

in this issue:

JULY 2008

Colorado's newly enacted Wage Transparency Act prohibits Colorado employers from taking adverse action against an employee because he or she inquired about, disclosed, compared, or otherwise discussed the employee's wages.

Littler Mendelson is the largest law firm in the United States devoted exclusively to representing management in employment and labor law matters.

Labor Management

A Littler Mendelson Newsletter

Colorado Enacts Law Guaranteeing Employees the Right to Discuss Their Wages

By Joshua B. Kirkpatrick and Michelle S. Simmons

In April 2008, Colorado Governor Bill Ritter signed Senate Bill 122, entitled the "Wage Transparency Act" (the "Act"). The Act, which amends the Colorado Anti-Discrimination Act and is effective August 5, 2008, prohibits employers from taking adverse actions against employees who discuss their wages with others. Employers often have policies prohibiting or restricting their employees from such communications. Colorado now joins only a few other states – including California, Michigan, and Illinois – in prohibiting such employer policies.

Terms of the Act

The Act provides that it shall be unlawful for an employer to "discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with any employee or other person because the employee inquired about, disclosed, compared, or otherwise discussed the employee's wages." The Act also makes it unlawful for an employer to "require as a condition of employment nondisclosure by an employee of his or her wages, or to require an employee to sign a waiver or other document that purports to deny an employee the right to disclose his or her wage information."

The Act qualifies these restrictions if otherwise permitted by federal law, and the Act does not apply to employers who are exempt from the provisions of the National Labor Relations Act (NLRA). Employers exempt from the NLRA are the federal and state governments and their agencies and subdivisions, any wholly owned government corporations, the Federal Reserve banks, those who employ persons subject to the Railway Labor Act, and

labor organizations when not acting as an employer. Consequently, the vast majority of private employers in Colorado are subject to the Act's restrictions.

Practical Significance

The terms of Act are clear: as of the effective date, August 5, 2008, employers may not take adverse actions against employees who discuss with others information about their wages. Moreover, employers can no longer require that an employee agree not to disclose his or her wages or waive the right to disclose such information.

Although the NLRA also provides protection to employees who discuss their wages under certain circumstances, it does so in Section 7 by protecting employees' right to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." This phrase raises questions and limitations regarding the scope of protected activity. While the NLRA protects only collective rights, the Act unambiguously protects individual rights, thereby providing clarity for Colorado employers and employees. For further discussion on the law governing "confidentiality" policies that might prohibit the discussion of wages, see Littler's July 2008 ASAP, *NLRB Again Finds Confidentiality Policies Unlawful*.

For employers with current employment agreements that do not comply with the Act, the best course of action is to amend the terms to bring those agreements into compliance. Similarly, employers should review employee handbooks and policy manuals to ensure that they do not contain provisions prohibiting the disclosure of employee pay rates. At a

minimum, employers who have promulgated such policies should not enforce them.

Joshua B. Kirkpatrick is a Shareholder and Michelle S. Simmons is an Associate in Littler Mendelson's Denver office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Kirkpatrick at jkirkpatrick@littler.com, or Ms. Simmons at msimmons@littler.com.
