Table of Contents

CHAPTER 1. HIRING

A. SCREENING, VERIFICATION AND REPORTING REQUIREMENTS

§ 1:1.50 Artificial Intelligence in Hiring *[New]*
§ 1:2 Verifying eligibility to work in the United States—Federal Form I-9 and E-Verify
§ 1:3 Colorado laws pertaining to verification of eligibility to work, public contractor hiring, and treatment of undocumented workers

B. RESTRICTIONS ON THE USE OF BACKGROUND AND CREDIT INFORMATION IN HIRING

§ 1:5 Colorado Employment Opportunity Act (CEOA)
§ 1:7 Fair Credit Reporting Act and Colorado Consumer Credit Reporting Act—Notice and authorizations required to obtain credit and investigative consumer reports
§ 1:11 Criminal background checks

C. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION IN HIRING

§ 1:12 Equal employment opportunity in hiring—In general
§ 1:13 Avoiding discrimination in hiring *[Retitled]*
§ 1:14 Discriminatory inquiries in job applications and interviews
§ 1:15 Affirmative action

CHAPTER 2. EXISTENCE OF THE EMPLOYMENT RELATIONSHIP

A. CONDITIONS FOR THE EXISTENCE OF AN EMPLOYMENT RELATIONSHIP

§ 2:4 Employment at will

B. INDEPENDENT CONTRACTORS

§ 2:5 Tests for classifying workers as employees or independent contractors
§ 2:6 Misclassification of employees
§ 2:7 Consequences of erroneous classification

C. STATUTORY DEFINITIONS OF EMPLOYEE AND EMPLOYER

§ 2:8 Overview of consequence of meeting statutory definitions of employee and employer
§ 2:9 Unemployment compensation and workers' compensation
§ 2:10 The Colorado Anti-Discrimination Act (CADA)
§ 2:12 The Fair Labor Standards Act (FLSA)
§ 2:15 The National Labor Relations Act (NLRA)

CHAPTER 3. WORKPLACE POLICIES, PRACTICES AND RECORDKEEPING

A. INTRODUCTION; POSTING REQUIREMENTS

§ 3:2 Required posters

B. RECOMMENDED POLICIES

§ 3:3 Equal employment opportunity
§ 3:5 Wage policies and paydays
§ 3:6 Family and medical leave
§ 3:10 Workers' compensation
§ 3:13 At-will employment
§ 3:17 Arbitration of disputes
§ 3:18 Telework

C. POLICIES THAT REQUIRE CAUTION

§ 3:19 Policies that can be construed to discourage activity protected under Section 7 of the National Labor Relations Act
§ 3:20 Restrictions on communications and social media
§ 3:21 Courtesy and civility policies
§ 3:22 Fair treatment and progressive discipline

D. POLICIES THAT ARE ILLEGAL OR NOT RECOMMENDED

§ 3:23 Wage secrecy
§ 3:24 Policies restricting cooperation with government agencies

E. RECORD RETENTION

§ 3:25 Record retention—In general
§ 3:26 Document destruction and potential litigation

F. POLICIES AND PRACTICES RELATED TO COVID-19 SAFETY AND RECORDKEEPING *[New]*

§ 3:28 Workplace safety related to COVID-19 *[New]*
§ 3:29 Requirements for reporting COVID-19 in the workplace *[New]*

§ 3:30 Avoiding discrimination related to COVID-19 safety measures, policies, and practices in the workplace *[New]*

CHAPTER 4. COMPENSATION

A. GENERAL STATE AND FEDERAL LAWS GOVERNING COMPENSATION

§ 4:2 Colorado wage and hour laws
§ 4:3 Enforcement of wage and hour laws

B. COMPENSABLE WORK TIME AND OVERTIME

§ 4:4 Defining compensable working time
§ 4:5 Overtime
§ 4:6 Calculating overtime pay
§ 4:7 Compensatory time off in lieu of overtime

C. OVERTIME EXEMPTIONS

§ 4:8 Exemptions from overtime; overview
§ 4:9 FLSA and COMPS Order salary basis test and salary thresholds *[Retitled]*
§ 4:12 FLSA job duties test

D. MINIMUM WAGES, OVERTIME, AND BREAKS *[Retitled]*

§ 4:13 Colorado's minimum wage
§ 4:14 Colorado Overtime and Minimum Pay Standards ("COMPS") Order Coverage *[Retitled]*
§ 4:15 Colorado Overtime and Minimum Pay Standards ("COMPS") Order Employee Exemptions *[Retitled]*
§ 4:16 Meals and breaks under FLSA and the Colorado Overtime and Minimum Pay Standards ("COMPS") Order *[Retitled]*

E. WAGE DISCRIMINATION BASED ON SEX

§ 4:17 The Federal Equal Pay Act
§ 4:18 Colorado Equal Pay for Equal Work Act *[Retitled]*

F. THE COLORADO WAGE CLAIM ACT

1. OVERVIEW

§ 4:19 Coverage

2. LEGAL REQUIREMENTS FOR EMPLOYERS

§ 4:20 Regular wage payment
§ 4:21 Earnings statements, record-keeping and posting notices
§ 4:22 Payment of wages upon termination
§ 4:23 Permitted deductions from wages

3. ENFORCEMENT

§ 4:25 Private lawsuits to recover unpaid wages and penalties
§ 4:27 Administrative and criminal enforcement

G. TAXES AND REQUIRED WITHHOLDINGS FROM WAGES

§ 4:28 Taxes and required withholdings from wages

H. LAWS GOVERNING CHILD LABOR

§ 4:30 Colorado Youth Employment Opportunity Act

I. AGRICULTURAL LABOR RIGHTS AND RESPONSIBILITIES ACT *[New]*

§ 4:31 Overview *[New]*
§ 4:32 Protected employees and covered employers *[New]*
§ 4:33 Minimum wage and overtime *[New]*
§ 4:34 Meal periods and breaks *[New]*
§ 4:35 Worker access to key service providers *[New]*
§ 4:36 Worker access to phone and internet communication *[New]*
§ 4:37 Heat precautions *[New]*
§ 4:38 Working methods *[New]*
§ 4:39 Retaliation *[New]*
§ 4:40 Enforcement *[New]*
§ 4:41 Posting and notice requirements *[New]*
§ 4:42 Unions, collective bargaining, and concerted activity *[New]*

J. PROTECTIONS FOR DELIVERY NETWORK COMPANY DRIVERS *[New]*

§ 4:43 Overview *[New]*

K. TRANSPORTATION NETWORK COMPANY TRANSPARENCY *[New]*

§ 4:44 Overview *[New]*

CHAPTER 5. LEAVES OF ABSENCE

A. THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

§ 5:1 FMLA—In general
§ 5:6 Block and intermittent FMLA leaves
§ 5:14 Colorado Family Care Act *[Retitled]*

B. OTHER LEAVES

§ 5:16 Leaves for pregnancy and childbirth-related disabilities
§ 5:17 Leaves for work-related injuries—Workers' compensation

§ 5:20 Colorado's military and firefighter leave laws
§ 5:21 Leaves for victims of domestic abuse or violence

C. LEAVES RELATED TO PUBLIC HEALTH EMERGENCIES AND THE COVID-19 PANDEMIC *[New]*

§ 5:26 Families First Coronavirus Response Act (FFCRA) Expired December 31, 2020 *[Retitled]*
§ 5:27 Coronavirus Aid, Relief and Economic Security Act (CARES Act) Expired December 31, 2020 *[Retitled]*
§ 5:28 Colorado Executive Orders *[New]*

D. PAID SICK AND FAMILY LEAVE: COLORADO HEALTHY FAMILIES AND WORKPLACES ACT (HFWA) *[New]*

§ 5:29 Overview of Healthy Families and Workplaces Act *[New]*
§ 5:30 Covered employers *[New]*
§ 5:31 Employees' leave entitlement *[New]*
§ 5:32 Purposes for which employees can use HFWA leave *[New]*
§ 5:33 Sick or family leave related to a public health emergency *[New]*
§ 5:34 Posting and recordkeeping requirements *[New]*
§ 5:35 Enforcement and prohibition against retaliation *[New]*

E. PAID SICK AND FAMILY LEAVE: COLORADO PAID FAMILY AND MEDICAL LEAVE INSURANCE ACT (FAMLI) *[New]*

§ 5:36 Overview of the Paid Family and Medical Leave Insurance Act (FAMLI) *[New]*
§ 5:37 Covered employers and participation requirements *[New]*
§ 5:38 Covered employees and other covered workers *[New]*
§ 5:39 Purposes for which workers can use FAMLI leave *[New]*
§ 5:40 Benefit amounts and duration *[New]*
§ 5:41 Coordination of FAMLI benefits with benefits under other laws *[New]*
§ 5:42 Posting and recordkeeping requirements *[New]*
§ 5:43 Job protection *[New]*
§ 5:44 Prohibition against interference/retaliation *[New]*

CHAPTER 7. NON-COMPETITION AGREEMENTS, TRADE SECRETS, AND INTELLECTUAL PROPERTY

A. NONCOMPETITION AGREEMENTS *[New]*

1. OVERVIEW *[New]*

§ 7:1 Most noncompetition agreements are void *[New]*

2. AGREEMENTS THAT ARE ENFORCEABLE

[New]

§ 7:2 Noncompetition and nonsolicitation agreements with highly compensated workers, to protect trade secrets *[New]*
§ 7:3 Noncompetition agreements ancillary to buying or selling a business *[New]*
§ 7:4 Protection of trade secrets; Defend trade secrets Act notice *[Retitled]*
§ 7:5 Agreements to recoup training expenses or apprentice scholarships *[New]*
§ 7:6 Agreements restricting the practice of medicine, the practice of advanced practice registered nurses, or the practice of dentistry are unlawful *[Retitled]*
§ 7:7 Current employees' duty of loyalty *[New]*
§ 7:8 Confidentiality agreements *[New]*
§ 7:9 Consideration required for noncompetition agreements *[New]*

3. NOTICE REQUIREMENTS *[New]*

§ 7:10 Noncompetition covenants are void unless the employee receives specific, written, timely notice *[New]*

4. ENFORCEMENT *[New]*

§ 7:11 Remedies against employers for attempting to enforce an invalid noncompetition agreement *[New]*
§ 7:12 Remedies against employees for violating a valid noncompetition or nonsolicitation agreement *[New]*
§ 7:12.50 Choice of law and venue *[New]*

B. TRADE SECRETS

§ 7:19 Remedies under the Colorado Uniform Trade Secrets Act

CHAPTER 8. EMPLOYMENT AGREEMENTS

B. CONTRACT PROVISIONS

3. ARBITRATION

§ 8:10 Arbitration provisions, generally
§ 8:13 Arbitration agreements that preclude collective or class actions
§ 8:14 EEOC's position on mandatory arbitration of discrimination claims
§ 8:16 Effect of agreements imposing arbitration-related expenses on employees

CHAPTER 9. ENDING THE EMPLOYMENT RELATIONSHIP: PLANT CLOSINGS, RETIREMENT, CONTINUATION OF BENEFITS, AND UNEMPLOYMENT COMPENSATION

C. CONTINUATION OF BENEFITS

§ 9:22 Patient Protection and Affordable Care Act

D. UNEMPLOYMENT INSURANCE

§ 9:24 Colorado Employment Security Act (CESA)
§ 9:25 Colorado Employment Security Act—Covered employers
§ 9:26 Colorado Employment Security Act—Protected employees

CHAPTER 10. COMMON LAW EMPLOYMENT CLAIMS

A. TORT CLAIMS BY EMPLOYEES AGAINST EMPLOYERS

1. WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

§ 10:1 Overview of the claim

6. OUTRAGEOUS CONDUCT (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

§ 10:18 Negligent infliction of emotional distress

7. NEGLIGENT SUPERVISION, RETENTION, DISCIPLINE OR TERMINATION

§ 10:19 Elements of proof of negligent supervision, retention, discipline or termination

B. CONTRACT CLAIMS BY EMPLOYEES AGAINST EMPLOYERS

§ 10:26 Breach of implied employment contract

C. TORT CLAIMS BY EMPLOYERS AGAINST EMPLOYEES

§ 10:31 Breach of duty of loyalty

D. REMEDIES FOR COMMON LAW CLAIMS

§ 10:34 Tort damages

CHAPTER 11. STATE STATUTES GOVERNING THE EMPLOYMENT RELATIONSHIP *[Retitled]*

A. COLORADO'S LAWFUL OFF-DUTY ACTIVITIES STATUTE (LODAS)

§ 11:1 Prohibition against terminating employees because of their lawful activities or conduct outside the workplace
§ 11:5 Enforcement and remedies

B. COLORADO WAGE CLAIM ACT AND WAGE PROTECTION ACT

§ 11:6 Private lawsuits to recover unpaid wages and penalties
§ 11:8 Administrative and criminal enforcement

C. WHISTLEBLOWERS AND PROTECTED CONCERTED ACTIVITY

§ 11:9 Whistle-blower protections; SEC Rule 21F-17(a) *[Retitled]*
§ 11:10 Protected concerted activity under the National Labor Relations Act (NLRA)

D. OTHER STATUTORY PROTECTIONS FOR EMPLOYEES

§ 11:11 Other statutes that limit employers' rights to terminate employees

E. PROTECTED HEALTH/SAFETY EXPRESSION AND WHISTLEBLOWING LAW ("PHEW") *[Retitled]*

§ 11:12 Overview of Protected Health/Safety Expression and Whistleblowing Law *[Retitled]*
§ 11:13 Principals and workers covered under PHEW *[New]*
§ 11:14 Enforcement and remedies under PHEW *[New]*
§ 11:15 Whistleblower enforcement under PHEW *[New]*

F. THE COLORADO LABOR PEACE ACT *[New]*

§ 11:16 Overview *[New]*
§ 11:17 Coverage *[New]*
§ 11:18 Protected concerted activity *[New]*
§ 11:19 The role of the Colorado Department of Labor and Employment Division of Labor Standards and Statistics (DLSS) *[New]*
§ 11:20 Notices of Intent to Strike *[New]*
§ 11:21 Unfair labor practice (ULP) complaints *[New]*

G. THE COLORADO PARTNERSHIP FOR QUALITY JOBS AND SERVICES ACT (PARTNERSHIP ACT) *[New]*

§ 11:22 Overview and coverage *[New]*
§ 11:23 Elections *[New]*
§ 11:24 Unfair labor practice (ULP) complaints *[New]*

CHAPTER 12. DISCHARGE IN THE PUBLIC SECTOR

B. EMPLOYEE CONSTITUTIONAL CLAIMS

§ 12:2 The requirement of state action
§ 12:3 Free speech under the First Amendment
§ 12:4 Union dues, free exercise of religion, and freedom of association under the First Amendment
§ 12:5 Political patronage under the First Amendment
§ 12:7 Fourteenth Amendment—due process—Property interests
§ 12:9 Fourteenth Amendment—due process—Due process procedures

C. 42 U.S.C.A. § 1983

§ 12:21 Persons subject to suit under Section 1983—State actors
§ 12:26 Government officials' immunity from suit—Qualified immunity

D. STATE GOVERNMENTAL IMMUNITY

§ 12:32 Determining whether the CGIA bars a claim
§ 12:33 Public employees' qualified immunity from liability under the CGIA

E. PROTECTIONS FOR PUBLIC WORKERS ACT *[New]*

§ 12:34 Overview *[New]*
§ 12:35 Employee rights and protections *[New]*
§ 12:36 Employees and employers covered *[New]*
§ 12:37 Enforcement *[New]*

CHAPTER 13. EMPLOYMENT LITIGATION: EMPLOYER DEFENSES, CLASS ACTIONS AND RECOVERY OF FEES AND COSTS

A. EMPLOYER DEFENSES TO EMPLOYEE CLAIMS

§ 13:1 Statutes of limitation
§ 13:2 Workers' comp preemption/exclusivity
§ 13:3 Statute of frauds
§ 13:5 Failure to mitigate damages

C. ATTORNEY FEES AND COSTS

§ 13:14 Appeals of fee and cost awards
§ 13:15 Determining who is the prevailing party entitled to fees and costs

CHAPTER 14. FEDERAL PREEMPTION OF STATE EMPLOYMENT LAWS AND CLAIMS

§ 14:8 Section 301 preemption of claims dependent on interpretation of collective bargaining agreement
§ 14:9 Preemption of claims regarding conduct prohibited or protected by the National Labor Relations Act ("Garmon preemption")

CHAPTER 15. EMPLOYER LIABILITY TO THIRD PARTIES

§ 15:4 Vicarious liability for employee conduct—Respondeat superior

CHAPTER 16. PROVING EMPLOYMENT DISCRIMINATION: TITLE VII AND CADA; WERSA AND MUNICIPAL CODES

B. TITLE VII

1. IN GENERAL

§ 16:2 Title VII of The Civil Rights Act of 1964
§ 16:3 Covered employers
§ 16:5 Protected employees
§ 16:6 Limitations period and enforcement procedures
§ 16:9 Disparate treatment—The McDonnell Douglas burden-shifting framework
§ 16:11 Employee's burden of showing pretext

2. SPECIAL ISSUES IN LITIGATING DISCRIMINATION CLAIMS

§ 16:16 Multiple decisionmakers and subordinate bias liability ("cat's paw" theory)

3. AFFIRMATIVE ACTION

§ 16:19 Affirmative action-- In general
§ 16:21 Mandatory affirmative action plans

4. RETALIATION

§ 16:23 Elements of proof
§ 16:24 Protected opposition or participation
§ 16:25 Materially adverse employment action

§ 16:26 The prima facie case of retaliation; causal connection
§ 16:27 Pretext presumption

5. REMEDIES

§ 16:31 Front pay, reinstatement or promotion
§ 16:32 Compensatory damages

6. RECORDKEEPING AND REPORTING

§ 16:35 Title VII—Recordkeeping, reporting, notices

C. COLORADO ANTIDISCRIMINATION ACT (CADA)

§ 16:37 Protected employees and covered employers
§ 16:38 Employment discrimination prohibited
§ 16:41 Protections for married employees
§ 16:43 Wage transparency and related protections
§ 16:44 CADA limitations period and enforcement procedures
§ 16:46 Remedies and litigation under the Job Protection and Civil Rights Enforcement Act of 2013 (JPCREA) for claims accruing on or after January 1, 2015
§ 16:47 Exhaustion of administrative remedies

D. OTHER STATUTORY PROTECTIONS

§ 16:48 Colorado Equal Pay for Equal Work Act *[Retitled]*

CHAPTER 17. SPECIFIC PROTECTIONS UNDER EMPLOYMENT DISCRIMINATION STATUTES: TITLE VII, 42 U.S.C.A. § 1981, ADA, ADEA, AND CADA

B. SPECIFIC STATUTORY PROTECTIONS

1. RACIAL DISCRIMINATION

§ 17:4 Racial discrimination—Colorado Anti-Discrimination Act
§ 17:5 Racial harassment
§ 17:11 Section 1981—Enforcement and remedies

2. NATIONAL ORIGIN AND CITIZENSHIP DISCRIMINATION

§ 17:13 Discrimination based on citizenship

3. RELIGIOUS DISCRIMINATION

§ 17:14 Religious discrimination—In general
§ 17:15 Religious discrimination—Title VII

§ 17:16 Title VII—Religious discrimination exemptions
§ 17:18 Religious discrimination—Reasonable accommodation

4. GENDER DISCRIMINATION

a. Overview

§ 17:23 Gender discrimination—Protected employees

b. Pregnancy Discrimination

§ 17:28 The reasonable accommodation requirement

c. Wage Equality

§ 17:29 Equal pay for equal work

d. Sexual Harassment

§ 17:30 Sexual harassment—In general
§ 17:33 Hostile environment sexual harassment
§ 17:37 Reasonable woman standard
§ 17:38 *Faragher* and *Ellerth:* Vicarious liability for harassment
§ 17:40 Sexual harassment, insurance coverage and workers' compensation insurance

5. DISABILITY DISCRIMINATION

a. Overview

§ 17:46 Disability discrimination—Individuals with a physical or mental impairment that substantially limits one or more major life activities
§ 17:49 Reasonable accommodation
§ 17:50 Reasonable accommodation—Employer defenses to claims of failure to reasonably accommodate

c. Disability Discrimination—Medical Inquiries, Medical Examinations and Health Benefits

§ 17:63 Health benefit plans

d. State Laws on Disability Discrimination

§ 17:65 Disability discrimination—Colorado Anti-Discrimination Act

6. AGE DISCRIMINATION

§ 17:69 Covered employers and protected employees
§ 17:73 Remedies

7. MARITAL STATUS DISCRIMINATION

§ 17:75 Marital status discrimination—Title VII and Colorado Anti-Discrimination Act

8. SEXUAL ORIENTATION DISCRIMINATION

§ 17:76 Sexual orientation, gender expression and gender identity discrimination—Colorado Anti-Discrimination Act *[Retitled]*

CHAPTER 18. SETTLEMENT OF EMPLOYMENT CLAIMS

§ 18:4 Additional restrictions on the release of statutory claims
§ 18:9 Tax consequences of settlement agreements
§ 18:10 Nondisclosure and non-disparagement provisions *[New]*

Table of Laws and Rules

Table of Cases

Index