DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Labor Standards and Statistics

POSTING, SCREENING, AND TRANSPARENCY RULES ("POST Rules")

7 CCR 1103-18

As proposed March 15, 2024; if adopted, effective July 1, 2024.

Rule 1. Statement of Purpose and Authority.

1.1 The general purpose of these Posting, Screening, and Transparency Rules ("POST Rules") is to exercise the authority of the Director, through the Division, to administer and enforce the provisions of C.R.S. §§ 8-2-126, 8-2-127, 8-2-130, 8-2-131, and 8-5-201 et seq (2024). These rules are adopted pursuant to the Division of Labor Standards and Statistics' authority in 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. These rules are intended to be consistent with the rulemaking requirements of the State Administrative Procedure Act, C.R.S. § 24-4-103. Unless otherwise noted, in these Rules: all statutes cited apply the most recent 2023 versions of the Colorado Revised Statutes; all rules cited apply the most recent versions adopted as of the adoption of these Rules.

1.2 These POST Rules replace the Employment Opportunity Act Rules (7 CCR 1103-4), the Social Media And The Workplace Law Rules (7 CCR 1103-5), the Colorado Chance To Compete Act Rules (7 CCR 1103-9), and the Equal Pay Transparency Rules (7 CCR 1103-13).

1.3 The Director of the Division of Labor Standards and Statistics in the Department of Labor and Employment has the authority to enforce, interpret, apply, and administer the statutes cited in Rule 1.1 above and these rules.

1.4 Incorporation by reference. The Employment Opportunity Act, C.R.S. §§ 8-2-126, the Social Media and the Workplace Law, C.R.S. § 8-2-127, the Colorado Chance to Compete Act, C.R.S. § 8-2-130, the Job Application Fairness Act, C.R.S. § 8-2-131, and the Equal Pay for Equal Work Act, C.R.S. § 8-5-101 et seq. (2024) (together referred to as the "POST Acts") are hereby incorporated by reference into this rule. Such incorporation excludes later amendments to or editions of these statutes. These statutes are available for public inspection at the Colorado Department of Labor and Employment, 633 17th Street, Denver CO 80202. Copies may be obtained from the Department of Labor and Employment at a reasonable charge. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of them at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division rules are available to the public at www.coloradolaborlaw.gov. Where these rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these rules govern so long as they are consistent with Colorado statutory and constitutional provisions. Where these rules reference another rule, the reference shall be deemed to include all subparts of the referenced rule.

1.5 Severability. If any part (including any section, sentence, clause, phrase, word, or number) is held invalid, (A) the remainder of the Rule remains valid, and (B) if the provision is held not wholly invalid, but merely in need of narrowing, the provision should be retained in narrowed form.

1.6 Deadlines. Deadlines in these Rules may be extended for good cause. In considering whether good cause exists, the Division will determine whether the reason is substantial and reasonable, and must take into account all available information and circumstances pertaining to the specific Complaint.

Rule 2. Definitions.

2.1 "Adverse action" means termination, discipline, failure to hire or promote, lower compensation, or other action that may deter activity protected by any of the POST Acts.

2.2 "Aggrieved by" means a perceived violation witnessed by, suffered by, or injured by.

2.3 "Career development" means "a change to an employee's terms of compensation, benefits, full-time or part-time status, duties, or access to further advancement in order to update the employee's job

title or compensate the employee to reflect work performed or contributions already made by the employee[,]" C.R.S. § 8-5-101(1.3), which means that such existing work or contributions:

(A) were part of the employee's existing job; and

(B) were not within a position with a current or anticipated "vacancy" as defined in C.R.S. § 8-5-101(8.5) and these Rules.

2.4 "Career progression" means "a regular or automatic movement from one position to another based on time in a specific role or other objective metrics." C.R.S. § 8-5-101(1.5).

2.5 "Complaint" or "Claim" interchangeably mean a Complaint or Claim alleging a violation of one of the POST Acts. "Complainant" means a person with a Complaint or Claim.

2.6 "Consumer credit information" means a written, oral, or other communication of information bearing on a consumer's creditworthiness, credit standing, credit capacity, or credit history. "Consumer credit information" includes a credit score but does not include the address, name, or date of birth of an employee associated with a social security number. "Consumer credit information" does not include income or work history verification.

2.7 "Credit score" means an attempted numerical quantification of a person's creditworthiness or credit history.

2.8 "Division" means the Division of Labor Standards and Statistics within the Department of Labor and Employment.

2.9 "Electronic communications device" means a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices.

2.10 "Employee" has the meaning provided in C.R.S. § 8-4-101(5), and includes every person who may be permitted, required, or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment, and includes an applicant for employment.

2.11 "Employer" has the meaning provided in C.R.S. § 8-4-101(6), except as follows, or as otherwise required by statute.

2.11.1 Under the Employment Opportunity Act, "employer" has the meaning provided by C.R.S. § 8-2-126(2)(e).

2.11.2 Under the Social Media and the Workplace Law, "employer" has the meaning provided by C.R.S. § 8-2-127(1)(c).

2.11.3 Under the Colorado Chance to Compete Act, "employer" has the meaning provided by C.R.S. § 8-2-130(2)(c).

2.11.4 Under the Job Application Fairness Act, "employer" has the meaning provided by C.R.S. § 8-2-131(2)(b).

2.11.5 Under the Equal Pay for Equal Work Act, "employer" has the meaning provided by C.R.S. § 8-5-101(5).

2.12 "Employment purposes" means evaluating a person for employment, hiring, promotion, demotion, reassignment, adjustment in compensation level, or retention as an employee.

2.13 "Initial employment application" or "initial written or electronic application form" includes all items the employer requires in order for an applicant to submit complete application materials for a position.

2.14 A "job opportunity" means "a current or anticipated vacancy for which the employer is considering a candidate or candidates or interviewing a candidate or candidates or that the employer externally posts." C.R.S. § 8-5-101(5.5)(a). A job opportunity "does not include career development or career

progression." C.R.S. § 8-5-101(5.5)(b).

2.15 A "posting" and a "notice" of a job opportunity are interchangeable terms in these Rules; any "posting" qualifies as a "notice," and any "notice" qualifies as a "posting." A "notification of … [a] job opportunity" (interchangeably termed a "job opportunity notice") that must include compensation and benefits includes both a notice to current employees required by C.R.S. § 8-5-201(1) and a posting an employer "externally posts" to others outside the employer (C.R.S. § 8-5-101(5.5)(a)).

2.16 "POST Acts" refer to the Employment Opportunity Act, C.R.S. § 8-2-126, the Social Media and the Workplace Law, C.R.S. § 8-2-127, the Colorado Chance to Compete Act, C.R.S. § 8-2-130, the Job Application Fairness Act, C.R.S. § 8-2-131, and the Equal Pay for Equal Work Act, C.R.S. § 8-5-201 et seq.

2.17 "Prevailing party" means the employee who successfully brings, or the employer who successfully defends, the complaint.

2.18 "Substantially related to the employee's current or potential job" means the information contained in a credit report is related to the position for which the employee who is the subject of the report is being evaluated because the position:

(A) Constitutes executive or management personnel or officers or employees who constitute professional staff to executive and management personnel, and the position involves one or more of the following —

(1) Setting the direction or control of a business, division, unit, or an agency of a business,

(2) A fiduciary responsibility to the employer,

(3) Access to customers', employees', or the employer's personal or financial information other than information customarily provided in a retail transaction, or

(4) The authority to issue payments, collect debts, or enter into contracts;

(B) Involves contracts with defense, intelligence, national security, or space agencies of the federal government; or

(C) Is with a bank or financial institution.

2.19 A "vacancy" means "an open position, whether as a result of a newly created position or a vacated position." C.R.S. § 8-5-101(8.5).

2.20 Any other definitions set forth in the POST Acts are hereby incorporated by reference, except where terms are defined differently in these Rules.

Rule 3. Complaints.

3.1 A person who is aggrieved by a violation of C.R.S. §§ 8-2-126, 8-2-127, 8-2-130, 8-2-131 and/or 8-5-201, or a representative of an aggrieved person, may file a complaint with the Division.

3.2 The Division will not accept complaints of violations of the Colorado Chance to Compete Act, C.R.S. § 8-2-130, or the Job Application Fairness Act, C.R.S. § 8-2-131, that occurred more than twelve months prior to the date of the complaint, and will not accept complaints of violations of the Equal Pay for Equal Work Act, Part II, C.R.S. § 8-5-201, that occurred before January 1, 2021.

3.3 Complaints shall be filed using a Division-approved form. A complaint or appeal is considered "filed" with the Division when it is received by the Division via mail, fax, email, online submission, or personal delivery. Any Complaint, appeal, or termination received after 11:59pm Mountain Time is considered filed the next business day. If a complaint is filed without using a Division-approved form, the date the complaint is received will be the date of the complaint, then the complainant will have fourteen days to submit a Division-approved form to avoid dismissal of the complaint without

prejudice. The fourteen days runs from the date the Division requests completion of the Division-approved form, unless the deadline is extended by the Division.

3.4 The complaint shall include the complainant's signature, contact information, and basis for the complaint. Failure to include this information on the complaint form may result in administrative dismissal of the complaint. Any such submission is considered "signed," or to have a "signature," if it has either an ink signature, a scanned signature, an electronically drawn or generated signature, or a typed name entered by the party or their authorized representative in the signature area; by signing in any such fashion, the individual is deemed to have agreed and assented that the document is signed by them.

3.5 The complaint shall include a short and plain statement of its grounds. A complaint concerning an employment application should also include or attach whichever the complainant is able to provide among the following: a link to, copy of, screen capture of, or other image of the application. The employer must explain which, if any, allegations it disputes. Any evidence probative of a relevant issue may be submitted or considered. The Division will cease investigating a complaint that, upon review, fails to raise a reasonable inference of a violation of any of the POST Acts.

3.6 Anonymous complaints will be accepted, but will not be investigated using the Division's administrative procedure, do not trigger any notice or participation rights for the Complainant, and will be investigated only at the discretion of the Division.

3.6.1 Anonymous complaints are considered tips or leads submitted on the Division's complaint form, and handled accordingly.

3.7 A complainant may withdraw a complaint at any time before the issuance of a determination by notifying the Division in writing.

3.8 A complainant shall respond in a timely manner to informational or investigatory requests by the Division. Failure to comply with this Rule may result in dismissal of the complaint. If a complaint is dismissed before a Notice of Complaint is sent to the employer due to failure to respond to a Division request for information, the complaint may be reopened if the complainant provides the requested information or documentation to the Division within 35 days of the request. A complainant may be required to file a new complaint if the response is received more than 35 days after the request.

Rule 4. Investigations.

4.1 The Division will investigate complaints that provide sufficient evidence from which a violation of C.R.S. §§ 8-2-126, 8-2-127, 8-2-130, 8-2-131, and/or 8-5-201 may be reasonably inferred (subject to Rule 3.7 as to anonymous complaints), as provided for wage complaints in Wage Protection Rules 4.1 and 4.2.1, 7 CCR 1103-7.

4.2 Wage Protection Rules ("WPR") 4.1, and 4.3 – 4.8, 7 CCR 1103-7, regarding investigation procedures and protections, are incorporated by reference, except that as incorporated:

(A) All references to a "wage claim" or "wage complaint" shall include a claim or complaint alleging a violation of C.R.S. §§ 8-2-126, 8-2-127, 8-2-130, 8-2-131, or 8-5-201;

(B) All references to "wage" or "wage and hour" or "labor" law, rights, responsibilities, investigations or proceedings shall include labor rights or responsibilities within these Rules;

(C) All references to "HFWA" shall include other labor rights or responsibilities within these Rules; and

(D) in WPR Rule 4.4.3 "C.R.S. § 8-4-113(1)(b)" is replaced with "C.R.S. §§ 8-4-113(1)(b) and 8-1-140(2)."

4.3 After receipt of a qualifying complaint, the Division will initiate the investigation by notifying the employer with a Notice of Complaint, along with any relevant supporting documentation the Complainant submitted, via U.S. mail, electronic means, or personal delivery. The employer must

respond within 14 days after a complaint is sent, unless the Division grants an extension.

4.4 The Division may exercise its discretion to have an investigation sequenced and/or divided into two or more stages on discrete questions of liability or relief (e.g., bifurcation), yielding two or more determinations and/or phases of the investigation.

Rule 5. Determinations and Remedies.

5.1 After investigating the complaint and assessing the employer's compliance, the Division investigator will issue a determination in writing.

5.1.1 The determination will be provided to the employer and complainant in writing via U.S. postal mail, electronic means or personal delivery.

5.1.2 The determination will contain information on the extent of the employer's compliance with the law, and will describe:

(A) what provisions of the law were adhered to and/or violated; and

(B) if a violation of C.R.S. §§ 8-2-126, 8-2-127, 8-2-130, 8-2-131, and/or 8-5-201 has occurred, steps the employer must take to cure the violation.

5.1.3 Determinations by the Division may include the following remedies, depending on which, if any, the Division's findings support:

(A) order(s) to cease non-compliance and/or effectuate compliance, as authorized by the POST Acts and statutes on Division investigative and enforcement authority in C.R.S. Title 8, Article 1; and

(B) fines pursuant to C.R.S. § 8-1-140(2) and/or the POST Acts.

5.1.4 The determination will contain information on appeal rights and appeal procedures.

5.1.5 The date of issuance of the Division's determination is the date the Division's determination is sent. Both the termination and appeal deadlines are calculated from the date the Division's determination is originally issued and sent to the parties.

5.1.6 A certified copy of any citation, notice of assessment, or order imposing relief or remedies may be filed with the clerk of any court having jurisdiction over the parties at any time after the entry of the order. Such a filing can be in a county or district court, and will thereby have the effect of a judgment from which execution may issue.

5.2 Each distinct violative job posting constitutes a separate violation for purposes of remedies, regardless of whether each posting references the same external publication or site with the violative content. Each instance of an individual responding to a job posting does not constitute a separate violation for purposes of remedies.

Rule 6. Recordkeeping Requirements

6.1 If any application, instruction, or advisement (written or electronic) for an employment position includes any question, inquiry, or request as to any aspect of a "criminal history" (as defined by C.R.S. § 8-2-130), or concerning the applicant's age, date of birth, or dates of attendance at or date of graduation from an educational institution, then the employer shall maintain copies of all such documents for two years after such material was made available, or throughout an investigation under these rules, whichever is longer.

6.2 Where a claim, complaint, or investigation for violation of C.R.S. §§ 8-5-201 or 8-5-202 has been filed or commenced, the employer shall preserve all relevant documents throughout the duration and until the expiration of the statutory period within which a person aggrieved may bring a civil action.

Rule 7. Appeals.

7.1 The determination issued by the investigator may be appealed to the Division.

7.2 A party to the claim who appeals the determination is entitled to an appeal hearing and final agency decision in conformity with the Colorado Administrative Procedure Act, C.R.S. § 24-4-105.

7.3 A Division hearing officer will preside over the hearing and issue an initial decision.

7.4 Any party to the claim may appeal the initial decision by filing written exceptions with the Division director within thirty calendar days of the initial decision under C.R.S. § 24-4-105(14)(a)(II).

7.4.1 Written exceptions shall be filed in conformity with instructions stated in the decision or order to which exceptions are being filed, as well as instructions posted on the Division website.

7.4.2 If no party files written exceptions with the director of the Division within thirty calendar days of the initial decision, the initial decision shall become the final agency decision.

7.5 The record on appeal to the director is the Division's record of its investigation unless the appealing party files a designation of the record with the division within twenty calendar days of the initial decision in accordance with C.R.S. § 24-4-105(15)(a).

7.6 The director's decision, after review of any exceptions, is the final agency decision. Any party to the claim may seek judicial review of this decision in accordance with C.R.S. § 24-4-106.

7.7 Failure to file exceptions in accordance with Rule 7.4 shall result in a waiver of the right to judicial review of the final agency decision in accordance with C.R.S. § 24-4-105(14)(c).

Rule 8. Rules as to the Employment Opportunity Act.

8.1 Nothing in the Employment Opportunity Act or these rules imposes any liability on a person, including a consumer reporting agency, as that term is defined in C.R.S. § 12-14.3-102(4) for providing an employer with consumer credit information.

Rule 9. Rules as to the Social Media and the Workplace Law.

9.1 An employer may access information about employees that is publicly available online.

Rule 10. Rules as to the Colorado Chance to Compete Act.

10.1 An employer may obtain publicly available criminal background reports at any time.

Rule 11. Rules as to the Equal Pay for Equal Work Act.

11.1 Job opportunity notices. Notices of job opportunities, including both those an employer "externally posts" (C.R.S. § 8-5-101(5.5)(a)) and those to notify current employees (C.R.S. § 8-5-201(1)), must include information on compensation, benefits, and application processes, as specified in Rules 11.1.1 – 3. Employers must make reasonable efforts to notify current employees, as specified in Rule 11.1.4.

11.1.1 Contents. Employers must include the following information in each posting (C.R.S. § 8-5-201(2)):

(A) the hourly rate or salary compensation (or a range thereof) that the employer is offering for the position (subject to Rule 11.1.2);

(B) a general description of any bonuses, commissions, or other forms of compensation that are being offered for the job;

(C) a general description of all employment benefits the employer is offering for the position, including health care benefits, retirement benefits, any benefits permitting paid days off (including sick leave, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, but not benefits in the form of minor perks;

(D) the application deadline (subject to Rule 11.1.3); and

(E) how to apply for the job opportunity.

11.1.2 Pay ranges. A posted compensation range may extend from the lowest to the highest pay the employer in good faith believes it might pay for the particular job, depending on the circumstances. An employer may ultimately pay more or less than the posted range, if the posted range was the employer's good-faith and reasonable estimate of the range of possible compensation at the time of the posting.

11.1.3 Deadlines. Postings must include the deadline to apply, but:

(A) if there is no deadline because the employer accepts applications on an ongoing basis, the posting must say so, and a deadline need not be included; and

(B) a deadline may be extended as long as (1) the original deadline was a good-faith expectation or estimate of what the deadline would be, and (2) the posting is promptly updated when the deadline is extended.

11.1.4 Duties to notify employees. An employer is required to make "reasonable efforts" to "announce, post or otherwise make known each job opportunity to all employees on the same calendar day and prior to the date on which the employer makes a selection decision[.]" C.R.S. § 8-5-201(1).

(A) Exceptions and limitations on the duty to provide job opportunity notices:

(1) Career developments and career progressions are not "job opportunities" and therefore do not require job opportunity notices.

(2) Confidentiality. A job opportunity need not be posted to all employees if the employer has a compelling need to keep a particular opening confidential because the position is still held by an incumbent employee who, for reasons other than avoiding job posting requirements, the employer has not yet made aware they will be separated. If any employees are told of the opportunity, all employees must be told who either (a) meet the minimum qualifications or (b) have a job "substantially similar" (within the meaning of C.R.S. § 8-5-102 in the Act) to any employees being told of the opportunity. If the need for confidentiality ends before any deadline to apply for the job, the employer must then promptly comply with applicable posting requirements in the Act.

(3) Automatic promotion after trial period. No job opportunity posting to other employees is required for a promotion within one year of an employee being hired with a written representation (whether in an offer letter; in an agreement; or in a policy the employer publishes to employees) that the employer will automatically consider the employee for promotion to a specific position within one year based solely on their own performance and/or employer needs.

(4) Acting, interim, or temporary ("AINT") hires. No immediate job opportunity posting is required to fill a position on an AINT basis for up to nine months where:

(a) the AINT hiring is not expected to be permanent, and if the hire may become permanent, the required job opportunity posting must be made in time for employees to apply for the permanent position; and

(b) the same or a substantially similar position was not held anytime in seven or more of the preceding twelve months by another AINT hire for which there was no job opportunity posting, except that if an AINT hire separates after more than seven months, from a position

expected to last up to nine months, then a posting is not required for a replacement to finish their term.

(5) If an employer is only physically located outside of Colorado and has fewer than fifteen employees working in Colorado, all of whom work only remotely, then, through July 1, 2029, the employer is only required to provide notice of remote job opportunities.

(B) Methods. An employer makes "reasonable efforts" with any method(s) by which all covered employees (1) can access within their regular workplace, either online or in hard copy, and (2) are told where to find required postings or announcements. If a particular method reaches some but not all employees, such as an online posting not accessible to those lacking internet access, an alternative method shall be used for such employees.

(C) Qualifications. Employers must notify all employees of all job opportunities, and may not limit notice to those employees it deems qualified for the position, but may state that applications are open to only those with certain qualifications, and may screen or reject candidates based on such qualifications.

11.2 Post-selection notice. After a candidate is selected for a job opportunity, employers must provide information described in Rule 11.2.1, by the processes described in Rule 11.2.2, to employees with whom the employer intends the selected candidate to regularly work.

11.2.1 Contents. Employers must include the following information:

(A) the name of the candidate selected for the job opportunity;

(B) the selected candidate's former job title if selected while already employed by the employer;

(C) the selected candidate's new job title; and

(D) information on how employees may demonstrate interest in similar job opportunities in the future, including identifying individuals or departments to whom the employees can express interest in similar job opportunities.

11.2.2 Duties to notify employees. Within 30 calendar days after a candidate who is selected to fill a job opportunity begins working in the position, employers must make "reasonable efforts" (as defined in Rule 11.1.4(B)) to notify the employees with whom the employer intends the selected candidate to work with regularly of the information in Rule 11.2.1.

(A) "Work with regularly" means employees who, as part of their job responsibilities, either (1) collaborate or communicate about their work at least monthly, or (2) have a reporting relationship (*i.e.*, supervisor or supervisee). Employers may comply by providing notice to a broader range of, or all, employees.

(B) Employers may comply with this Rule by providing post-selection notice either (1) of each individual selection, or (2) of multiple selections, as long as the notice is provided no later than 30 days after any selection(s) in the notice.

11.2.3 Non-disclosure rights.

(A) An employer shall not disclose a selected candidate's name and/or prior job title if:

(1) any applicable law (including an applicable, legally binding statute, rule, or order) requires not disclosing either (or both) of those items; or

(2) a selected candidate informs the employer (a) in writing, (b) on their own initiative (but employers may inform candidates of non-disclosure rights under this Rule), and (c) voluntarily (*i.e.*, without pressure or coercion), that they believe disclosure of either (or both) of those items would put their health or safety at risk (but need not detail the health or safety risk).

(B) An employer shall still provide all other required post-selection information, even if under this rule it does not disclose a candidate's name or prior job title.

11.3 Career progression notices.

11.3.1 For positions with "career progression," an employer shall disclose and make available to all eligible employees (consistent with the methods for reasonable efforts in Rule 11.1.4(B)) the requirements for career progression, in addition to each position's terms of compensation, benefits, full-time or part-time status, duties, and access to further advancement.

11.3.2 "Eligible employees" are those in the position that, when the requirements in the notice are satisfied, would move from their position to another position listed in the notice as a "career progression."

Rule 12. Rules as to the Job Application Fairness Act.

12.1 Initial Application Requirements.

12.1.1 An employer may request or require additional application materials, such as resumes, CVs, transcripts, or certifications, during an initial employment application, provided that the employer notifies the applicant that the applicant may redact or remove information that identifies their age, date of birth, or dates of attendance at or graduation from an educational institution.

12.1.2 Employers may request an individual to verify compliance with age requirements imposed by law or regulation, or enrollment or membership in a program or organization required for the position, so long as the individual is not required to disclose their "specific age, date of birth, or dates of attendance at or date of graduation from an educational institution on an initial employment application." This includes that an employer may ask:

(A) if an applicant is at least an age legally required to perform the job; or

(B) whether an applicant is enrolled in a school or education program for a position that requires such enrollment.

12.2 Bona Fide Occupational Qualifications.

12.2.1 If an employer claims that it is or was required to verify compliance with age requirements imposed pursuant to or required by a bona fide occupational qualification pertaining to public or occupational safety, it must establish that the challenged practice does indeed effectuate that goal and that there is no acceptable alternative which would better advance it or equally advance it with less discriminatory impact.

12.2.2 If an employer claims that it is or was required to verify compliance with age requirements imposed pursuant to or required by a federal, state, or local law or regulation based on a bona fide occupational qualification, it must establish that the age limit imposed by the law or requirement is reasonably necessary to the essence of the business, and either that:

(A) all or substantially all individuals excluded from the job involved are in fact disqualified, or

(B) some of the individuals so excluded possess a disqualifying trait that cannot be ascertained except by reference to age.

12.2.3 Whether occupational qualifications will be deemed to be "bona fide" to a specific job will be

determined on the basis of all the pertinent facts surrounding each particular situation. It is anticipated that inquiries based on a bona fide occupational qualification will be limited in scope and application.

Rule 13. Geographic Limits.

13.1 The requirements of the POST Acts and Rules do not apply to postings or applications (1) for jobs to be performed entirely outside Colorado, or (2) physically located entirely outside Colorado.

13.2 Under the Equal Pay for Equal Work Act, the job opportunity notice, post-selection notice, and career progression notice requirements (C.R.S. § 8-5-201(1), (3), and (4), respectively) do not require notice to employees entirely outside Colorado.