave per year. Paid sick leave may be used for a variety of health- and safety-purposes (see Colorado Department of Labor and Employment, Division of Labor Standards and Statistics' Interpretive Notice & Formal Opinion (INFO) #6B). The law also requires employers to supplement employees' accrued sick leave upon the declaration of a public health emergency to ensure that every employee has at least 80 hours of accrued sick leave available. This is a one-time supplement (i.e., once per emergency declared) and does not renew annually.
- The state minimum wage is adjusted annually. As of January 1, 2022, Colorado's minimum wage rate is \$12.56 per hour.
- Cities, counties, and other local jurisdictions may pass their own minimum wage and overtime requirements that exceed state law requirements.

Law stated - 21 July 2022

What do you consider unique to those doing business in your state?

Colorado severely restricts employers' use of non-compete agreements and provides for criminal and civil penalties against employers who violate the law.

Colorado is one of the few states to require employers to pay out unused accrued paid time off and vacation leave upon an employee's separation.

Colorado has some unique legal provisions of which employers should be aware, including the legalization of marijuana, the protection of lawful off-duty activities, mandatory paid sick leave, expanded privacy rights, etc.

Law stated - 21 July 2022

Is there any general advice you would give in the labor/employment area?

In Colorado, an implied contract may be created through written or oral statements, including oral representations made by managers or statements contained in employee handbooks or other materials. Continued employment can constitute sufficient consideration for contracts, including non-compete agreements.

Employers in Colorado should also be aware of the following:

- Colorado will not enforce “use-it-or-lose-it” PTO/vacation leave policies—accrued but unused PTO/vacation must be paid out upon separation from employment.
- With limited exceptions, non-compete agreements are generally unenforceable (and illegal) in Colorado. Such agreements are only enforceable to protect trade secrets, and only apply to employees who earn at least \$101,250 annually (adjusted each year). Colorado’s new non-compete law imposes advance notice requirements and choice-of-law and venue provisions and addresses customer non-solicitation agreements.
- Colorado’s Equal Pay for Equal Work Act (EPEWA) prohibits wage discrimination based on sex and imposes equal pay obligations beyond those required under the federal Equal Pay Act (EPA). The EPEWA also requires employers to disclose the compensation and benefits for all jobs posted.
- Colorado has legalized marijuana, but employers may discipline or terminate employees for off-duty marijuana.
- Sexual orientation, including gender identity, is a protected category under the Colorado Anti-Discrimination Act.
- With limited exceptions, employers may not discriminate based on an employee’s lawful activities during non-working hours.
- Employers with more than 25 employees may not discharge or refuse to hire an individual on the basis that he or she is married to or plans to marry another employee of the same company.
- Colorado’s “Ban the Box” law prohibits employers from inquiring into a job applicant’s criminal history in an initial job application.
- Under the Healthy Families and Workplaces Act (HFWA), all Colorado employers are required to provide their Colorado employees one hour of paid sick leave for every 30 hours worked, up to 48 hours per year, and supplemental leave during a public health emergency. Employee handbooks need to contain a provision addressing HFWA leave.

Law stated - 21 July 2022

Emerging issues

What are the emerging trends in employment law in your state, including the interplay with other areas of law, such as firearms legislation, legalization of marijuana and privacy?

Employment law is rapidly changing in Colorado to provide employees increasingly more rights in the workplace. For example, starting August 10, 2022, non-compete agreements will be largely unenforceable (and illegal) with respect to many employees. Starting in January 2023, employers will be required to contribute to a state-run family and medical leave insurance program (FAMLI) under which eligible employees are entitled to paid family and medical leave.

Law stated - 21 July 2022

Proposals for reform

Are there any noteworthy proposals for reform in your state?

In its 2021 and 2022 sessions, the Colorado General Assembly passed a number of bills relating to labour and employment, including:

- HB 22-1112: Workers’ Compensation Injury Notices. Extends the timeline for an employee to notify their employer about an on-the-job injury from four to 10 days and requires new signage.
- HB 22-1354: Protecting Injured Workers’ Mental Health Records. Clarifies portions of the Workers’ Compensation Act related to the release and disclosure of mental health records for employees making a claim under the act.

- SB 22-161: Wage Theft Employee Misclassification Enforcement. Modifies the penalties for failing to provide requested information to the division of labour standards and statistics, procedural requirements, and enhances remedies available to employees.
- HB 22-1317: Restrictive Employment Agreements Act. Restrictive covenants are still void in Colorado unless they fall within certain statutory exceptions which have been significantly narrowed or removed altogether. Adds notice requirements and statutory penalties.
- HB 22-1367: Updates to Employment Discrimination Laws. Extends time to file charge of discrimination with the CCRD from 6 months to 300 days, expands the CCRD's time to investigate and retain jurisdiction, expands the definition of employee to include domestic workers, and allows plaintiffs in age discrimination suits to recover compensatory and punitive damages and request a jury trial.
- HB 22-97: Whistleblower Protection Health & Safety. Expands protections of Colorado Public Health Emergency Whistleblower Act by removing references to "public health emergency" and permitting claims for retaliation if the employee raises any reasonable concern about a workplace health or safety violation.
- SB 22-230: Collective Bargaining for Counties. Grants public employees of a county the right to organize as part of a union and engage in collective bargaining.

Under the Colorado Overtime and Minimum Pay Standards Order #38 ("COMPS Order"), 7 C.C.R. §1103-1 (2022), the minimum salary threshold for certain employees to be exempt from overtime requirements under Colorado law is \$865.38 per week, which exceeds the \$684 per week minimum under federal law.

Law stated - 21 July 2022

EMPLOYMENT RELATIONSHIP

State-specific laws

What state-specific laws govern the employment relationship?

Colorado Revised Statutes – Title 8 – Labour and Industry contains the majority of the laws governing employer-employee relationships, including wages, workers' compensation and employment security (unemployment compensation). Title 24 – Government-State contains the state's anti-discrimination and fair employment practices laws.

Colorado's Administrative Regulations (CCR) include rules governing employment-related matters. 3 CCR 708 contains rules related to Colorado's Civil Rights Commission and enforcement of the state's Anti-Discrimination Act. 7 CCR 1101 to 1103 includes regulations concerning wages, employment security (unemployment compensation), wages, employment verification, restrictions on the use of credit report and social media and worker's compensation.

Law stated - 21 July 2022

Who do these cover, including categories of workers?

Depending on the specific provision, these laws generally cover employees. Some provisions, including the anti-discrimination laws, also apply to applicants for employment.

Law stated - 21 July 2022

Misclassification

Are there state-specific rules regarding employee/contractor misclassification?

Colorado has a misclassification statute related to misclassifying independent contractor status under the Employment Security Act (unemployment compensation) (C.R.S. §8-72-114). It provides for penalties of up to \$5,000 per misclassified employee for the first misclassification with willful disregard, and up to \$25,000 per misclassification for subsequent willful misclassifications. The employer will also be ordered to pay appropriate premiums for unemployment insurance, including back premiums, and interest. Colorado follows the control/supervision test for independent contractors, which is detailed in C.R.S. §§ 8-4-101; 8-40-202; and 8-70-115, and summarized by the Colorado Department of Labor and Employment [here](#) .

Law stated - 21 July 2022

Contracts

Must an employment contract be in writing?

An express contract for employment may be made either orally or in writing and may also be created by conduct, which is said to be a contract implied in fact.

An implied contract can arise out of an employment manual, handbook, or other document reflecting company policy and practice.

The statute of frauds voids unwritten agreements that cannot be performed within one year, so an oral contract extending beyond one year must be in writing (see C.R.S. §38-10-112).

Law stated - 21 July 2022

Are any terms implied into employment contracts?

Every contract in Colorado contains an implied covenant of good faith and fair dealing. However, in the employment context, the Colorado Court of Appeals has refused to extend the implied covenant of good faith and fair dealing to at-will employment contracts. The Colorado Supreme Court has declined to recognize a tort claim for breach of an express covenant of good faith and fair dealing, concluding that a breach of an express covenant may result in damages for breach of contract only, not as a tort.

Law stated - 21 July 2022

Are mandatory arbitration agreements enforceable?

In Colorado, arbitration is a matter of contract and ordinary principles of contract interpretation apply. Arbitration is a favoured means of dispute resolution in Colorado courts. Without grounds based in a contract to find the arbitration agreement unenforceable, mandatory arbitration agreements may be enforced. Likewise, mandatory arbitration agreements may also include class and/or collective action waivers, generally speaking.

Law stated - 21 July 2022

How can employers make changes to existing employment agreements?

Except as stated in any written agreement, parties may alter written or unwritten contracts orally. However, best practice would be to record any contractual changes in writing, signed by both parties.

Law stated - 21 July 2022

HIRING

Advertising

What are the requirements relating to advertising open positions?

It is unlawful to persuade or engage workers to move from one place to another through false or deceptive means. This includes deceptive representations and false advertisements around wages, the type of employment, the job environment, union strike environment, or other key characteristics (C.R.S. §8-2-104). Employers must also comply with the anti-discrimination provisions of the Colorado Anti-Discrimination Act (C.R.S. §24-34-402).

Under Part 2 of Colorado's Equal Pay for Equal Work Act, if an employer chooses to publish a job opening publicly, the employer must include salary/compensation information in the posting, including a general description of benefits offered with the position (see INFO #9). Further, for internal promotional opportunities within Colorado, employers must make reasonable efforts to publish the same among existing employees before filling the position.

Law stated - 21 July 2022

Background checks

(a) Criminal records and arrests

The Colorado Chance to Compete Act prohibits employers from inquiring into an applicant's criminal history in an initial job application and from advertising that persons with criminal histories may not apply for the position at issue. Colorado employers may also not inquire about sealed records (C.R.S. § 24-72-702). The Colorado Civil Rights Division states in its Pre-employment Inquiries Guidelines that asking any questions about arrests may lead to a discriminatory inference and questions about convictions should be substantially related to the applicant's ability to perform a specific job.

Law stated - 21 July 2022

(b) Medical history

The Colorado Code of Regulations prohibits pre-employment medical examinations and pre-employment inquiries as to whether an applicant is an individual with a disability (3 CCR §708-1, Rule 60.3(B)(1)). However, employers may condition an offer of employment on the results of a medical examination conducted before the employee begins employment, provided that all entering employees are subject to such an exam regardless of disability and the exam results are used only in accordance with Colorado law (Id. at Rule 60.3(B)(3)). Employers cannot charge employees or applicants for medical examinations or furnishing of medical records that are required as a condition of employment. Colo. Rev. Stat § 8-2-118

Law stated - 21 July 2022

(c) Drug screening

Colorado does not have a state law regulating drug and alcohol testing by private employers. However, employers should note that Colorado has legalized the use of marijuana for both medical and recreational purposes. The Colorado Supreme Court ruled that terminating an employee who used medical marijuana outside the workplace after he or she tested positive during a random drug test did not violate Colorado's lawful activities statute (*Coats v. Dish Network, LLC* , 350 P.3d 849 (Colo. 2015)).

The City of Boulder has an ordinance related to alcohol and drug testing (Boulder Rev. Code §12-3-1 to 5).

Law stated - 21 July 2022

(d) Credit checks

Colorado's Employment Opportunity Act, C.R.S. §8-2-126, restricts the use of consumer credit information by employers.

Law stated - 21 July 2022

(e) Immigration status

Employers must comply with federal law 8 U.S.C. § 1324a(b). (See C.R.S. § 8-2-122).

Law stated - 21 July 2022

(f) Social media

Colorado employers may not suggest, request, or require that an employee or applicant disclose any username, password, or any other information that provides access to the individual's personal accounts or personal electronic communications devices. Employers also may not compel an employee or applicant to add anyone as a "friend" or to their list of contacts and may not require, request, suggest, or cause an employee or applicant to change their privacy settings associated with a social networking account. Finally, employers cannot discharge, discipline, or discriminate against any employee or applicant for refusing or failing to disclose such information. A few exemptions exist related to conducting workplace investigations regarding compliance with applicable laws or the unauthorized downloading of the employer's proprietary information (C.R.S. §8-2-127).

Law stated - 21 July 2022

(g) Other

Colorado law prohibits employers from terminating an employee for engaging in any lawful activity off the premises of the employer during non-working hours. There are exceptions when such a restriction relates to a bona fide occupational requirement or is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest (C.R.S. §24-34-402.5).

All private employers are prohibited from inquiring about criminal history on an employment application or stating that a person with a criminal history cannot apply, but employers may obtain the publicly available criminal background report of an applicant at any time if not to directly solicit business for financial gain (C.R.S. § 8-2-130).

WAGE AND HOUR

Pay

What are the main sources of wage and hour laws in your state?

Colorado Revised Statutes—Title 8—Labor and Industry—Article 4—Wages—contains the majority of the laws governing wage and hour issues. The Code of Colorado Regulations, 7 CCR 1101-1103, includes the regulations concerning wages.

Law stated - 21 July 2022

What is the minimum hourly wage?

The state minimum wage will be adjusted annually as measured by the Consumer Price Index used for Colorado. The current minimum wage as of January 2022 is \$12.56 per hour (but this may vary by city or county—the City and County of Denver’s minimum wage is \$15.87 per hour).

Law stated - 21 July 2022

What are the rules applicable to final pay and deductions from wages?

When an employee is terminated by the employer, all earned wages are due immediately, if the accounting unit is operational. If the accounting unit is not scheduled to be operational, pay is due no later than six hours after the start of the accounting unit’s next regular working day. If the accounting unit is offsite, wages are due no later than 24 hours after the start of the accounting unit’s next regular working day (C.R.S. §8-4-109).

When an employee resigns or quits their employment, all earned wages are due by or on the next regular payday (C.R.S. §8-4-109). For a detailed list of permitted deductions, see INFO #16 .

Effective August 10, 2022, when deducting from an employee’s wages the amount of money or value of property that the employee failed to return upon separation, the employer must provide notice of the anticipated deduction within 10 days after termination, including a written accounting of (i) money/property owed, (ii) the replacement value, (iii) the date it was given to the employee, and (iv) the date it should have been returned. If the employee returns the money/property within 14 days of the notice, the employer must reimburse the employee for the deduction.

Regarding vacation time, if an employer provides an employee paid vacation or paid time off (PTO), the employee is entitled to any earned/accrued but unused vacation/PTO upon separation, and any agreement purporting to “forfeit” any earned but unused vacation is void. See *Nieto v. Clark’s Market*, 2021 CO 48.

Law stated - 21 July 2022

Hours and overtime

What are the requirements for meal and rest breaks?

For individuals covered by the Colorado Overtime and Minimum Pay Standards Order # 38 (“COMPS Order”), employers must provide an uninterrupted meal period of at least 30 minutes to employees scheduled to work a shift of five or more hours. If the nature of the job does not allow for an uninterrupted meal period, the employee must be permitted to

consume an “on-duty” meal while performing duties and such period must be compensated.

Paid rest periods of 10 minutes are required for every four hours worked, or major fractions of four hours. To the extent practical, rest periods should be in the middle of each four-hour work period. If an employer fails to authorize and permit a required rest break, then the employer must pay the employee an additional 10 minutes of wages at the employee’s agreed-upon or required rate of pay. Special rules and time periods apply to agricultural workers.

Law stated - 21 July 2022

What are the maximum hour rules?

Colorado employees engaged in work in underground mines, underground workings, and smelters may not work more than eight hours within 24 hours, except under certain conditions (C.R.S. §8-13-102).

Firefighters are restricted from being on duty during any calendar month for periods which amount to more than 12 hours for each day in a month, with exceptions for emergencies (C.R.S. §8-13-107).

Minors (under 18) may not work more than 40 hours in a week or more than eight hours in any 24-hour period. Minors under 16 may not work more than six hours after school hours unless the next day is not a school day. Except for babysitters, no minor under the age of 16 shall be permitted to work between the hours of 9:30 p.m. and 5:00 a.m., except work as a model, actor, or performer, unless the next day is not a school day (C.R.S. §8-12-105).

For overtime purposes, Colorado requires that overtime pay be paid to non-exempt employees at 1.5 times their regular hourly rate for hours worked in excess of 40 hours per working week, and on a daily basis for hours worked over 12 hours per day, or 12 consecutive hours without regard to the start and end time of the working day, whichever calculation results in the greater payment of wages (see COMPS Order #38).

Law stated - 21 July 2022

How should overtime be calculated?

For individuals covered by the COMPS Order, overtime pay must be paid to non-exempt employees at 1.5 times their regular hourly rate for hours worked in excess of 40 hours per working week, and on a daily basis for hours worked over 12 hours per day, or 12 consecutive hours without regard to the starting and ending time of the working day, whichever calculation results in the greater payment of wages. A working day is any consecutive 24-hour period starting with the same hour each day and the same hour as the beginning of the working week. A working week is any consecutive seven-day period starting with the same calendar day and hour each week (see COMPS Order #38).

Law stated - 21 July 2022

What exemptions are there from overtime?

Colorado exemptions from overtime include commission sales, the ski industry, medical transportation, salespersons, parts persons, and mechanics employed by automobile, truck, or farm implement dealers, range workers, and salespersons employed by trailer, aircraft and retail boat dealers. Other exemptions include supervisory and sales roles, business owners and non-profits, some residence workers, taxi drivers, volunteers, and other categories covered in COMPS Order #38.

Law stated - 21 July 2022

Record keeping

What payroll and payment records must be maintained?

For employees covered by the COMPS Order, employers must keep for at least three years after the wages or compensation was due, a true and accurate record of the following:

- name, address, occupation, and date of hire;
- date of birth, if the employee is under 18;
- daily record of all hours worked;
- record of allowable credits and declared tips; and
- regular rates of pay, gross wages earned, withholdings made, and net amounts paid each pay period (COMPS Order (2022)).

Federal payroll record-keeping requirements exist under the Fair Labor Standards Act.

Additionally, employers must keep, for two years, records documenting each employee's paid sick leave accrued and used.

Law stated - 21 July 2022

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

What is the state law in relation to:

Protected categories

(a) Age?

It is discriminatory employment practice to refuse to hire, discharge, promote or demote, harass during the course of employment, or discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of age (age 40 or older) (C.R.S. §24-34-402).

Law stated - 21 July 2022

(b) Race?

It is discriminatory employment practice to refuse to hire, discharge, promote or demote, harass during the course of employment, or discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of race or colour (C.R.S. §24-34-402). It is also a discriminatory employment practice to discriminate against a person based on the person's protective hairstyle, such as braids, locs, twists, tight coils, cornrows, Bantu knots, Afros, and headwraps (C.R.S. § 24-34-301(5.8)).

Law stated - 21 July 2022

(c) Disability?

It is discriminatory employment practice to refuse to hire, discharge, promote or demote, harass during the course of employment, or discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of disability. However, with regard to disability, it is not a discriminatory or unfair

employment practice if:

- there is no reasonable accommodation that the employer can make with regard to the disability;
- the disability actually disqualifies the person from the job; and
- the disability has a significant impact on the job (C.R.S. §24-34-402).

Law stated - 21 July 2022

(d) Gender?

It is discriminatory employment practice to refuse to hire, discharge, promote or demote, harass during the course of employment, or discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of sex (C.R.S. §24-34-402).

Law stated - 21 July 2022

(e) Sexual orientation?

It is discriminatory employment practice to refuse to hire, discharge, promote or demote, harass during the course of employment, or discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of sexual orientation, which includes gender identity and gender expression.

Law stated - 21 July 2022

(f) Religion?

It is discriminatory employment practice to refuse to hire, discharge, promote or demote, harass during the course of employment, or discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of religion or creed (C.R.S. §24-34-402).

Law stated - 21 July 2022

(g) Medical?

Colorado does not include medical or genetic information as a protected category under its anti-discrimination statute, except to the extent it relates to disability.

Law stated - 21 July 2022

(h) Other?

Additional protected classes under the Colorado Anti-Discrimination Act are national origin and ancestry (C.R.S. §24-34-402). Colorado law also protects against discrimination based on pregnancy, physical recovery from childbirth, or related conditions (C.R.S. §24-34-402.3).

Employers cannot terminate an employee for engaging in any lawful activity away from or off the employer's premises during non-working hours. There are limited exceptions to this restriction when a conflict of interest or bona fide occupational requirement exists (C.R.S. §24-34-402.5).

Harassment**What is the state law in relation to harassment?**

Under the Colorado Anti-Discrimination Act, "harass" means to create a hostile work environment based on an individual's race, national origin, sex, sexual orientation, disability, age, or religion. Harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of the complaint and take prompt remedial action if appropriate (C.R.S. §24-34-402).

Law stated - 21 July 2022

Family and medical leave**What is the state law in relation to family and medical leave?**

Colorado currently has no state equivalent to the federal Family and Medical Leave Act (FMLA). However, under the Family Care Act, Colorado requires those employers covered under the FMLA to provide FMLA leave benefits to eligible employees to care for their civil union and domestic partners who have a serious health condition (C.R.S. §8-13.3-203).

Starting January 1, 2024, Colorado employees will be entitled to up to 12 weeks of partially paid leave and job security for various family and medical-related absences from work, plus an additional 4 weeks of paid leave if employees have a serious health condition related to pregnancy or childbirth complications under the Paid Family and Medical Leave Insurance ("FAMLI") program. The fund will be funded by employee and employer payroll taxes, with employee/ employer contributions set to begin on January 1, 2023.

Law stated - 21 July 2022

PRIVACY IN THE WORKPLACE**Privacy and monitoring****What are employees' rights with regard to privacy and monitoring?**

No Colorado law specifically addresses the monitoring of employees or employee communications, thus such monitoring is governed by Colorado's wiretapping statute (C.R.S. 18-9-304). Employer policies should specify that employees should have no expectation of privacy in any information or items brought onto the employer's premises or contained on or accessed through the employer's computer systems or devices. Colorado is a one-party consent state for recording telephone conversations or other wire communications (C.R.S. §18-9-304). Accordingly, employers that aren't visibly present during employees' conversations can't knowingly listen to or record such conversations or attempt to listen to or record such conversations unless they have consent from at least one main party to the conversations.

Law stated - 21 July 2022

Are there state rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

C.R.S. §8-2-127 addresses the exemptions related to workplace investigations, but Colorado employers may not request or require employees or applicants disclose usernames or passwords for personal accounts or electronic devices, nor compel them to add anyone to a contact list or social networking account. Employers are also barred from

requiring an employee to change their privacy settings associated with accounts, and employers may not retaliate against employees or applicants for refusal.

Law stated - 21 July 2022

Bring your own device

What is the latest position in relation to bring your own device?

Colorado law does not address the issue of bring your own device.

Law stated - 21 July 2022

Off-duty

To what extent can employers regulate off-duty conduct?

Under the Colorado Anti-Discrimination Act, employers may not terminate an employee for engaging in any lawful activity away from or off the employer's premises during non-working hours. There are limited exceptions to this restriction when a conflict of interest or bona fide occupational requirement exists (C.R.S. §24-34-402.5).

Law stated - 21 July 2022

Gun rights

Are there state rules protecting gun rights in the employment context?

In Colorado, an employer can determine which employees, if any, may carry a firearm in the workplace. Colorado Revised Statute § 18-12-214 restricts where a person holding a concealed carry permit may take their gun, and reserves the right of a private property owner, private tenant, private employer, or private business entity to exclude weapons from their premises. This law includes the right to prohibit the possession of a firearm in a locked vehicle in the company's parking lot.

Law stated - 21 July 2022

TRADE SECRETS AND RESTRICTIVE COVENANTS

Intellectual property

Who owns IP rights created by employees during the course of their employment?

If an employee's job duties include inventing or solving a particular problem that requires invention, any invention created by that employee becomes the property of the employer (Scott Sys., Inc. v. Scott , 996 P.2d 775 (Colo. App. 2000)). Corporate officers may also be under a duty to assign rights to inventions to their employer (Id.). However, absent an agreement to the contrary, an employee who is not an officer or was not hired to invent generally retains ownership of all intellectual property that he or she creates (Id.; see also Hewett v. Samsonite Corp ., 507 P.2d 1119 (Colo. App. 1973)).

Law stated - 21 July 2022

Restrictive covenants

What types of restrictive covenants are recognized and enforceable?

Colorado recognizes and may enforce covenants not to compete, solicit, or disclose confidential information but subject to the strict provisions of C.R.S. §8-2-113, which presumes a non-compete to be void unless it meets a statutory exception. Colorado has also adopted the Uniform Trade Secrets Act (C.R.S. §7-74-101 et seq.).

Effective August 10, 2022, Colorado implemented new law concerning non-competes, solicitation of customers, and confidentiality provisions under C.R.S. §8-2-113.

Any non-compete covenant that restricts the right of any person to receive compensation for performance of skilled or unskilled labour is void (C.R.S. §8-2-113). The statute provides exceptions for noncompetes entered into with a “highly compensated worker” (as defined by COMPS #38, 2022, and is \$101,250 in 2022) and is for the protection of trade secrets and is no broader than is reasonably necessary to protect the employer’s legitimate interest in protecting trade secrets or for:

- the purchase and sale of a business or the assets of a business;
- an employer’s recovery of the expense of educating and training a worker where the training is distinct from normal on-the-job training, the employer’s recovery is limited to the reasonable costs of the training and decreases over the course of the two years subsequent to the training proportionately based on the number of months that have passed since the completion of the training, and the employer recovering for the costs of the training would not violate the Fair Labor Standards Act; and
- Colorado courts will not enforce a non-compete agreement if it unreasonably restricts a current or former employee’s ability to earn a living.

A court will not create reasonable limits if the contract is silent on those issues (National Graphics Co. v. Dilley , 681 P.2d 546 (Colo. App. 1984)).

In a document separate from that containing any other covenants between the employer and employee, which must be signed by the employee, the employer shall provide a notice to the employee or prospective employee identifying the agreement with restrictive covenants (and attaching the same), stating that the agreement contains restrictive covenants that could restrict the workers’ options for subsequent employment following their separation from the employer, and directs the worker to specific sections of the agreement that contain the covenant not to compete. This notice must be provided to a prospective worker before the worker accepts the employer’s offer of employment; or a current worker at least 14 days before the earlier of the effective date of the covenant or the effective date of any additional compensation or change in the terms or conditions of employment that provides consideration for the covenant.

Employees who, at the time of termination of employment, primarily reside or work in Colorado cannot be required to adjudicate the enforceability of the covenant outside of Colorado.

Law stated - 21 July 2022

Non-compete

Are there any special rules on non-competes for particular classes of employee?

An agreement between a physician and a partnership, group, or other employer may require the payment of damages in an amount that is reasonably related to the injury suffered by reason of the termination of the employment relationship, with a liability exception for physicians who treat patients with rare disorders.

Law stated - 21 July 2022

LABOR RELATIONS

Right to work

Is the state a “right to work” state?

Colorado is a modified right to work state. Collective bargaining agreements may require that all employees join the union as a condition of employment, but Colorado’s Labor Peace Act provides conditions that must be met before such contract provisions be included in the agreement (C.R.S. §8-3-101 et seq.).

Law stated - 21 July 2022

Unions and layoffs

Is the state (or a particular area) known to be heavily unionized?

According to the Bureau of Labor Statistics, union members account for about 6.5% of wage and salary workers in Colorado in 2021. Industries with union representation include mining, manufacturing/construction, healthcare, public employment, and retail/grocers.

Law stated - 21 July 2022

What rules apply to layoffs? Are there particular rules for plant closures/mass layoffs?

Colorado has no law regarding plant closures and mass layoffs for private employers.

Law stated - 21 July 2022

DISCIPLINE AND TERMINATION

State procedures

Are there state-specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

Colorado has no law governing private employers with regard to discipline and grievance procedures.

Law stated - 21 July 2022

At-will or notice

At-will status and/or notice period?

Colorado is an at-will state.

Law stated - 21 July 2022

What restrictions apply to the above?

The at-will status may be modified by an express or implied contract. An implied contract can arise out of an employment manual, handbook, or other document reflecting company policy and practice.

In addition, Colorado recognizes certain public policy exceptions to the at-will employment relationship including violation of public policy (such as when an employee refuses to comply with an unlawful request or whistle-blowing activity), wrongful constructive discharge, fraudulent inducement, or any other unlawful reason (e.g., discrimination).

Law stated - 21 July 2022

Final paychecks

Are there state-specific rules on when final paychecks are due after termination?

If terminated by the employer, all earned wages are due immediately if the accounting unit is operational or no later than six hours after the start of the accounting unit's next regular working day if not operational at termination. If the accounting unit is offsite, then wages are due no later than 24 hours after the start of the accounting unit's next regular working day (C.R.S. §8-4-109). When an employee resigns or quits employment, all earned wages are due by or on the next regular payday (C.R.S. §8-4-109).

Effective August 10, 2022, when deducting from employee's wages the amount of money or value of property that the employee failed to return upon separation, the employer must provide notice of the anticipated deduction within 10 days after termination, including a written accounting of (i) money/property owed, (ii) the replacement value, (iii) the date it was given to the employee, and (iv) the date it should have been returned. If the employee returns the money/property within 14 days of the notice, the employer must reimburse employee for the deduction

While employers are not required to provide paid vacation benefits, if an employer does provide paid vacation or paid time off (PTO), any earned but unused vacation/PTO time must be treated like wages and paid out upon separation. Any purported "use it or lose it" policies, requiring forfeiture of earned but unused vacation upon separation, are void. See *Nieto v. Clark's Market*, 2021 CO 48.

Law stated - 21 July 2022

Jurisdictions

	Canada - Quebec	Stikeman Elliott LLP
	USA - California	DLA Piper
	USA - Colorado	Holland & Hart LLP
	USA - District of Columbia	Shook Hardy & Bacon LLP
	USA - Georgia	Ogletree Deakins
	USA - Indiana	Ogletree Deakins
	USA - Iowa	Nyemaster Goode PC
	USA - Maine	Pierce Atwood LLP
	USA - Maryland	Shawe Rosenthal LLP
	USA - Massachusetts	Morgan, Brown & Joy LLP
	USA - Michigan	Nemeth Law
	USA - Montana	Christensen & Prezeau, PLLP
	USA - Nebraska	Rembolt Ludtke LLP
	USA - Nevada	Holland & Hart LLP
	USA - New Hampshire	Pierce Atwood LLP
	USA - New Jersey	Faegre Drinker Biddle & Reath LLP
	USA - New Mexico	Holland & Hart LLP
	USA - New York	DLA Piper
	USA - North Carolina	Poyner Spruill LLP
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	USA - Tennessee	Bass Berry & Sims PLC
	USA - Texas	Ogletree Deakins
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