



## **NOTICE OF PUBLIC HEARING CONCERNING PROPOSED RULES**

Notice is hereby given of a public hearing to afford all interested persons an opportunity to be heard prior to adoption of these proposed rules outlined below, under authority granted to the Division of Labor Standards and Statistics by the State Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of C.R.S. §§ 8-1-107(2)(p), 8-1-103(3), 8-1-111, 8-2-126, 8-2-127, 8-2-130(5)(e), 8-2-131(5)(f), and 8-5-203.

### **Posting, Screening, and Transparency (“POST”) Rules, 7 CCR 1103-18:**

Last spring, the Job Application Fairness Act (“JAFA,” SB23-058) was enacted to limit age-related inquiries in initial job applications, effective July 1, 2024. That means there are now **five laws** the Division covers on what employers can, can’t, must, or must not include in job postings or applications — collectively, the Posting, Screening, & Transparency Acts (the “**POST Acts**”).

To streamline the rules that enforce and implement the POST Acts, the Division’s newly proposed rules are **one rule set that combines the rules on all five POST Acts** — that is, to provide one rule set, rather than five, for employers and employees. This new rule set, the Posting, Screening, & Transparency Rules (“**POST Rules**”), 7 CCR 1103-18, merges and replaces the rules on the existing four POST Acts (#1-4 below), and adds new JAFA-related rules (#5 below) — specifically:

1. The Equal Pay Transparency (“EPT”) Rules (7 CCR 1103-13);
2. The Colorado Chance to Compete Act (“Ban the Box”) Rules (7 CCR 1103-9);
3. The Social Media and the Workplace Law Rules (7 CCR 1103-5);
4. The Employment Opportunity Act (“Credit History”) Rules (7 CCR 1103-4); and
5. New rules related to the Job Application Fairness Act (“JAFA”).

**The POST Rules replace existing rule sets 1-4 above, with no substantive changes intended**, other than technical updates — for example, assuring that the previously separate complaint, investigation, and appeal procedures for all five POST Acts are the same, to the maximum extent permitted by the Acts and the Colorado Administrative Procedure Act.

### **Public Hearing Information:**

Date and Time of Hearing: **Tuesday, April 16, 2024, at 3:30 pm**, and continuing as long as anyone wishes to speak, including into the early evening if needed, and potentially continuing to another day if anyone is still waiting to speak. You need not stay the entire meeting.

Written Comment Deadline for the above rules: **Monday, April 22, 2024, at 12:00 pm**.

The Division is administering this public hearing, and all interested persons are free to offer oral testimony and to listen to part or all of the hearing. **Participation will be by remote means only**. A recording of the public hearing will be publicly posted afterward on our [rulemaking page](http://cdle.colorado.gov/LaborRules) (direct URL: [cdle.colorado.gov/LaborRules](http://cdle.colorado.gov/LaborRules)).

While not required, we request and highly recommend that **anyone interested in oral testimony use this [rulemaking comment form](#) to RSVP**. We will call on those who RSVP to speak first, followed by testimony from others. A recording of the public hearing will be publicly posted afterward on our [rulemaking page](#).

Written comments may be submitted by: 1) our online [rulemaking comment form](#) (also available at [cdle.colorado.gov/LaborRules](http://cdle.colorado.gov/LaborRules)); 2) mail to the below address; 3) fax to 303-318-8400; or 4) email to [CDLE\\_LaborStandardsRules@state.co.us](mailto:CDLE_LaborStandardsRules@state.co.us). Because **written comments become part of the same record as oral testimony**, and are reviewed by the same officials, **you may submit written comments in lieu of oral testimony**, but are free to participate by both means.

**Instructions for Hearing Participation:** Either of the below options will work to participate, but for orderly administration of participation, and to avoid possible audio feedback, please do not use both simultaneously. *(You do not need to have a Google account to access any of the below means.)*

- (A) **To Participate by Internet, Including Testifying:**  
visit this “Meet” webpage: <https://meet.google.com/nmo-ewkq-nnx>
  
- (B) **To Participate by Phone, Whether to Listen or to Testify:**  
call (US) +1 478-412-6194, and then enter this pin: 208 811 927#

Please contact [CDLE\\_LaborStandardsRules@state.co.us](mailto:CDLE_LaborStandardsRules@state.co.us) with any questions about how to access either the public hearing or its recording, or **if you need accommodations or translation services** to attend or participate. This public hearing is held in accordance with the State Administrative Procedure Act, C.R.S. § 24-4-101 et seq., and the Colorado Open Meetings Law, C.R.S. § 24-6-401 (2024), to receive any testimony, written, views, or arguments that interested parties wish to submit regarding the proposed rules.

For more on the rulemaking process, for the full text of all proposed rule filings and all existing rules listed above, and for the form to submit comments on these rules, visit the [DLSS Rulemaking page](#) (at [cdle.colorado.gov/LaborRules](http://cdle.colorado.gov/LaborRules)), and select “**Rules & Orders: Proposed & Recently Adopted.**” Or contact the Division by mail at: Division of Labor Standards and Statistics, 633 17th Street, Denver, Colorado 80202.

## **STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS**

**Posting, Screening, and Transparency (“POST”) Rules, 7 CCR 1103-18 (2024), as proposed March 15, 2024; to be followed and replaced by a final Statement at the conclusion of the rulemaking process.**

**I. BASIS.** The Director (“Director”) of the Division of Labor Standards and Statistics (“Division”) has the authority to adopt rules and regulations on wage-and-hour and workplace conditions, under authority listed in Part II, which is incorporated into Part I as well. These rules establish the Posting, Screening, and Transparency Rules, 7 CCR 1103-18, which implement the Equal Pay for Equal Work Act (“EPEWA”), C.R.S. §§ 8-5-101 et seq.; the Colorado Employment Opportunity Act, C.R.S. § 8-2-126; the Social Media and the Workplace Law, § 8-2-127; the Chance to Compete Act, C.R.S. § 8-2-130; and the Job Application Fairness Act (“JAFA”), C.R.S. § 8-2-131.

**II. SPECIFIC STATUTORY AUTHORITY.** The Director is authorized to adopt and amend rules and regulations to enforce, execute, apply, and interpret Articles 1, 2, 4-6, of Title 8, C.R.S. (2024), and all rules, regulations, investigations, and other proceedings of any kind thereunder, by the Colorado Administrative Procedure Act, C.R.S. § 24-4-103, and provisions of C.R.S. §§ 8-1-107(2)(p), 8-1-103(3), 8-1-111, 8-2-126, 8-2-127, 8-2-130(5)(e), 8-2-131(5)(f), and 8-5-203.

**III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION.** Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is incorporated into this finding as well; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

**IV. SPECIFIC FINDINGS FOR ADOPTION.** Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows.

**A. Overview: Merging Existing Rule Sets, Keeping Existing Rules, and Adding New JAFA Rules**

Last spring, the Job Application Fairness Act (“JAFA,” SB23-058) was enacted to limit age-related inquiries in initial job applications, effective July 1, 2024. That means there are now **five laws** the Division covers on what employers can, can’t, must, or must not include in job postings or applications — collectively, the Posting, Screening, & Transparency Acts (the “**POST Acts**”).

To streamline the rules that enforce and implement the POST Acts, the Division’s newly proposed rules are **one rule set that combines the rules on all five POST Acts** — that is, to provide one rule set, rather than five, for employers and employees. This new rule set, the Posting, Screening, & Transparency Rules (“**POST Rules**”), 7 CCR 1103-18, merges and replaces the rules on the existing four POST Acts (#1-4 below), and adds new JAFA-related rules (#5 below) — specifically:

1. The Equal Pay Transparency (“EPT”) Rules (7 CCR 1103-13);
2. The Colorado Chance to Compete Act (“Ban the Box”) Rules (7 CCR 1103-9);
3. The Social Media and the Workplace Law Rules (7 CCR 1103-5);
4. The Employment Opportunity Act (“Credit History”) Rules (7 CCR 1103-4); and
5. New rules related to the Job Application Fairness Act (“JAFA”).

**The POST Rules replace existing rule sets 1-4 above, with no substantive changes intended**, other than technical updates — for example, assuring that the previously separate complaint, investigation, and appeal procedures for all five POST Acts are the same, to the maximum extent permitted by the Acts and the Colorado Administrative Procedure Act.

**B. New Rules on the Job Application Fairness Act**

Rule 12 of the POST Rules contains the new rules related to JAFA. Rule 12.1.1, on initial application requirements, notes that employers may request or require additional application materials during an initial employment application – as defined in Rule 2.13 – so long as applicants are notified of their option to redact age-related information. Such notifications are required for any “additional application materials” including but not limited to resumes, CVs,

transcripts, and certifications. While resumes and CVs are not explicitly listed in the statute, the Division finds most resumes and CVs have “dates of attendance at or graduation from an educational institution,” one of the core pieces of age-related information in the statute. Many resumes and CVs also have the applicant’s date of birth, another core piece of age-related information. Since the statute requires notice to applicants that these pieces of age-related information may be redacted from additional application materials (if such materials are requested), and since resumes and CVs are generally understood to be additional application materials, the Division interprets the phrase “additional application materials” to include resumes and CVs. Thus, under Rule 12.1.1, employers may still request or require resumes and/or CVs, but must provide the required notice to applicants that they may redact the specified age-related information, just like for any other additional application materials.

Rule 12.1.2 clarifies specific questions are permitted on initial employment applications, including whether an applicant is at least an age legally required to perform the job, and also whether an applicant is enrolled in a school or education program for a position that requires such enrollment.

Rule 12.2 addresses bona fide occupational qualifications. For these rules, the Division adopts existing federal regulations from the EEOC’s interpretation of bona fide occupational qualifications under the Age Discrimination in Employment Act, 29 CFR § 1625.6(a)-(b).

**C. Pre-Existing Rules on Equal Pay Transparency**

The Equal Pay Transparency Rules (“EPT Rules”) (7 CCR 1103-13) are replaced by the POST Rules. However, the Division intends to make no substantive changes to the process, substance, or enforcement of equal pay transparency, except for a technical change to the appeals process. POST Rule 11 copies over the entirety of EPT Rule 4 — aside from EPT Rule 4.3, on geographic limits, which is moved into POST Rule 13. EPT Rule 3, on the process of equal pay complaints, investigations, and determinations, is also copied over with a few non-substantive changes throughout POST Rules 3, 4, 5, and 6. The appeals process of the EPT Rules has been updated in POST Rule 7 to conform with Colorado’s Administrative Procedure Act.

**D. Pre-Existing Rules on Chance To Compete, Social Media And The Workplace, and the Employment Opportunity Act**

The Colorado Chance To Compete Act Rules (7 CCR 1103-9), Social Media And The Workplace Law Rules (7 CCR 1103-5); and Employment Opportunity Act Rules (7 CCR 1103-4) are also replaced by the POST Rules. Here too, the Division intends to make no changes to the process, substance, or enforcement of these rules. Each of these prior rulesets unnecessarily repeated statutory text, and the Division finds that these POST Rules simplify the rules for each statute. Rules 8, 9, and 10 simply provide clarity on what information employers and/or consumer reporting agencies may ask for or share.

**V. EFFECTIVE DATE.** If adopted, these rules take effect July 1, 2024, or as soon after as rulemaking completes.



\_\_\_\_\_  
Scott Moss  
Director  
Division of Labor Standards and Statistics  
Colorado Department of Labor and Employment

March 15, 2024

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Date