



# The Colorado Equal Pay for Equal Work Act - Requirements and Opportunities

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## Who Are We?

*Graves Consulting is a Management and Human Resources consulting firm that specializes in municipal compensation and organizational culture. We have worked with dozens of municipalities throughout Colorado, Oklahoma, Wyoming and North Dakota.*

### Laurie Graves - President, Graves Consulting, LLC

- HR expert with 25+ years experience - private sector, non-profit and municipal governments

### Eric Marburger - Sr Consultant, Graves Consulting, LLC

- Previous owner of ESM Consulting with extensive HR/Compensation experience with municipalities throughout Colorado

### Chuck Passaglia - Employment Law Solutions, Inc

- Provided a legal review of our Pay Equity Audit process

# The Basics

- ▶ Senate Bill 19-085 - “Equal Pay for Equal Work Act”
- ▶ Passed in May 2019
- ▶ Effective on January 1, 2021
- ▶ Prohibits an employer in the State of Colorado from discriminating on the basis of sex (gender), or on the basis of sex in combination with another protected status, by paying an employee of one sex a wage rate less than the rate paid to an employee of a different sex for substantially similar work

## Why was it passed?

**Federal Equal Pay Act became law in 1963, however...**

- ▶ Women in Colorado earn 86 cents for every dollar earned by men
- ▶ Latinas earn 54 cents and black women earn 63 cents for every dollar earned by white men

## That Adds Up

- ▶ If the wage gap were eliminated, a working woman in Colorado would earn, on average, \$7,000 more per year,
- ▶ That would pay for 1.9 years of community college or 6 months of child-care costs,
- ▶ The effects of pay disparity compound over a woman's lifetime, with women losing between \$400,000 and \$1,000,000 over the course of a lifetime,
- ▶ Equal pay would cut the poverty rate for working women in half and reduce the poverty rate for employed single mothers by more than 40%

*\*From the Institute for Women's Policy Research and the Women's Foundation of Colorado (and included in the Act)*

## Impact on Employers in Colorado

- ▶ Applies to every employer in the state of Colorado, public and private, regardless of size,
- ▶ Employees may bring a lawsuit within two years after an alleged violation,
- ▶ Each time a paycheck is received, a new violation occurs,
- ▶ No requirement to go through an administrative process as a prerequisite,
- ▶ May be awarded back pay for up to three years, AND...
- ▶ May be awarded liquidated damages (\$\$\$)

**Liquidated Damages may be avoided if an employer conducts a “thorough and comprehensive pay audit of its workforce, with the specific goal of identifying and remedying unlawful pay disparities”**

# The Act Prohibits an Employer From...

- ▶ Seeking the wage rate history of a prospective employee or requiring disclosure of wage rate as a condition of employment;
- ▶ Relying on a prior wage rate to determine a wage rate;
- ▶ Discriminating or retaliating against a prospective employee for failing to disclose the employee's wage rate history;
- ▶ Discharging or retaliating against an employee for actions by an employee asserting the rights established by the act against an employer; or
- ▶ Discharging disciplining, discriminating against, or otherwise interfering with an employee for inquiring about, disclosing, or discussing the employee's wage rate

# The Act Requires an Employer To...

- ▶ Announce all opportunities for promotion to all employees on the same calendar day and prior to making a promotion decision
- ▶ Disclose in each job posting the full pay range and a general description of all benefits and other compensation to be offered to the hired applicant
- ▶ Maintain records of job descriptions and wage rate history for each employee for the duration of their employment plus two years after the end of their employment



## The Act Offers an Employer...

- ▶ The ability to avoid liquidated damages if the employer can demonstrate that the act or omission giving rise to the violation was in good faith

**Good faith may be demonstrated by the employer having conducted a comprehensive pay audit of its workforce with the specific goal of identifying and remedying unlawful pay disparities within two years of the complaint**

# Pay Equity Audit Intent

The intent of a pay equity audit is to identify and remedy unlawful pay disparities. However, not all pay disparities are unlawful, in fact, most are reasonable and valid.

The audit should identify disparities and then further detailed review will help you determine if they are for reasons considered valued under the Act

# Pay Equity Audit- Process Steps

1. Compile a list of all positions within the organization
  - Municipalities may exclude positions whose pay is set by statute
2. Ensure proper EEO categories are assigned to all positions
3. Group all positions by EEO category
  - Determine if sub-categories or combined categories are necessary based on sample size
  - Does a category include second level managers as well as entry level individual contributors (Professional category)?
  - Does a category only include one or two positions with very few incumbents that could be reasonable combined with another (Skilled Craft Workers and Technicians)?

**It is important to not manipulate the groupings to reverse engineer more positive results**

# Pay Equity Audit/Analysis Overview

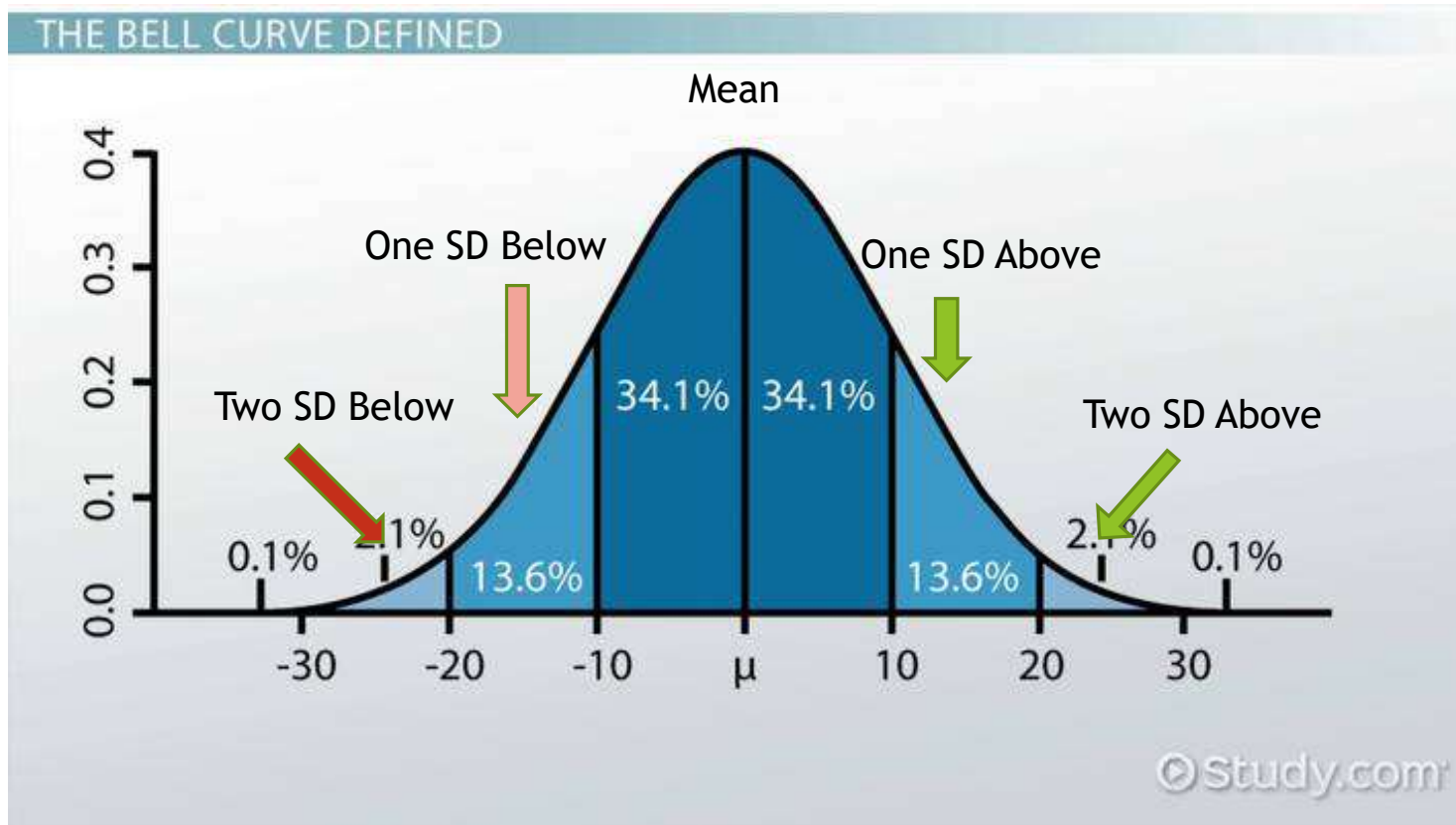
## 4. Pull current census data for all incumbents that includes:

- EE Name or Unique Identifier
- Dept/Division (optional)
- Job Title
- EEO Category
- Date of Hire
- Current Rate of Pay
- Gender
- Race (if voluntarily provided)
- Date of Birth

## Pay Equity Audit/Analysis Overview

5. Use statistical techniques to analyze the data by category
  - Calculate the Mean (average) of all pay rates
  - Calculate the Standard Deviation (Excel does this)
  - Determine the pay amounts that are one and two Standard Deviations above and below the mean
  - ▶ There will always be outliers, it's a function of the statistics and math
  - ▶ The question is if the outliers have a valid explanation

# Statistics and the Bell Curve



# Valid reasons for wage differences

- ▶ Seniority based pay systems
- ▶ A merit system (traditional Pay for Performance)
- ▶ Production based pay systems
- ▶ Geographic locations differences
- ▶ Reasonable education, training, experience requirements

# Invalid reasons for wage differences

- ▶ Basing wages on a prior wage history
- ▶ Using “market” as the basis for paying similarly situated employees less than others



# What To Do With The Results

Conduct a further analysis on employees that fall two standard deviations below the mean in each category. Look at:

- Time in this position
- Prior experience when hired
- Significantly different job requirements or education/experience requirements from other positions in the same category
- Supervisory level and number of direct and indirect reports as compared to others in the same category
- Historical performance ratings that may have impacted pay

Conduct a similar review for all other employees that fall more than one standard deviation above or below the mean to ensure pay disparities are valid

**Document the findings and actions taken**

*\*We recommend consulting with legal counsel before taking any employment actions in response to the analysis*

## Example of a Pay Equity Audit

The following slides are from an actual pay equity audit for a municipal client conducted earlier this year...



# Organization Demographics

		Percentage
<b>Total employees in analysis</b>	<b>2927</b>	
Employees under 40	1139	38.9%
Employees 40 and older	1788	61.1%
Male Employees	1244	42.5%
Females Employees	1683	57.5%
White Employees	2329	79.6%
Black Employees	31	1.1%
Hispanic Employees	345	11.8%
Asian Employees	47	1.6%
American Indian/Alaskan Native Employees	22	0.8%
Hawaiian or Pacific Islander Employees	3	0.1%
Two or More Race Employees	45	1.5%
Other	2	0.1%
Unknown	103	3.5%

# Employee Groupings

- We started with EEO-4 Categories
- Worked with HR staff to reclassify some positions
  - EEO guidance is contradictory on some positions
- Eliminated temporary/seasonal employees
- Eliminated Elected Officials

# Statistical results in each group

- We calculated the mean salary and the standard deviation of each group.
- Employees whose salaries fall below two SD from the mean are in the **Red Zone**
- Employees whose salaries fall below one SD but above two SDs from the mean are in the **Light Red Zone**
- Employees whose salaries fall more than two SDs from the mean are in the **Green Zone**
- Employees whose salaries fall more than one SD, but less than two SDs from the mean are in the **Light Green Zone**

# Administrative Support Grouping

Average Salary	\$ 45,989		Total Count	751
One Standard Deviation	\$ 7,905			
<u>Standard Deviations</u>			<u>Count</u>	<u>Percent of Total</u>
Light Red Zone	\$ 38,084		62	8.3%
Light Green Zone	\$ 53,895		91	12.1%
Red Zone	\$ 30,179		20	2.7%
Green Zone	\$ 61,800		26	3.5%

# Official & Administrators Grouping

Average Salary	\$ 126,217		Total Count	84
One Standard Deviation	\$ 27,032			
<u>Standard Deviations</u>			<u>Count</u>	<u>Percent of Total</u>
Light Red Zone	\$ 99,184		9	10.7%
Light Green Zone	\$ 153,249		9	10.7%
Red Zone	\$ 72,152		0	0.0%
Green Zone	\$ 180,282		3	3.6%

# Paraprofessional Grouping

Average Salary	\$ 59,368	Total Count	96
One Standard Deviation	\$ 8,224		
<u>Standard Deviations</u>		<u>Count</u>	<u>Percent of Total</u>
Light Red Zone	\$ 51,144	18	18.8%
Light Green Zone	\$ 67,592	15	15.6%
Red Zone	\$ 42,920	0	0.0%
Green Zone	\$ 75,817	3	3.1%



# Professional Grouping

Average Salary	\$ 73,449	Total Count	829
One Standard Deviation	\$ 21,466		
<u>Standard Deviations</u>		<u>Count</u>	<u>Percent of Total</u>
Light Red Zone	\$ 51,982	72	8.7%
Light Green Zone	\$ 94,915	70	8.4%
Red Zone	\$ 30,516	0	0.0%
Green Zone	\$ 116,381	43	5.2%

# Protective Service Grouping

Average Salary	\$ 75,894		Total Count	594
One Standard Deviation	\$ 15,201			
<u>Standard Deviations</u>			<u>Count</u>	<u>Percent of Total</u>
Light Red Zone	\$ 60,693		65	10.9%
Light Green Zone	\$ 91,095		42	7.1%
Red Zone	\$ 45,493		25	4.2%
Green Zone	\$ 106,295		1	0.2%

# Service - Maintenance Grouping

Average Salary	\$ 47,609	Total Count	121
One Standard Deviation	\$ 9,773		
<u>Standard Deviations</u>		<u>Count</u>	<u>Percent of Total</u>
Light Red Zone	\$ 37,836	12	9.9%
Light Green Zone	\$ 57,383	15	12.4%
Red Zone	\$ 28,063	0	0.0%
Green Zone	\$ 67,156	4	3.3%

# Skilled Grouping

Average Salary	\$ 55,286	Total Count	196
One Standard Deviation	\$ 10,785		
<u>Standard Deviations</u>		<u>Count</u>	<u>Percent of Total</u>
Light Red Zone	\$ 44,501	19	9.7%
Light Green Zone	\$ 66,072	16	8.2%
Red Zone	\$ 33,716	0	0.0%
Green Zone	\$ 76,857	13	6.6%

# Technical Grouping

Average Salary	\$ 77,439		Total Count	255
One Standard Deviation	\$ 22,537			
<u>Standard Deviations</u>			<u>Count</u>	<u>Percent of Total</u>
Light Red Zone	\$ 54,902		39	15.3%
Light Green Zone	\$ 99,976		65	25.5%
Red Zone	\$ 32,366		0	0.0%
Green Zone	\$ 122,513		0	0.0%

# Overview

- There are Red Zone employees in Administrative Services and Protective Services categories:
  - Many have less than two years of service
  - Some warrant further review
- Female employees earn 83% of male employees and non-white employees earn 84% of white employees
- On average, employees over 40 earn more than employees under 40

# Impact on Market Studies (Compensation/Classification)

- ▶ A market study seeks to ensure an organization is competitive to market based on specific job titles
- ▶ A pay equity audit groups positions together based on “substantially similar work...based on a composite of skill and effort”
- ▶ Some professions are historically undervalued in the market (ie. Librarians or Teachers) based on education, skill and knowledge required
- ▶ Many of those professions happen to be female dominated
- ▶ After a Market Study is conducted, a review of pay grades assigned to positions within a specific EEO category should be reviewed and considered when finalizing the Classification Listing

## Summary

- ▶ The Colorado Equal Pay for Equal Work Act **does not** create additional liability for organizations in the State of Colorado that did not exist before
- ▶ It **does** streamline the process somewhat for claimants to bring a lawsuit
- ▶ It **does** provide organizations with the ability to reduce financial penalties by acting in “good faith”
- ▶ The pay equity audit process we have described may be done internally or externally
- ▶ Documentation of the process, the findings and the actions taken is critical to reducing financial penalties
- ▶ This process can also be used as a Diversity, Equity and Inclusion indicator for your organization



# Questions?

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