

# OURERC A LOCAL BUSINESS NEWSLETTER

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**ERC WILL BE CLOSED:  
JULY 3—INDEPENDENCE DAY**

## SAFETY FACTS: DID YOU KNOW?

- NIOSH reported that in the 2000s, 30% of workers said they got six or fewer hours of sleep daily.
- A National Sleep Foundation study found that close to 25% of transportation workers said fatigue affects their job at least once a week.
- 10% of workers reported falling asleep at inappropriate times.



## TITLE VII (OF THE 1964 CIVIL RIGHTS ACT)

On June 15, 2020, the U.S. Supreme Court held that the Title VII (of the 1964 Civil Rights Act) prohibition on discriminatory treatment of an employee “because of sex” extends to employees who are homosexual or transgender. The decision indicates that a person’s homosexuality or transgender status is not relevant to employment decisions, and the Court concluded that it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that person “based on sex.” A person’s sex need not be the sole or primary cause of the adverse action for Title VII’s protections to apply.

### Religious Exemptions:

- \* Title VII (“Section 702(a)”) exempts from religious discrimination prohibitions certain specifically-defined “religious organizations” and “religious educational institutions.” The exemption is generally limited to allowing a preference to employ persons who share the religion of the organization or institution
- \* “But how these doctrines protecting religious liberty interact with Title VII are questions for future cases.”

### State and Local Laws:

- \* Currently 21 states, the District of Columbia (and Guam and Puerto Rico) and a host of county and city governments already have anti-discrimination and anti-harassment statutes that prohibit employment discrimination based on sexual orientation, transgender status, gender identity / expression.
- \* The Bostock decision will have the greatest impact in the other 29 states, where employers may need to update their anti-discrimination and anti-harassment policies and practices (including training) to include sexual orientation and gender identity (and gender expression) protections.

### What does this mean for ERC Partners?

- Clients who believe they qualify for a religious-based exemption should carefully review their situation, and if appropriate seek legal advice and guidance. The various potential religious defenses and protections are largely undeveloped and uncertain at best.
- ERC will continue to assist clients with compliance regarding applicable state and local anti-discrimination and anti-harassment laws, including dress code policies
- Employer Best Practices: When reviewing adverse employment actions: (1) treat sexual orientation, transgender status (and gender expression) as EEO-protected categories; (2) confirm that similarly-situated employees are treated similarly; (3) carefully document the legitimate business reasons supporting the adverse decision/action; and (4) with long-term employees, be careful with hyper-technical reasons for an adverse employment decision/action.

# Colorado Overtime and Minimum Pay Standards Order #36

The Colorado Overtime and Minimum Pay Standards (COMPS) Order #36. There is an increase in wages effective 7/1/2020 – please see attached poster that was sent to all clients back in March 2020 and should be posted next to your large Colorado/ Federal poster.

## Exemptions from the COMPS Order: All listed in Rule 2; key exemptions listed below.

- Executives/supervisors, decision-making administrative employees, and professionals (Rule 2.2.1-3) paid the exempt salary:

Salary through 6/20	7/20-12/20	2021	2022	2023	2024	Each Year After 2024
Equal to at least minimum wage for all hours	\$35,568	\$40,500	\$45,000	\$50,000	\$55,000	Prior year's salary, inflation-adjusted

- 20% owners, or at a nonprofit the highest-paid/highest-ranked employee, if actively engaged in management (2.2.5).
- Highly technical computer-related employees (defined in 2.2.10), if paid at least \$27.63 per hour.
- Various in-residence workers, including property managers, range workers, and camp/outdoor education field staff (2.2.7).
- Various, but not all, types of salespersons (2.2.4, 2.4.1, 2.4.2) and transportation workers (2.2.6).
- Certain medical transportation and hospital/nursing home employees have modified overtime rules (2.4.4, 2.4.5).
- Downhill ski/snowboard employees, including on-mountain food but not lodging, are exempt from 40-hour overtime (2.4.3).
- Agriculture jobs are exempt from overtime and meal periods, and have more flexibility as to rest periods (2.3).

## SAFETY FIRST: THE DANGERS OF FATIGUED WORKERS

Safety is priority for all ERC Colorado partners. ERC Partners are required to ensure safety for all of their employees. One of the most underrated safety issues is fatigued workers. According to the [National Institute for Occupational Safety and Health](#) (NIOSH) only getting five hours of sleep each night can triple a worker's risk for depression, slips, trips and falls, muscle strains, and dehydration. [NIOSH](#) states, "in the transportation industry, fatigued driving can lead to devastating accidents."

### Warning Signs for Fatigued Workers:

ERC Colorado recommends employees to seek safety advisors if they or a co-worker show signs of extreme fatigue. Signs may include but are not limited to the symptoms listed below.

**Physical:** Look out for yawning, eye rubbing, slurring of speech, slower reaction times or staring blankly into space for a few moments.

**Mental:** Signs may include but are not limited to having hard time concentrating, grasping for words, fading motor skills, and/or even hallucinating.

**Emotional:** Typically quiet or withdrawn, lack of motivating, or showing inappropriate emotions for a given situation

**Thinking:** Symptoms include exhibiting poor judgement, flawed logic or not recognizing effective solutions to problems.

**Communication:** Misinterpreting instructions, inability to properly communicate directions or emotions and discussions that don't make sense.

### Tips on how to prevent fatigue:

- Manage Employee Shift Lengths. Typically, Five 8-hour shifts or 4 10-hour shifts per week work well. Shorter shifts during evening hours are often more effective than longer ones.
- Get at least 10 consecutive hours of time off-duty daily to ensure you get enough sleep.
- Small rest breaks every couple hours will help you regenerate.
- Look at workloads in relation to shift length. Longer shifts tend to be light work.



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