

PANORAMIC

EMPLOYMENT: NORTH AMERICA

USA - Colorado



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Employment: North America

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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 a contract to the contrary, every employment relationship is presumed to be at will. Colorado recognizes the legal claim of wrongful discharge in violation of public policy as an exception to “at-will” employment.

Colorado law includes numerous unique employment provisions, some of which go beyond the requirements of federal law. The highlights of some key state law differences include the following:

- Employers with at least 1 employee in Colorado are required to include compensation range and benefits in job postings for roles that could be performed in Colorado.
- Overtime pay is required for non-exempt employees on a daily and weekly basis.
- The minimum salary thresholds for employees exempt from overtime under Colorado law are higher than federal thresholds regarding the same and, while similar to the federal counterparts, portions of Colorado’s duties tests for the executive, administrative, and professional exemptions are narrower.
- With limited exceptions, employers may not take any adverse employment action based on an employee’s lawful activities off the employer’s premises 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.
- Employers must provide up to 48 hours of paid sick leave per year. Mandatory paid sick leave includes leave for reasons related to the treatment of domestic abuse, stalking, sexual assault, or other related crimes, and effective August 7, 2023, leave to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member, and leave to care for a family member whose school or place of care has been closed—or to evacuate a place of residence—due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in closure or the need to evacuate.
- The state minimum wage is adjusted annually. As of January 1, 2024, Colorado’s minimum wage rate is \$14.42 per hour.
- Cities, counties, and other local jurisdictions may pass their own minimum wage and overtime requirements that exceed state law requirements. For example, Denver County’s minimum wage rate in 2024 is \$18.29 per hour.
- Colorado generally considers restrictive covenants void except in limited circumstances and only when certain criteria is met.

Law stated - 6 August 2024

Key considerations

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

Colorado is known for its highly educated workforce. The state's natural beauty and outdoor lifestyle make it a very desirable place to study, work, and live.

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 - 6 August 2024

| Key considerations

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

Employment relationships in Colorado are presumed to be at will, terminable with or without cause or notice but 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 (which are void unless specific statutory criteria is met). Additionally, Colorado is quickly expanding employee protections and rights with mandatory paid sick leave, payment for accrued but unused PTO upon separation from employment, and statutory penalties for presenting unenforceable noncompete and nonsolicitation agreements. Colorado also has a mandatory insurance program (the Family and Medical Leave Insurance or "FAMLI") that provides employees with supplemental wage replacement for qualifying leaves of absence.

Law stated - 6 August 2024

| 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?

Colorado law is trending to provide employees increasingly more rights in the workplace. Employers must provide mandatory paid sick leave, most employers and all employees must pay into the FAMLI program (with employee benefits becoming available January 1, 2024), and employers must announce job opportunities to all employees. Colorado has also expanded the number and type of protected classes for discrimination purposes and, effective August 7, 2023, lowered the burden of proof for harassment claims. Colorado has passed comprehensive consumer data privacy laws, which will certainly affect larger employers operating in Colorado. On May 17, 2024, Colorado passed comprehensive legislation restricting the use of artificial intelligence. The new law requires developers and entities that use high-risk AI systems to use reasonable care to prevent algorithmic discrimination.

Law stated - 6 August 2024

Proposals for reform

Are there any noteworthy proposals for reform in your state?

In 2023, the Colorado General Assembly passed a number of bills relating to labor and employment, including:

- SB23-17: Amended the Colorado Healthy Families and Workplaces Act to provide additional qualifying uses of paid sick leave.
- SB23-172: The “Protecting Opportunities and Workers’ Rights” or “POWR” Act lowered the burden of proof for harassment claims, changed the standard for disability discrimination claims, restricted confidentiality and nondisclosure agreements, made marital status a protected class, and included new record retention requirements.
- SB23-105: Amended Colorado’s Equal Pay for Equal Work Act such that employers no longer need to provide notice to employees of career progression/development promotions, extended the statute of limitations for wage discrimination claims, and created a process for the Division of Labor and Employment to investigate and mediate wage discrimination claims.
- SB23-58: Prohibited employers from inquiring about a prospective employee’s age, date or birth, and dates of attendance at or date of graduation from an educational institution on an initial employment application.

As of June 18, 2024, the Colorado General Assembly passed the following bills relating to labor and employment:

- SB24-205: Requires that employers deploying a high-risk artificial intelligence system use reasonable care to avoid algorithmic discrimination of employees. The law is scheduled to take effect on February 1, 2026.
- HB24-1451: Amends Colorado’s CROWN Act to include hair length that is commonly or historically associated with race to the list of traits associated with race for the purposes of anti-discrimination law. This law took effect on June 3, 2024.
- HB24-1130: Expands the Colorado Privacy Act (CPA) to protect employees’ biometric data and restrict when employers can collect and use it. This law will take effect on July 1, 2025.
- HB24-1324: Grants the Attorney General rule-making authority over restrictive employment agreements and regulates training expenses that an employer may recover from an employee.

Law stated - 6 August 2024

EMPLOYMENT RELATIONSHIP

State-specific laws

What state-specific laws govern the employment relationship?

Colorado Revised Statutes – Title 8 – Labor 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 rules and regulations, the Code of Colorado 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 - 6 August 2024

State-specific laws

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 - 6 August 2024

Misclassification

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

Colorado has a statute related to misclassifying independent contractors 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 Department of Labor and Employment [here](#).

Law stated - 6 August 2024

Contracts

Must an employment contract be in writing?

An express contract for employment may be made either orally or in writing and an agreement 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.

However, 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). Thus, an oral employment agreement that cannot be performed within one year is barred by the statute of frauds, but an oral employment agreement for an indefinite term is not barred by this statute.

Law stated - 6 August 2024

Contracts

Are any terms implied into employment contracts?

Every contract in Colorado, except at-will employment contracts, contains an implied covenant of good faith and fair dealing. 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 - 6 August 2024

Contracts

Are mandatory arbitration agreements enforceable?

In Colorado, arbitration is a matter of contract and ordinary principles of contract interpretation apply. Arbitration is a favored 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 - 6 August 2024

Contracts

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 - 6 August 2024

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, including 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) and under Part 2 of Colorado's Equal Pay for Equal Work Act, job postings must include salary/compensation information in the posting, including a general description of benefits offered with the position (see INFO #9 and #9A). Internal job opportunities within Colorado, with some exceptions, must be published to existing employees before filling the position.

The Colorado Chance to Compete Act bars employers from advertising that persons with criminal histories may not apply for the position at issue (with certain exceptions) (see INFO #9C).

The Ensure Equal Pay for Equal Work Act, passed in June 2023 and effective as of January 1, 2024, amended the Equal Pay for Equal Work Act to clarify and enhance an employer's obligations relating to open positions and job opportunities.

Law stated - 6 August 2024

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 (with certain exceptions) (see INFO #9C). Colorado employers may also not inquire about sealed records (C.R.S. §24-72-702). Otherwise, Colorado law does not currently restrict an employer's use of criminal history records for both arrests and convictions and the law allows an employer to obtain the publicly available criminal background report of an applicant at any time.

Law stated - 6 August 2024

Background checks

(b) Medical history

The Code of Colorado Regulations (CCR) prohibits pre-offer medical examinations and pre-employment inquiries as to whether an applicant is an individual with a disability (although an employer may make pre-employment inquiries into an applicant's ability to perform job-related functions) (3 CCR §708-1:60.3). However, employers may condition an offer of employment on the results of a medical examination conducted before employment begins, as long as 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.).

Law stated - 6 August 2024

Background checks

(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 - 6 August 2024

Background checks

(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 - 6 August 2024

Background checks

(e) Immigration status

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

Law stated - 6 August 2024

Background checks

(f) Social media

Colorado employers may not suggest, request, or require that an employee or applicant disclose any username, password, or other means for accessing the employee's or applicant's personal accounts or service through the employee's or applicant's personal electronic communications device. 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 - 6 August 2024

Background checks

(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).

The Job Application Fairness Act, which takes effect July 1, 2024, bars employers from asking about a job applicant's age in an initial application, except where age requirements are based on legal and safety needs (C.R.S. § 8-2-131). In this vein, the statute also bars employers from inquiring into date of birth, dates of attendance or graduation at an educational institution, or other inquiries similarly disclosing age (see INFO #9B). Employers may request additional application materials, such as CVs and school transcripts, but they must notify applicants that they can redact age identifying information, such as graduation dates, etc. And, even where there is legal or safety need to verify compliance with age requirements, and employer cannot ask the applicant to disclose his or her specific age.

Law stated - 6 August 2024

WAGE AND HOUR

Pay

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

Article 4 of Title 8 in Colorado's Revised Statutes contains most of the laws governing wage and hour issues. The Code of Colorado Regulations (CCR), 7 CCR 1101-1103, includes the regulations concerning wages.

Law stated - 6 August 2024

Pay

What is the minimum hourly wage?

The Colorado Constitution requires that the state minimum wage be adjusted annually for inflation. The current minimum wage as of June 2024 is \$14.42 per hour.

Law stated - 6 August 2024

Pay

| 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 (including accrued but unused PTO), if the accounting unit is operational. If the unit is not scheduled to be operational, pay is due no later than six hours after the start of the unit's next regular working day. If the unit is offsite, wages are due no later than 24 hours after the start of the unit's next regular working day (C.R.S. §8-4-109).

When an employee resigns or quits their employment, all earned wages (including accrued but unused PTO) are due by or on the next regular payday (C.R.S. §8-4-109).

Generally, deductions from wages are permitted for:

- those mandated by local, state, or federal law (e.g., FICA requirements, and garnishments);
- contributions attributable to automatic enrollment in an employee retirement plan;
- loans, advances, goods or services, and equipment or property provided by an employer to the employee pursuant to a written agreement;
- the cost of theft, if a report has been properly filed with law enforcement;
- revocable deductions authorized by the employee (e.g., for medical insurance, stock purchases, pension plans, or charities); and
- the amount of money or value of property that the employee failed to properly pay or return when the terminated employee was entrusted with such money or property so long as proper notice is provided to the employee as set out in the statute (C.R.S. §8-4-105).

Law stated - 6 August 2024

| Hours and overtime

| What are the requirements for meal and rest breaks?

For individuals covered by the Colorado Overtime and Minimum Pay Standards Order (COMPS Order) # 39, 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 - 6 August 2024

| Hours and overtime

| 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 - 6 August 2024

Hours and overtime

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 - 6 August 2024

Hours and overtime

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 - 6 August 2024

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 # 38 (2022)).

Work records required under Colorado's unemployment compensation law must be retained for at least five years.

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

Law stated - 6 August 2024

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

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 - 6 August 2024

Protected categories

(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).

Law stated - 6 August 2024

Protected categories

(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 that would allow the individual to satisfy the essential functions of the job; and
- the disability actually disqualifies the person from the job (C.R.S. §24-34-402).

Law stated - 6 August 2024

Protected categories

(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 - 6 August 2024

Protected categories

(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 (C.R.S. §24-34-402).

Law stated - 6 August 2024

Protected categories

(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 - 6 August 2024

Protected categories

(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 - 6 August 2024

Protected categories

(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 with more than 25 employees are prohibited from discharging an employee or refusing to hire an individual solely on the basis that he or she is married to or plans to marry another employee of the same employer (C.R.S. §24-34-402).

Effective August 7, 2023, marital status is a protected category under the Colorado Anti-Discrimination Act.

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).

Law stated - 6 August 2024

Harassment

What is the state law in relation to harassment?

Under the Colorado Anti-Discrimination Act, as amended by the Protecting Opportunities and Workers' Rights (POWR) Act (effective August 7, 2023), "harass" or "harassment" means to engage in, or the act of engaging in, any unwelcome physical or verbal conduct or any written, pictorial, or visual communication directed at an individual or group of individuals because of that individual's or group's membership in, or perceived membership in, a protected class, which conduct or communication is subjectively offensive to the individual alleging harassment and is objectively offensive to a reasonable individual who is a member of the same protected class. (C.R.S. §24-34-402).

Although the conduct or communication need not be severe or pervasive to constitute harassment, it must fall into one of three categories to be actionable:

- submission to the conduct or communication is explicitly or implicitly made a term or condition of the individual's employment;
- submission to, objection to, or rejection of the conduct or communication is used as a basis for employment decisions affecting the individual; or

- the conduct or communication has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

Petty slights, minor annoyances, and lack of good manners do not constitute harassment unless the slights, annoyances, or lack of manners, when taken individually or in combination rise to level of actionable harassment.

In cases involving alleged harassment by a supervisor, the employer can only raise an affirmative defense if:

- the employer has established a program that is reasonably designed to prevent harassment, deter future harassers, and protect employees from harassment;
- the employer has communicated the existence and details of how to make complaints to both its supervisory and nonsupervisory employees, such as through a handbook or policy; and
- the employee has unreasonably failed to take advantage of this reporting program.

Law stated - 6 August 2024

Family and medical leave

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

Colorado's FAMLI Program is funded with employee and employer contributions. Starting January 1, 2023, 0.45% of each Colorado employee's gross earnings per pay period will be deducted to cover FAMLI Program premiums and employers with 9 or more employees will similarly pay a 0.45% premium. Employers can opt-out of FAMLI provided they have a State-approved plan in place. Employees can start applying for benefits and using FAMLI leave on January 1, 2024. Employees are eligible to receive FAMLI leave and benefits on their first day of employment, provided they work in Colorado and have earned \$2,500 over the previous year for work performed in Colorado. Employees are not eligible for job protections under Colorado's FAMLI Act unless they have been employed by their current employer for at least 180 days.

The following are qualifying conditions for paid FAMLI leave:

- caring for a new child in the first year after the birth, adoption, or foster care placement;
- caring for a family member with a serious health condition;
- leave for the employee's own serious health condition;
- leave because of a family member's active duty service in the United States Armed Forces, or notice of an impending call or order to active duty in the Armed Forces; and
- leave needed because the employee or a family member was the victim of domestic violence, stalking, sexual assault, or abuse.

Assuming the employer does not have its own private plan (which must be approved through the state), employees will submit applications for benefits directly to the Colorado Department of Labor and Employment's FAML I Division via its Employee Portal. The Employee Portal was up and running by the fourth quarter of 2023. The CDLE will process each application and let the employee know whether their request was approved or denied, or whether additional documentation is needed. The CDLE will also notify the employer that the employee applied for FAML I leave and benefits.

Employers should specify in their handbooks or policies that if an employee uses FAML I leave for a reason that also qualifies as leave under FMLA, then FAML I and FMLA leave run concurrently.

Employers can permit, but must not require, employees to use accrued paid time off to "top off" FAML I benefits to make their benefits payments whole. Employees cannot, however, receive more in compensation than their average weekly wage.

Law stated - 6 August 2024

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 - 6 August 2024

Privacy and monitoring

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 - 6 August 2024

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 - 6 August 2024

Off-duty

To what extent can employers regulate off-duty conduct?

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 - 6 August 2024

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 - 6 August 2024

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 - 6 August 2024

Restrictive covenants

What types of restrictive covenants are recognized and enforceable?

Any non-compete covenant that restricts the right of any person to receive compensation for performance of labor is void (C.R.S. §8-2-113). The statute provides exceptions for:

- the purchase and sale of a business or the assets of a business;
- the protection of trade secrets, provided certain other requirements are satisfied; and
- recovery of the expense of educating and training an employee who has served an employer for less than two years.

A non-compete agreement for the protection of trade secrets is only enforceable if:

- at the time the agreement is entered into and enforced, the employee earns an amount of annualized cash compensation equivalent to or greater than the threshold for highly compensated employees (which is set at \$123,750 for 2024);
- the agreement is no broader than reasonably necessary to protect the employer's legitimate interests in protecting trade secrets; and
- the employer satisfies the notice requirements described below.

To determine whether the restrictions are reasonable, courts will look to the scope, duration, and geographic coverage.

The legislature has granted the Colorado Attorney General rule-making authority over restrictive employment agreements, so employers can expect additional rules and regulations in the future. Further, for an employer to recover expenses under training repayment agreement provisions (TRAPs), the training must comply with the rules promulgated by the Attorney General.

Notice requirements: employers must provide workers and prospective workers a separate notice 14 days in advance that informs them that they are being offered a non-compete agreement and directing them to the specific paragraph(s) containing the non-compete covenant. The notice must be signed by the worker.

Customer non-solicitation agreements: the same general requirements that apply to non-compete agreements apply to customer non-solicitation agreements except that an employee need only earn 60% of the threshold for highly compensated employees (currently \$74,250).

Colorado has adopted the Uniform Trade Secrets Act (C.R.S. §7-74-101 et seq.).

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Non-compete

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

Physician non-competes that restrict the right of a physician to practice medicine are void. However, 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.

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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.).

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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 6.9% of wage and salary workers in Colorado in 2023. Industries with union representation include mining, manufacturing/construction, healthcare, public employment, and retail/grocers.

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Unions and layoffs

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.

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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.

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At-will or notice

At-will status and/or notice period?

Colorado is an at-will state.

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At-will or notice

What restrictions apply to the above?

The at-will status may be modified by an express or implied contract and Colorado recognizes certain public policy exceptions to the at-will employment relationship including violation of public policy (e.g., whistleblowing), wrongful constructive discharge, fraudulent inducement, or any other unlawful reason (e.g., discrimination).

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Final paychecks

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

When an employee is terminated by the employer, all earned wages (including accrued but unused PTO) 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 unit's next regular working day. If the 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 their employment, all earned wages (including accrued but unused PTO) are due by or on the next regular payday (C.R.S. §8-4-109).

Law stated - 6 August 2024