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# Colorado's New Employment Laws: What to Know

The 2024 Colorado legislative session concluded on May 8, 2024. Consistent with last year's session, the 74th General Assembly ended with a number of new employment-related laws passing. Enacted legislation will enhance employee protections and heighten employer penalties across a variety of areas, ranging from workers' compensation and workplace privacy to child labor and employee hair length. Conversely, notable employment-related bills were also vetoed by Governor Jared Polis that concern issues of wage theft in the construction industry and employee participation in work meetings about religious or political matters.

Below we summarize the major bills affecting employers that were either passed or vetoed in the Colorado legislative session.

### ***Bills enacted***

Notable bills that Governor Polis **signed** this legislative session are categorized and listed below.

### **Privacy and artificial intelligence**

#### **1. Privacy of biometric data (HB 24-1130)**

House Bill 24-1130 amends the Colorado Privacy Act to require Colorado employers and controllers that collect and process biometric data or identifiers to comply with various disclosure, consent, and retention requirements beginning on July 1, 2025. Among the law's requirements, employers that handle biometric data must adopt a written policy detailing data retention schedules, security breach protocols, and guidelines for data deletion.

Employers must also inform individuals about the collection and purpose of their biometric data while data controllers must obtain consent before collecting any biometric data.

Consumers (including employees) have the right to access their biometric data and any information about the data's collection, use, and sharing. The law also prohibits employers and other businesses from selling, leasing, or trading biometric data or refusing services based on an individual's refusal to provide biometric data unless it is necessary for the service. Further, the law prohibits the use of biometric data to track an employee's location or the time spent on a task without consent. For more information on HB 24-1130, see our post on the bill's passage from May.

## 2. Consumer protections for artificial intelligence (SB 24-205)

Senate Bill 24-205, also known as the "Colorado AI Act," will apply to businesses using artificial intelligence (AI) for certain employment purposes like making decisions related to hiring, retention, or promotion. The Act regulates the use of high-risk AI systems to prevent algorithmic discrimination by "developers" and "deployers" of these systems. A high-risk AI system is any AI system that makes, or is a "substantial factor" in making, a "consequential decision" in areas like employment.

Algorithmic discrimination occurs when the use of a high-risk AI system results in a decision that disfavors an individual or group based on classifications protected under state or federal law (such as their age, race, gender, etc.).

Employers classified as "deployers" under the Act are those that **use** a high-risk AI system, while "developers" are employers that **develop** or **significantly modify** an AI system. Under the Act, deployers will need to comply with certain requirements, including but not limited to implementing a risk management policy, completing an annual impact assessment, and providing notice to employees that a high-risk AI system is being used to make consequential employment decisions. Compliance obligations for developers relate to documentation and disclosures on the foreseeable uses of the high-risk AI system as well as any risks of algorithmic discrimination that may arise. The law is set to take effect on February 1, 2026, and will likely undergo amendments and significant rulemaking in 2025. For more information on SB 24-205, see our post on the bill's enactment.

## Benefits and workers' compensation

### 1. Workers' compensation disability benefits (HB 24-1220)

House Bill 24-1220 addresses disability benefits for workers' compensation injuries. Key provisions that took effect on August 7, 2024, include:

**Refusal of modified employment:** Disability benefit claimants are no longer considered responsible for their termination if they refuse an offer of modified employment that would either require traveling 50 miles more than their preinjury commute or contravene driving restrictions placed by the claimant's authorized treating physician.

**Adjustments to permanent impairment benefits:** The loss of an ear is added to the list of injuries eligible for medical impairment benefits.

**Direct deposit:** Claimants can now receive their disability benefits via direct deposit upon request. Claimants or their attorneys can withdraw this authorization at any time.

Starting on January 1, 2025, the law also imposes an increase on the caps for combined temporary and permanent disability payments. For claimants with an impairment rating of 19% or less, the cap will increase to \$185,000. For claimants with a rating over 19%, the cap will increase to \$300,000.

## 2. **Small employer qualifications for healthcare insurance coverage (SB 24-073)**

Senate Bill 24-073 modifies the definitions of “small employer” and “large employer” for the purpose of determining healthcare insurance coverage. Effective January 1, 2026, the law defines a “small employer” as employing up to 50 (formerly 100) employees, and a “large employer” as employing more than 50 (formerly 100) employees. The calculation of employee numbers remains based on the average number of eligible employees employed on business days during the immediately preceding calendar year. For new businesses that did not exist in the preceding year, they must average the number of employees “reasonably expected” to be employed on business days in the current calendar year.

Employers that were issued a small group health benefit plan before January 1, 2026, and who employ between 51 and 100 employees can choose to either remain in the small group health benefit market for up to five years after the plan’s issuance or enter the large group health benefit market.

## **Other enacted employment laws**

### 1. **Changes to Colorado’s noncompete law (HB 24-1324)**

House Bill 24-1324 amends Colorado’s noncompete law to enhance the Attorney General’s enforcement authority over restrictive employment agreements and to set guidelines and penalties regarding the recovery of employee education and training expenses by employers. In particular, the law prevents workers from seeking damages or injunctive relief for a violation of the noncompete law if the Attorney General successfully recovers damages from the violating employer.

For employers that violate the noncompete law’s restrictions on recovering education and training expenses, the Attorney General may recover three times the amount that the employer sought to recover. The law also subjects an employer’s right to recover education and training expenses to forthcoming regulations issued by the Attorney General. The law took effect on August 7, 2024.

### 2. **Hair length and the CROWN Act (HB 24-1451)**

The CROWN Act of 2020 prohibits racial discrimination in employment practices based on hair texture, hair type, or hairstyles commonly or historically associated with one's race. House Bill 24-1451 amends the Crown Act to include prohibitions against racial discrimination based on hair length. The new change took effect on August 7, 2024.

### 3. **Colorado Disability Opportunity Office (HB 24-1360)**

House Bill 24-1360 establishes the Colorado Disability Opportunity Office (CDOO) within the Department of Labor and Employment. The CDOO aims to protect civil rights, create opportunities, and ensure adequate services for individuals with disabilities within Colorado. With the formation of the CDOO, Colorado employers can anticipate a greater focus from the CDLE in the coming years on workplace issues concerning fair opportunities for individuals with disabilities and enhanced anti-discrimination initiatives. The law already went into effect on July 1, 2024.

### 4. **Increased protections for minor workers (HB 24-1095)**

House Bill 24-1095 is a collection of amendments to the Colorado Youth Employment Opportunity Act of 1971, aimed at bolstering protections for minor workers. These changes, effective January 1, 2025, introduce new compliance measures, penalties, and protections to ensure the safety and rights of young workers. Key provisions include stricter penalties and public disclosures for Act violations, anti-retaliation measures, and a safe harbor provision that protects employers who were intentionally misled by a minor worker regarding their age and utilized a reliable third-party to verify the minor's age.

### 5. **Reminder on the Job Application Fairness Act (SB 23-058 from last year)**

Lastly, remember that the "Job Application Fairness Act" went into effect on July 1, 2024. The law prohibits employers from inquiring about a prospective employee's age, date of birth, and dates of attendance at, or date of graduation from an educational institution on an initial employment application.

Employers may ask an applicant to provide application materials such as transcripts and certifications if the employer notifies the applicant that they may redact information that identifies their age, date of birth, or dates of attendance at or graduation date from an educational institution. Employers may also ask an applicant to verify compliance with age requirements if: (1) there is a bona fide occupational qualification pertaining to public or occupational safety; (2) a federal law or regulation; or (3) a state or local law or regulation based on a bona fide occupational qualification.

### ***Bills vetoed***

Notable bills that Governor Polis **vetoed** this legislative session include:

## 1. Wage claims in the construction industry (HB 24-1008)

If passed, House Bill 24-1008 would have changed wage theft claims in the construction industry by making general contractors liable for claims of unpaid wage made by subcontractors. Governor Polis vetoed the bill, stating that the punishment for wage theft should be targeted at offending subcontractors who fail to pay their workers, not general contractors.

## 2. Prohibition on employee discipline (HB 24-1260)

If passed, House Bill 24-1260 would have prohibited employers from subjecting an employee to discipline, discharge, or an adverse employment action, based on the employee's refusal to attend or participate in employer-sponsored meetings about religious or political matters or listen to religious or political communications from the employer. Governor Polis vetoed the bill, finding that the bill's definitions of "religious matters" and "political matters" were overly broad.

### Contact us

If you have any questions about this new legislation or other employment law issues, contact Barbara Grandjean, Ashley Jordaan, Shawna Ruetz, Keith Ybanez, Owen Davis, Marina Fleming, or your Husch Blackwell attorney. Summer associate McKale Walker contributed to this update.