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Researching Colorado Employment Law

BY JILL STURGEON

In the wake of COVID-19's economic challenges, federal and state legislators have passed emergency relief measures affecting the employment law landscape in Colorado. This is in addition to other recent legislation affecting Colorado employers and employees in new ways. This article presents strategies for researching Colorado employment law and staying abreast of developments in this rapidly changing area. It covers both secondary

materials, which offer a general understanding of employment law, and primary sources—statutes, regulations, and local ordinances. It also includes tips for researchers using subscription-based services.

The Big Picture

Jurisdiction-specific secondary materials are a great place to start researching an unfamiliar field of law. These materials usually give an

overview of a topic and point researchers to relevant primary law. Recommended secondary sources for Colorado employment law are *Colorado Employment Law*,¹ which provides an excellent overview of employment law issues, and *Colorado Employment Law and Practice*,² which offers Colorado-specific employment law information from experienced practitioners.

Colorado Bar Association Continuing Legal Education (CBA-CLE) presentations and materials are another good source for learning the basics about a specific field of law and often present a condensed introduction by experts in the field. Some materials address a narrow employment law issue, while others provide a broad review of Colorado employment law. For example, the *2020 Employment Law Conference*, an annual update on changes to Colorado law and national developments, was delivered virtually, so the recording can be watched in its entirety. This and many other CLE programs and materials are available for purchase from

CBA-CLE. Print materials from CBA-CLE can also be found in law library collections, including the University of Colorado–Boulder Wise Law Library and the University of Denver Westminster Law Library.

In addition, the CBA’s Employment Law Section brings together attorneys interested in labor and employment law issues to exchange ideas. Resources from this section are accessible on the CBA’s website.

The *Mountain West Employment Law Letter*³ covers state employment issues in Colorado, as well as Idaho, Montana, New Mexico, Utah, and Wyoming. The articles cover developments in employment law for the entire region, including actions of both state and federal agencies that impact employment-related issues. In 2020, the publisher condensed its state newsletters into nine regional publications, but all content from prior years remains available in the respective state databases in Westlaw, including the *Colorado Employment Law Letter*.⁴ Both titles can be found in Westlaw.

For information beyond Colorado law, researchers can turn to the multitude of books and treatises that have been written on various aspects of employment law. Recommended resources include:

- *Restatement of the Law, Employment Law*,⁵
- *Employment Law*,⁶
- *Nutshell* series (e.g., *Employment Law in a Nutshell*⁷ and *Labor Law in a Nutshell*⁸), and
- CCH Labor Relations Reporter.⁹

For developing issues, researchers should consult employment law journals, such as the *Employee Rights and Employment Policy Journal*,¹⁰ the *Employee Relations Law Journal*,¹¹ and the *ABA Journal of Labor and Employment Law*.¹² Many law schools, including Berkeley¹³ and Hofstra,¹⁴ also publish employment law journals or law reviews focused on recent issues in labor and employment law. These materials are often available online. Researchers can also search Social Science Research Network (SSRN)¹⁵ and bepress Digital Commons¹⁶ for articles written by law faculty.

Law libraries frequently draft research guides on specific fields of law. A Google search for “Employment Law Research Guide” provides

a sample of these research guides. Both the Library of Congress¹⁷ and Georgetown Law Library,¹⁸ for example, have created in-depth guides to federal employment law research.

Honing the Search

While this article focuses on Colorado employment law research, researchers should keep in mind that employment law, and especially labor law, are also governed by federal law. Primary sources for Colorado employment law include both state and federal statutes, agency regulations, and local ordinances.

Colorado agencies are a useful source for current developments. They provide online access to current and proposed regulations and allow interested parties to ask questions or obtain information directly from the agency.

Colorado Statutes

Colorado statutes governing employment law are located in

- Title 8: Labor and Industry,
- Title 12: Professions and Occupations, and
- Title 24: Government-State (including the Colorado Anti-Discrimination Act (CADA) as it relates to employment practices at CRS §§ 24-34-401 et seq.).

The Colorado statutes are available online at no charge through LexisNexis.¹⁹ Browsing

the Table of Contents is an easy, no-cost way to find employment laws related to your research question.

The powers and duties of state agencies are defined by statute, so researchers can use the table of contents for the relevant title to find out which agency handles different areas within that title. Researchers can then visit the agency’s website for additional materials.

Agency Regulations

Colorado agencies are a useful source for current developments. They provide online access to current and proposed regulations and allow interested parties to ask questions or obtain information directly from the agency. Often, they provide reports on current policies and guidance on how regulations should be applied. With a field as rapidly changing as employment law, staying current on how the laws are applied and the rationale behind this application is essential.

The main employment-related agency is the Colorado Department of Labor and Employment (CDLE),²⁰ which oversees labor standards, workers’ compensation, unemployment insurance, and other employment-related issues in Colorado. In addition to publishing proposed and adopted rules,²¹ CDLE issues Interpretive Notice & Formal Opinions (INFOs). INFOs are not binding law but are the officially approved opinions and notices to employers, employees, and others regarding the department’s interpretation of various statutes and rules.²²

Through CDLE’s Office of Labor Standards, the Division of Labor Standards and Statistics (DLSS)²³ interprets, investigates, issues guidance, rules on, and enforces labor law on various aspects of wage requirements (e.g., minimum, overtime, and deductions); health-related leave; whistleblowing; employee privacy rights (e.g., limits on inquiries into credit history, criminal records, or social media); union–management relations (e.g., elections and certain grievances); transparency in posting job and promotion opportunities; public contracting; and youth employment.

The Colorado Division of Professions and Occupations²⁴ licenses professions, occupations, and businesses in Colorado and could be relevant to employment issues relating to licensure.

Local Ordinances

Local governments often address local employment issues through local ordinances. Local ordinances related to Colorado employment law may be found through Municode²⁵ or by searching a municipality’s website.²⁶ For instance, after HB 19-1210²⁷ repealed a prohibition against local governments enacting a minimum wage for their locality, Denver was the first local government to enact a citywide minimum wage.²⁸

Subscription-Based Legal Databases

Access to online legal research platforms can greatly simplify the research process. The major platforms provide a curated selection of employment law resources as well as convenient access to both state and federal cases, statutes, and regulations.

Bloomberg Law

From the “Browse All Content” tab, subscribers may select “Practice Centers” and then “Labor & Employment” to access the Labor & Employment Practice Center. The Practice Center provides links to legal analysis through BNA portfolios, manuals, and selected books, treatises, law reviews, and other journals. It also contains links to practical guidance and reform tracking tools, and provides dedicated state-law-specific tools.

Lexis+

To access employment law materials, including cases, statutes, and regulations, subscribers may select “Labor & Employment Law” from the “Practice Area” tab on the Lexis homepage. This page also provides access to news, forms, and XprTHR, which offers guidance tailored to human resources professionals

and employment law attorneys. Alternatively, researchers may select the “Topics” tab from the homepage, select “Labor & Employment Law,” and then click through topics organized like a table of contents or search for a specific employment-related topic.

Westlaw Edge

Subscribers may select “Employment” under “Practice Areas” to access employment law cases, statutes, and regulations. Westlaw also compiles “Proposed & Enacted Legislation” and “Proposed & Adopted Regulations” for both federal and state laws and regulations from the past two years. Subscribers can access Practical Law from this page to access more information sorted by topics within employment law, in addition to news, practitioner resources, and State Q&A, which surveys employment laws by topic across all 50 states.


Legislative Developments

Reviewing the legislative history of proposed and enacted legislation can be an important part of researching employment law issues and how they might change in the future. The General Assembly website provides information on past, present, and forthcoming legislation. Two main committees deal with employment law issues: the House Committee on Business Affairs and Labor, and the Senate Business, Labor, and Technology Committee. The General Assembly also provides Status Sheets,²⁹ which outline the status of legislation for the current session.

For a bill to be considered or to become law, it must be referred to and returned from a committee.³⁰ Committees consider current and proposed legislation and provide legislative oversight for specific executive branch agencies. These committees often provide background information that can help researchers understand the purpose of employment-related legislation. Committees also generate reports and discuss the intricacies of proposed employment laws. Audio from recent committee meetings and schedules of upcoming committee meetings are available on the Colorado General Assembly’s website.³¹

A great deal of employment legislation has been passed in recent years. During the 2020

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legislative session alone, a number of bills that impact employers and employees passed.³² For example, SB 20-205 requires employers with 16 or more employees to provide paid sick leave to their employees, beginning on January 1, 2021. This provision applies to all employers starting in 2022.³³ Another example is HB 20-1048, which explicitly prohibits discrimination in employment practices based on hairstyles commonly or historically associated with race.

In addition, public and private employers in Colorado should be aware of the Equal Pay for Equal Work Act (EPEWA),³⁴ effective January 1, 2021, which imposes equal pay obligations beyond those required by the federal Equal Pay Act.³⁵ EPEWA authorizes CDLE to create a new administrative procedure to accept and mediate complaints under the Act.³⁶ In late September 2020, CDLE proposed “equal pay transparency rules” to clarify EPEWA.³⁷ This is a good example of how legislation and agency interpretations interact.

Updates to implementing regulations can also make significant changes to employment law. For example, the Colorado Overtime and Minimum Pay Standards (COMPS) Order, 7 CCR § 1103-1, effective March 16, 2020, covers all private sector work, regardless of industry, unless specifically exempted by the Order.³⁸ Previous Colorado minimum wage orders covered only four industries, retail/service, food/beverage, health/medical, and commercial support service.

Conclusion

Staying up to date on employment law is the best way for employers, employees, and the attorneys who advise them to prepare for and avoid future problems. The many resources described above allow practitioners to understand current employment law and plan for what is on the horizon. 



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NOTES

1. Gallagher et al., eds., *Practitioner's Guide to Colorado Employment Law* (CBA-CLE 3d ed. 2018 and 2020 updates).
2. Corrada and Corrada, *Colorado Employment Law and Practice*, 3d, vol. 16, Colo. Practice Series (Thomson West 2019-20) (available on Westlaw).
3. *Mountain W. Emp. L. Letter* (M. Lee Smith 2020-).
4. *Colo. Emp. L. Letter* (M. Lee Smith 1992-2019). Available in print at the Wise Law Library through June 2010.
5. *Restatement of the Law, Employment Law* (American Law Institute 2015).
6. Rothstein et al., *Employment Law* (Practitioner Treatise Series) (Thomson Reuters 6th ed. 2019).
7. Covington, *Employment Law in a Nutshell* (West Academic Pub. 4th ed. 2017).
8. Leslie, *Labor Law in a Nutshell* (West Academic Pub. 5th ed. 2008).
9. Included in the CCH Labor and Employment Law Combination multibase, CCH Labor Relations Reporter offers an extensive array of labor, employment, and related publications published by CCH. It is available on Westlaw. Additional CCH content can be found in Wolters Kluwer's Cheetah database.
10. *Employee Rts. & Emp. Pol'y J.* (National Employee Rights Institute 1997-).
11. *Emp. Relations Law J.* (Executive Enterprises Pub. Co. 1975-).
12. *ABA J. Lab. & Emp. L.* (ABA Section of Labor & Employment Law 2009-). Previously titled *Labor Lawyer* (1985-2009).
13. *Berkeley J. of Emp't and Labor Law*.
14. *Hofstra Labor & Emp't Law J.* (continues *Hofstra Labor Law J.*).
15. SSRN provides access to numerous drafts and final papers across the social sciences and humanities. Professors often post papers on SSRN before they are officially published, giving readers the opportunity to see works at an early stage, www.ssrn.com/en.
16. Digital Commons publishes and manages 600 member institutions' research and scholarship, <http://network.bepress.com/law/labor-and-employment-law>.
17. <https://guides.loc.gov/employment-and-labor-law/online-resources>.
18. https://guides.ll.georgetown.edu/labor_employment.
19. Colorado statutes, court rules, and the US and Colorado constitutions are available at www.lexisnexis.com/hotttopics/colorado.
20. <https://cdle.colorado.gov>.
21. Recently proposed and adopted rules are located at <https://cdle.colorado.gov/proposed/adopted-rules>.
22. <https://cdle.colorado.gov/interpretive-notice-formal-opinions-infos>.
23. <https://cdle.colorado.gov/dlss>.
24. www.colorado.gov/pacific/dora/dpo.
25. Municode Library, “Colorado,” <https://library.municode.com/co>.
26. For tips on conducting more thorough local government research, see Linz, “Researching Colorado Local Government Law,” 38 *Colo. Law.* 101 (Aug. 2009).
27. Codified at CRS §§ 29-1-1401; 8-3-102; and 8-6-101, effective Jan. 1, 2020.
28. Under the ordinance, Denver's minimum wage will be \$12.85 an hour on Jan. 1, 2020; \$14.77 an hour on Jan. 1, 2021; and \$15.87 an hour on Jan. 1, 2022. https://library.municode.com/co/denver/codes/code_of_ordinances?nodeId=TITIIREMUCO_CH58WA_ARTIIMIWA_S58-16DEMIWA.
29. <https://leg.colorado.gov/agencies/house-representatives/status-bills>.
30. Colo. Const. art. V, § 20.
31. <https://leg.colorado.gov>.
32. For a review of the 2020 legislative session, see White, “The CBA's 2020 Legislative Session in Review” 49 *Colo. Law.* 34 (Aug./Sept. 2020).
33. SB 205, Colorado Second Regular Session of the Seventy-Second General Assembly, codified at CRS § 8-13.3-403(1)(c).
34. Equal Pay for Equal Work Act, 2019 Colo. Legis. Serv. Ch. 247 (SB 19-085), codified at CRS §§ 8-5-101 et seq.
35. 29 USC § 206.
36. CRS § 8-5-103.
37. 7 Colo. Code Regs. § 1103-13.
38. Corrada and Corrada, *supra* note 2 at § 4:14.