

Special District Association of Colorado

SDA NEWS

DECEMBER 2023

Supporting Community-Based Government

Season's Greetings!



2024 Calendar of Statutory Deadlines Inside



- Safe & Liquid Investment Options
- The Benefit of Two Funds
- Rated AAAM / AAAs-1
- Online Access
- Check Writing & Treasury Features

Bob Krug • bkrug@csafe.org
Tim Kauffman • tkauffman@csafe.org

www.csafe.org | (303) 296-6340

Board of Directors

President
Sue Blair
Independence Metropolitan District No. 4

Vice President
Bill Simmons
Eagle River Fire Protection District

Secretary/Treasurer
Ronda Lobato
Costilla County Conservancy District

Executive Vice President
Allison Ulmer
Collins Cole Flynn Winn & Ulmer, PLLC



Ross Blackmer
Thompson Crossing Metropolitan District
Nos. 3 and 5

James Borland
Fort Collins/Loveland Water District

Kent Bosch
Upper Thompson Sanitation District

Bill Clayton
West Metro Fire Protection District

Dick Cleveland
Eagle River Water & Sanitation District

Jodi Docheff
Kremmling Memorial Hospital District

Jim Kullhem
Prospect Recreation & Park District

Phil Thomas
Fountain Sanitation District

Staff

Ann Terry
Executive Director

Meredith Smith Quarles
Director of Operations

Michael Valdez
Director of Policy

Megan Lippard
Editor and Communications Manager

Anthony Sandoval
Program Manager

Karla Boughey
Membership Services Coordinator

Jamille Andres
Office Coordinator

Dianne Criswell
General Counsel

Evan Goulding
In Memoriam

SDA

225 East 16th Avenue
Suite 1000
Denver, CO 80203
(303) 863-1733
Toll Free (800) 886-1733
sdaco@sdaco.org
www.sdaco.org

Designed by Emmett Jordan



Ann Terry, SDA Executive Director.

Dear SDA Members,

As this year comes to a close, I am once again inspired by your enduring leadership and unwavering commitment to your local communities.

The difficulties we have faced this year related to property taxes have taken a toll on all of us. From the passage of Senate Bill 23-303 to the defeat of Proposition HH to the Special Session that followed, it has been a roll-

ercoaster of ongoing challenges and emotions.

Throughout everything, your tireless efforts to provide critical information regarding these issues have made a significant difference. Your real-world analysis of how property taxes impact your ability to serve your constituents has been invaluable to our collective mission.

Thank you for your ongoing commitment, engagement, and dedication to the well-being of your districts. I am grateful for the opportunity to work alongside such resilient and creative leaders.

As we look ahead to 2024, we know that we will continue to stand strong together. We are honored to champion special districts and support our members in any way we can.

I would like to wish you and your family the very best this holiday season and a prosperous new year!

Sincerely,

Ann Terry

Executive Director



View your Landscape Differently

Creating beautiful metro districts requires a strategic partner with foresight and an unwavering attention to detail. BrightView combines the resources of a national provider with the local attention you deserve. Our team maintains Colorado's most notable metro districts, giving us the experience to provide your property the world-class service it deserves.

Shad Parrish
308 841 3003
shad.parrish@brightview.com



Design | Develop | Maintain | Enhance



Spencer Fane LLP | spencerfane.com
1700 Lincoln Street, Suite 2000 | Denver, CO 80203
Phone: 303.839.3800 | Fax: 303.839.3838

Spencer Fane is the law firm where your leaders work with our leaders. With over 120 combined years of special district experience in Colorado, we can handle all of your district's legal needs. Advancing the interests of your district is our priority.



... contributing to a cleaner, safer Colorado through low-cost loans to governmental entities for all types of water infrastructure projects.

Call 303-830-1550 or e-mail info@cwrpda.com | www.cwrpda.com



Happy Holidays!

We would like
to wish everyone
a joyful holiday
season and a very
Happy New Year!
All the best from
the SDA team!



Ann Terry



Meredith Smith Quarles



Michael Valdez



Megan Lippard



Anthony Sandoval



Dianne Criswell



Karla Boughey



Jamille Andres



COMMUNITY RESOURCE SERVICES



(303) 381-4960 • www.crsocolorado.com

Providing cost-effective, customized
management and accounting services

Over 200 Clients & Growing!



ICENOGLE SEAVER POGUE

A Professional Corporation
Attorneys at Law

Serving Colorado Special Districts & Other Political Subdivisions

4725 South Monaco Street, Suite 360, Denver, Colorado 80237
www.isp-law.com | 303.292.9100

GMS
INC

CONSULTING
ENGINEERS

Water

Supply
Treatment
Storage
Distribution

Wastewater

Collection
Lift Stations
Force Mains
Treatment

Funding Assistance

Grant & Funding Assistance
Feasibility Studies

Drainage

Hydrology
Detention
Conveyance Systems

Facilities Management

GIS Mapping
Operations Consultation

Utility Consultants

Municipalities
Special Districts
Non-Profits

Utilities

Planning
Permitting

GMS Inc.

Serving Colorado and Kansas

(719) 475-2935

Colorado Springs, CO

jmeyer@gmsengr.com

Looking for an easy and convenient way to stay up to date on the latest legislative issues for special districts?

SDA Legislative Briefings Set to Begin January 23!

Are you looking for an easy and convenient way to stay up to date on the latest legislative issues for special districts? Then make sure to mark your calendars to join us for the 2024 SDA Legislative Briefings!

The 2024 Legislative Session officially convenes on Wednesday, January 10, and we already have our full set of Legislative Briefings scheduled and ready to go.

The first briefing will take place on Tuesday, January 23 at 12:00 pm. These briefings will take place via Zoom, and all SDA members are welcome to listen in as we review the current hot topics and issues we have been working on at the Capitol.

Following the first briefing, the schedule of briefings for the entire Session is as follows:

- » Tuesday, February 6 at 12:00 pm
- » Tuesday, February 20 at 12:00 pm
- » Tuesday, March 5 at 12:00 pm
- » Tuesday, March 19 at 12:00 pm
- » Tuesday, April 2 at 12:00 pm
- » Tuesday, April 16 at 12:00 pm
- » Tuesday, April 30 at 12:00 pm

Please visit the SDA website at www.sdaco.org for more information and to register. Whether you would like to listen every time or just once in a while, this is an easy way to stay informed on all the current issues (please note that we will not be recording the briefings).

In addition, you will also be able to access a wide variety of legislative information on the SDA website. Here you will find the full Legislative Briefing schedule, the bill tracker, and any other pertinent legislative update or reports, all in one easy-to-find place. This added convenience is a quick and helpful way for members to stay up to date with the Legislative Session.

As always, please contact the SDA office at 303-863-1733 and ask for Ann Terry or Michael Valdez if you have any questions. 🍷



**Alliance
Association
Bank®**

Serving Special Districts Throughout Colorado

Specializing in:

ConnectLive™¹ Software Integration

No-Fee Lockbox Services²

Online Homeowner Payment Portal

Simplified Banking Transitions



One of Forbes' "America's
Best Banks" Year After Year

¹The ability to integrate with ConnectLive™ may depend on the accounting software used. Services and integration tools may differ by software. ²Funds deposited through the Lockbox will follow Western Alliance Bank's funds availability policy as outlined in the Deposit Account Agreement Disclosure. Alliance Association Bank, a division of Western Alliance Bank, Member FDIC. Western Alliance Bank ranks high on Forbes' "America's Best Banks" list year after year.



Offering Powerful Banking Solutions & Software Integrations

Alliance Association Bank's ConnectLive™¹ integration provides robust solutions enabling you to seamlessly manage the finances of your districts. ConnectLive™ integrates with the industry's leading accounting software providers, allowing you to see key financial information in one platform.



David Ford-Coates, CMCA

Vice President, HOA & Special District Banking
(720) 885-1444

dfordcoates@allianceassociationbank.com



Joanne Haluska, CMCA, AMS

Senior Managing Director, Central Region
(216) 314-9100

jhaluska@allianceassociationbank.com

Bank on Accountability® | allianceassociationbank.com

BUILDING AND PROTECTING COLORADO COMMUNITIES.



Providing general and specialized legal services for special district formation, board governance, public infrastructure development, contracting and finance, elections, employment matters, water law, and general operation of metropolitan, water, sanitation, fire protection, emergency and hospital, and recreation districts and other public service entities.

Shareholders

Paul R. Cockrel
Evan D. Ela
Linda M. Glesne
David A. Greher
Matthew P. Ruhland

Associates

Joseph W. Norris
Harley G. Gifford
Madison D. Phillips
Dakota Spence-Zurek

Paralegals

Micki Mills
Sarah Luetjen

44 Cook Street, Suite 620, Denver, CO 80206
www.cegrlaw.com • 303-218-7200

MAKING A DIFFERENCE

in People's Lives & Their Environment



Infrastructure
CONSULTING ENGINEERS

www.TSTInfrastructure.com

303-799-5197

Englewood, CO 80111

PLANNING. ENGINEERING. CONSTRUCTION. MANAGEMENT. OPERATIONS.

Deadline to File Your Transparency Notice is January 15

About Transparency Notices

Title 32, Article 1, Colorado Revised Statutes, requires that certain special districts (see chart below) give public notice each year of certain basic information about the district:

- » Address, telephone number, and primary contact person
- » The names of and contact information for the members of the Board
- » The name of the Board Chair or President
- » The name of each member whose office will be on the ballot at the next regular special district election

- » The time, date, and location of regular Board meetings
- » Mill levy and property tax revenues
- » Date of next regular election
- » The self-nomination procedure

Nicknamed the “Transparency Notice,” this notice may be disseminated to the public in a variety of ways (as discussed later in this article), but most special districts either post it on their own website or post it on the SDA website.

The chart below lists special districts that are required to provide a Transparency Notice and those that are not.

Required to Provide Transparency Notice
Ambulance districts
Fire protection districts
Forest improvement districts
Health service (hospital), health assurance, and mental health care service districts
Metropolitan districts
Mosquito control districts (not county pest control districts)
Park and recreation districts
Sanitation districts
Tunnel districts
Water districts
Water and sanitation districts

NOT Required to Provide Transparency Notice
Business improvement, general improvement, local improvement, public improvement, and special improvement districts
Cemetery districts
Conservancy districts
Conservation districts (formerly soil conservation districts)
Conservation districts (river water)
Disposal districts
Drainage districts
Federal mineral lease districts
Ground water management districts
Intergovernmental authorities
Irrigation districts
Junior college districts
Library districts
Local marketing districts
Pest control districts (county-established)
Recreation districts (county-established)
School districts
Urban drainage and flood control districts
Urban renewal and downtown development authorities
Water conservancy districts
Water conservation districts

Continued on page 11

ABOUT US

Since 1995, the Colorado Employer Benefit Trust has partnered with the Special District Association of Colorado to provide benefit solutions that are superior and affordable. With more than 240 Special Districts participating in the Trust, CEBT is recognized for its comprehensive benefit offerings, exceptional customer service and consistently low rate increases.

MEDICAL - DENTAL - VISION - LIFE - LTD/STD



WHAT YOU CAN EXPECT

By joining CEBT's self-insured pool you can enjoy:

- ✓ Lower Risk
- ✓ Reduced Administrative Costs
- ✓ A Long-term Stable Solution for Your District

OUR MISSION

"To provide quality health benefit options at a competitive cost with superior service to eligible employer groups."

For more information contact:

☎ 303-345-7730
✉ Terry.Rook@wtwco.com
🌐 www.cebt.org
[REQUEST A QUOTE NOW](#)

CEBT
Benefit by Trust
A Higher Standard of Quality



Providing over 100 years of technical excellence in:

- Water & Wastewater Infrastructure Design & Rehabilitation
- Water & Wastewater Treatment System Planning & Design
- Groundwater Wells
- Special District Engineering & Consulting Services
- Construction Management

Enduring Relationships | Trusted Expertise | Promises Delivered

CONTACT:

Jerry Peña, P.E.

720.744.2233

165 S. Union Blvd., Suite 570
Lakewood, CO 80228

KENNEDYJENKS.COM

KJ | Kennedy Jenks

**Serving your District's
covenant enforcement,
foreclosure, and collection needs.**

Contact us
720-221-9780



**Orten Cavanagh
Holmes & Hunt, LLC**
ATTORNEYS AT LAW

info@ochhoalaw.com
www.ochhoalaw.com

If you plan to post your district's Transparency Notice on the SDA website, first be sure your district is a current member of SDA.

Posting on SDA's Website

If you plan to post your district's Transparency Notice on the SDA website, first be sure your district is a current member of SDA. State law requires membership in SDA if you would like to post your Transparency Notice on the SDA website.

If you are a current member, you can review and update your Transparency Notice by going to the SDA website at www.sdaco.org. Make sure you are logged in and then click on "Transparency Notice" in the blue ribbon at the top of the page.

When you complete your online SDA membership renewal, you will also be given a prompt at the end of the renewal process to update your Transparency Notice.

Posting on Your District's Website

If you wish to post the Transparency Notice you've created on the SDA website on your district's website, you can print and post a copy of the completed SDA form.

If you choose to post your notice on your district's official website, your district's website must be "linked" to the website of the Division of Local Government (DLG). If you haven't already established a link, please contact the DLG at 303-864-7720, and they can help walk you through this process.

Other Ways to Distribute Your Transparency Notice

In addition to the website postings discussed above, the statute provides that the annual Transparency Notice to Electors may be disseminated in one or more of the following ways:

1. Mailing the notice to each household where one or more eligible district electors reside;
2. Including the notice as a prominent part of a:
 - a. Newsletter
 - b. Annual report
 - c. Billing insert
 - d. Billing statement
 - e. Letter
 - f. Voter information card or other election notice
 - g. Other informational mailing sent by the district to eligible electors
3. Physically posting the Transparency Notice as provided in the statute,¹ but **only if** the special district has fewer than 1,000 eligible electors

and the district is wholly located in a county with a population fewer than 30,000.

If you plan to use one of these other distribution methods, you may draft your own Transparency Notice as long as it contains all the information required by Section 32-1-809(1)(a-i), C.R.S. The Division of Local Government has prepared a statutorily sufficient Transparency Notice template that you may access on the DLG website.

In addition, a copy of the Transparency Notice is also filed with:

- » the Division of Local Government;
- » the Board of County Commissioners;
- » the County Assessor;
- » the County Treasurer;
- » the County Clerk and Recorder; and
- » the governing body of any municipality in which the district is located.

Exemptions for Inactive Districts

Special districts that have legally claimed "inactive" status pursuant to Section 32-1-104, C.R.S., are exempt from complying with the Transparency Notice provisions in Section 32-1-809, C.R.S.

CORA and Water and Sanitary Rate Increase Notices

In addition to the Transparency Notice information, SDA members can also post their required document and retrieval policy and fee schedule for Colorado Open Records Act (CORA) requests directly on the Transparency Notice form on the SDA website. There is also a section to post notice of a public hearing if a district plans a fee increase or change for water or sanitary sewer service.

We Make It Easy for You

Being able to take care of all of these requirements in one easy place is an added membership benefit that we hope all districts will take advantage of.

If you have any questions or need assistance accessing your Transparency Notice, please call the SDA office at 303-863-1733. 🍌

¹See §32-1-809(2)(e), C.R.S.

2024 Calendar of Statutory Deadlines

The following is a to-do list for your district in the upcoming year. Please note that this list merely highlights some of your reporting and filing responsibilities; it is not exhaustive.

Deadlines in **the blue boxes** occur on the same date each year. Deadlines in **the green boxes** fall on different dates each year.

On or before January 1 of each year

File a current, accurate map of the district boundaries (or letter stating there were no changes) with:

- » the Division of Local Government (DLG);
- » the County Clerk and Recorder of each County in which the district is located; and
- » the County Assessor of each County in which the district is located.¹

First Board Meeting

At the first regular Board meeting of the new calendar year, designate the “official” posting place for 24-hour (agenda) notice of district meetings.² The posting location may be the public website of the district or the physical location(s) designated by the district at the first regular Board meeting of the new calendar year. In order to comply with the posting of notice on the public website of the district, the notice must contain the specific agenda information, if available, not later than 24 hours prior to the holding of the meeting. A district that posts notices on a website shall provide the address of the website to the Department of Local Affairs. The district must still designate one physical location within the district boundaries for posting in the event of an exigent or emergency circumstance which prevents posting or public access to the online webpage.

Notice of rate or fee change for water or sanitary sewer services

Special districts fixing or increasing fees or other charges for water and sanitary sewer services must hold a public meeting to do so. Special districts must provide notice to its customers 30 days in advance of the public meeting.³

The notice to customers must be made in one or more of the following ways:

- » Mailing the notice separately to each customer; or
- » Including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter or other informational mailing sent to each customer; or
- » Posting the notice on the district’s official website, if there is a link to the district’s website on the official website of the DLG; or
- » If the district is a member of the Special District Association of Colorado (SDA), by updating the transparency notice on SDA’s website.

January 15

Pursuant to Section 32-1-809, C.R.S., an annual “transparency” notice must be provided to eligible electors between November 16 and January 15. The annual transparency notice to electors must contain certain information about the district, including, but not limited to:

- » Address, telephone number, and contact for the district;
- » Board member names and contact information;
- » Name of Board Chair or President;
- » Name of each Board member whose office will be on the ballot at the next regular special district election;
- » Date of next Board election and procedures for self-nomination;
- » Mill levy and total property tax revenues received during the last year; and
- » Regular Board meeting and posting location information.

The notice to electors must be made in one or more of the following ways:

- » Mailing the notice separately to each household where one or more eligible electors of the district reside; or
- » Including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, or other informational mailing sent to each customer; or
- » Posting the notice on the district’s official website, if there is a link to the district’s website on the official website of the DLG; or
- » If the district is a member of SDA, by updating the transparency notice on SDA’s website; or
- » For a special district with less than 1,000 eligible electors that is wholly located in a county with a population of less than 30,000, posting the notice in at least three publication places within the district and at the County Clerk and Recorder’s office.

In addition, a copy of this annual “transparency” notice is also filed with:

- » the DLG;
- » the Board of County Commissioners;
- » the County Assessor;
- » the County Treasurer;
- » the County Clerk and Recorder; and
- » the governing body of any municipality in which the district is located.⁴

January 30

File with DLG a certified copy of adopted budget, including budget message and any resolutions adopting the budget, appropriating money, and fixing the rate of any mill levy.⁵

March 1 (60 days after end of fiscal year)

Annual information report to the DLG with respect to any nonrated public securities of the district which were outstanding as of the end of the fiscal year (December 31).⁶

March 31 (within 3 months of close of fiscal year)

Application for exemption from audit, if applicable, due to State Auditor. Any local government where revenues or expenditures are at least \$100,000 but not more than \$750,000 may, with the approval of the State Auditor, be exempt from the provisions of Section 29-1-603.⁷

If district has authorized but unissued general obligation debt as of the end of its fiscal year (December 31), submit copy of application for exemption from audit to Board of County Commissioners or governing body of municipality that adopted a resolution of approval of the service plan.⁸

Prior to May 1

If any new property included in district by 100% owner petition, deadline to record court order of inclusion with County Clerk and Recorder to enable district to levy tax against newly included property for the year in which the inclusion occurred.⁹

File a recorded copy of the certified court order of inclusion with the DLG and the County Clerk and Recorder.¹⁰

Record a special district public disclosure document and a map of the new boundaries of the district at the same time as recording the order of inclusion.¹¹

June 30

Auditor submits completed audit and audit report to district Board.¹²

File copy with State Auditor within 30 days after receipt.¹³

Submit audit report or application for exemption from audit to Board of County Commissioners or governing body of municipality that adopted a resolution of approval of the service plan if district has authorized but unissued general obligation debt as of the end of its fiscal year (December 31).¹⁴

Prior to July 1

If any new property included into district by taxpayer petition or Board resolution, deadline to record court order of inclusion with County Clerk and Recorder to enable district

to levy tax on newly included property for year in which inclusion occurred.¹⁵

File a recorded copy of the certified court order of inclusion with the DLG and the County Clerk and Recorder.¹⁶

Record a special district public disclosure document and a map of the new boundaries of the district at the same time as recording the order of inclusion.

July 30

File audit report with State Auditor within 30 days after the report is received,¹⁷ but not later than July 30, or file request for extension of time to file audit.

Submit audit report to Board of County Commissioners or governing body of municipality that adopted a resolution of approval of the service plan if district has authorized but unissued general obligation debt as of the end of its fiscal year (December 31).¹⁸

August 25

County Assessor certifies district's valuation for assessment (preliminary).¹⁹

September 30

If the State Auditor has granted extension of time to file audit, this is the final date an audit may be filed. Failure to file the audit may result in the State Auditor authorizing the County Treasurer to prohibit the release of any monies which were generated pursuant to the taxing authority of the district until the district submits an audit report to the State Auditor.

October 1

Any special district created after July 1, 2000, shall file not more than once a year a special district annual report for the preceding calendar year. Unless the requirement is waived or otherwise requested by an earlier date by the Board of County Commissioners or by the governing body of the municipality in which a special district is wholly or partially located, the annual report must be provided by October 1 of each year. The annual report must be electronically filed with the governing body that approved the service plan or, if the jurisdiction has changed due to annexation into a municipality, the current governing body with jurisdiction over the special district, the Division, and the State Auditor, and such report must be electronically filed with the County Clerk and Recorder for public inspection, and a copy of the report must be made available by the special district on the special district's website.

The annual report must include, as applicable for the reporting year, but shall not be limited to:

- » Boundary changes made;
- » Intergovernmental agreements entered into or terminated with other governmental entities;
- » Access information to obtain a copy of

rules and regulations adopted by the Board;

- » A summary of litigation involving public improvements owned by the special district;
- » The status of the construction of public improvements by the special district;
- » A list of facilities or improvements constructed by the special district that were conveyed or dedicated to the county or municipality;
- » The final assessed valuation of the special district as of December 31 of the reporting year;
- » A copy of the current year's budget;
- » A copy of the audited financial statements or the application for exemption from audit, as applicable;
- » Notice of any uncured defaults existing for more than ninety days under any debt instrument of the special district; and
- » Any inability of the special district to pay its obligations as they come due under any obligation which continues beyond a 90-day period.²⁰

October 15

Qualified person prepares and submits proposed budget to Board.²¹

Publish/post notice of budget and hearing.²²

November 16

Begin 60-day window to provide annual "transparency" notice to electors for 2024.²³

December 10

County Assessor certifies district's valuation for assessment (final).²⁴

December 15

Adopt budget and appropriate moneys, if certifying a mill levy.²⁵

December 15

Certify mill levy to Board of County Commissioners.²⁶

December 15

File notice of inactive status, if applicable, with:²⁷

- » Board(s) of County Commissioners or governing body of municipality that approved district service plan;
- » County Treasurer;
- » County Assessor;
- » County Clerk and Recorder;
- » District Court;
- » State Auditor; and
- » DLG

December 15

File notice of intent to continue in inactive status, if applicable, with:²⁸

- » State Auditor and
- » DLG

December 31

Adopt budget and appropriate moneys, if not levying property taxes.²⁹

December 31

Calculate (as of the end of the fiscal year) district's authorized but unissued general obligation debt. Specify amount, if any, and any current or anticipated plan to issue the debt in district's audit report.³⁰

December 31

At least annually, publish information about land development charges, if applicable, on district's official website.³¹

December 31

An annual inventory of real and personal property having an original cost that equals or exceeds an amount established by the district, unless the amount is established by the State.³²

Many thanks to Crystal Schott at Collins Cole Flynn Winn & Ulmer, PLLC for her assistance in reviewing and updating this calendar.

¹ Section 32-1-306, C.R.S.

² Section 24-6-402(2)(c), C.R.S.

³ Section 32-1-1001(2)(a), C.R.S.

⁴ Section 32-1-809, C.R.S. and Section 32-1-104(2), C.R.S.

⁵ Section 29-1-113(1), C.R.S.

⁶ Section 11-58-105, C.R.S.

⁷ Section 29-1-604, C.R.S.

⁸ Section 29-1-606(7), C.R.S.

⁹ Sections 39-1-110(1.5) and 32-1-105, C.R.S.

¹⁰ Section 32-1-105, C.R.S.

¹¹ Section 32-1-104.8, C.R.S.

¹² Section 29-1-606, C.R.S.

¹³ Section 29-1-606(3), C.R.S.

¹⁴ Section 29-1-606(7), C.R.S.

¹⁵ Sections 39-1-110(1.5), 32-1-401(2), and 32-1-105, C.R.S.

¹⁶ Section 32-1-105, C.R.S.

¹⁷ Section 29-1-606, C.R.S.

¹⁸ Section 29-1-606(7), C.R.S.

¹⁹ Section 39-5-128(1), C.R.S.

²⁰ Section 32-1-207(3)(c), C.R.S.

²¹ Section 29-1-105, C.R.S.

²² Section 29-1-106(3), C.R.S.

²³ Section 32-1-809, C.R.S.

²⁴ Section 39-1-111(5), C.R.S.

²⁵ Section 29-1-108(2), C.R.S.

²⁶ Sections 39-5-128(1) and 32-1-1201, C.R.S.

²⁷ Section 32-1-104(3), C.R.S.

²⁸ Section 32-1-104(4), C.R.S.

²⁹ Section 29-1-108(2), C.R.S.

³⁰ Sections 29-1-605(2) and 29-1-606(7), C.R.S.

³¹ Section 29-1-803(1), C.R.S.

³² Section 29-1-506(1), C.R.S.



Overview of Changes to Federal and State Employment and Labor Laws in 2023

Guest article by Michelle B. Ferguson, Esq. from Ireland Stapleton

Federal and state employment and labor laws underwent dramatic transformations this year. While there has been discussion of these changes over the course of the year, we have found that some public employers are still caught unaware that these changes applied to local governments, such as special districts. While this article outlines the key changes, the takeaway is that it is absolutely necessary that each district review its existing policies and make any necessary updates required due to these changes as soon as possible.

Federal Law Updates

Accommodations of Religious Beliefs

This past summer the U.S. Supreme Court issued a decision in *Groff v. DeJoy* regarding the plaintiff's claim that the United States Postal Service failed to accommodate the employee's sincerely held religious belief, observance, or practice. Under Title VII of the Civil Rights Act of 1964 ("Title VII"), employers of 15 or more employees must provide reasonable accommodations for an employee's sincerely held religious belief, observance, or practice, unless the accommodation would result in "undue burden" on "the conduct of the employer's business." Federal precedent leading up to the *Groff* decision generally dictated that employers were required to provide such religious accommodations only if the burden to the employer was *de minimis*. In practice, this generally had been understood to mean that employers did not have to provide an accommodation if it would result in more than a minimal burden to the employer's operations.

The U.S. Supreme Court's decision in *Groff* results in a heightened standard that employers must meet when considering an employee's request to accommodate their religious beliefs. Specifically, the Court stated the ordinary meaning of "undue hardship" means "substantial additional costs" or "substantial expenditures." Thus, even somewhat expensive or inconvenient measures

may be required to accommodate an employee's religious beliefs under Title VII, so long as those measures are not overwhelming or onerous.

The Court further held that the employer is required to consider other options that would accommodate the employee, instead of only addressing the accommodation proposed by the employee. This inquiry and exploration into all reasonable options is similar to the burden an employer must undertake when assessing reasonable accommodations for a disability, as outlined by the Americans with Disabilities Act.

The religious accommodations question is still a fact-specific inquiry, and what is reasonable or what causes an "undue burden" to the employer will depend on the facts and circumstances of each request. In the meantime, the *Groff* decision requires employers to rethink how they address an employee's request for religious accommodations moving forward.

Form I-9 Change

The U.S. Citizenship and Immigration Services ("USCIS") announced a new version of the Form I-9, Employment Eligibility Verification. Employers must use Form I-9 to verify the identity and employment authorization of their employees. USCIS made significant changes to the form and its instructions, including a checkbox to indicate that an employee's Form I-9 documentation was examined using a DHS-authorized alternative procedure.

Among other significant changes, USCIS's new Form I-9 merges fields in Sections 1 and 2; moves the preparer/translator certification area to a separate supplementary document; removes the language referring to an "alien authorized to work" in Section 1, replacing it with "noncitizen authorized to work;" and updates notices to employers regarding avoidance of unlawful discrimination. The update also ensures that the Form I-9 is compatible with digital devices and can be filled out on tablets or mobile devices. A copy of the new form is available here:

<https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf>

Prior versions of the Form I-9 are obsolete as of November 1, 2023.

State Law Updates

The Colorado state legislature passed a number of new bills in the 2023 Legislative Session imposing additional requirements upon employers, which are discussed below.

Senate Bill 23-017—Amendments to the Colorado Paid Sick Leave Requirements

Senate Bill 23-017 amended the Healthy Families and Workplaces Act (“HFWA”), which requires both public and private employers of all sizes to provide paid sick leave to their employees for various enumerated purposes. Effective August 7, 2023, SB 23-017 expanded upon those reasons for which HFWA paid sick leave may be used, to include:

- » Where the employee needs to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member;
- » The employee needs to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member’s school or place of care; and
- » The employee needs to evacuate the employee’s place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate the employee’s residence.

As a reminder, public employers must provide all employees (whether full-time, part-time, temporary, or seasonal) at least one hour of paid sick leave for every 30 hours worked, which may be capped at 48 hours paid sick leave per calendar year. While sick leave must carry over year-to-year (although its use can be capped at 48 hours per year), accrued unused paid sick leave need not be paid out on separation from employment. These requirements are retained from the prior version of the HFWA, which have applied to public employers of all sizes since January 1, 2021.

Employees also remain eligible to take paid sick leave for the following reasons:

- » The employee has a mental or physical illness, injury, or health condition that prevents the employee from working; needs to obtain a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or needs to obtain preventive medical care;

- » The employee needs to care for a family member who is experiencing any of those three conditions;
- » The employee or the employee’s family member has been the victim of domestic abuse, sexual assault, or harassment and the use of leave is to seek medical attention for the employee or the employee’s family member to recover from a mental or physical illness, injury, or health condition caused by the domestic abuse, sexual assault, or harassment; obtain services from a victim services organization; obtain mental health or other counseling; seek relocation due to the domestic abuse, sexual assault, or harassment; or seek legal services, including preparation for or participation in a civil or criminal proceeding relating to or resulting from the domestic abuse, sexual assault, or harassment; or

...public employers must provide all employees (whether full-time, part-time, temporary, or seasonal) at least one hour of paid sick leave for every 30 hours worked...

- » Due to a public health emergency, a public official has ordered closure of the employee’s place of business or the school or place of care of the employee’s child and the employee needs to be absent from work to care for the employee’s child.

Employers are prohibited from denying paid sick leave for any of these reasons (unless the employee has exhausted all accrued paid leave) or retaliating against an employee for their use of paid sick leave. Additionally, employers are prohibited from seeking documentation to confirm the need for leave unless and until the employee is absent from work for four or more consecutive days. As a reminder, employers may meet the requirements under HFWA by using their existing leave policies so long as the policies provide clear notice of their intent to do so, and such policies comply with all other aspects of the HFWA.

Senate Bill 23-058—Job Application Questions

Senate Bill 23-058, otherwise known as the “Job Application Fairness Act,” prohibits employers from requiring applicants to provide age, date of birth, dates of attendance or dates of completion of graduation from educational institutions. Employers are permitted to request additional application materials, including copies of certifications, transcripts, and other materials *created by third parties*, at the time

Continued on page 16

of an initial employment application, **if** the employer notifies the individual that the individual may redact information that identifies their age, date of birth, or dates of attendance at, or graduation from, an educational institution.

While this bill expressly prohibits seeking age-related information in job applications, federal and state anti-discrimination laws (such as the federal Age Discrimination in Employment Act (“ADEA”)) already precluded employers from seeking age or dates of birth on employment applications (aside from seeking similarly carved out application documents, such as proof of graduation). SB 23-058 codified these requirements and clarified reasons for which an employer can request potential age-identifying documentation under state law.

The EPEWA requires employers to pay workers the same for performing the same job duties, unless certain objective criteria are met which would justify a pay disparity, such as experience or tenure.

Senate Bill 23-105—Amendments to the Equal Pay for Equal Work Act

Senate Bill 23-105 amended the Colorado Equal Pay for Equal Work Act (“EPEWA”). The EPEWA requires employers to pay workers the same for performing the same job duties, unless certain objective criteria are met which would justify a pay disparity, such as experience or tenure. The EPEWA further requires employers to post all job vacancies and promotional opportunities, at least internally, and to include in such postings pay information for the position, a description of the benefits available, and how eligible employees may apply.

Effective January 1, 2024, the EPEWA amendments add a requirement that the job posting also include the date the application window is expected to close. The amendments also create an exemption for employers with physical locations exclusively outside of Colorado, *and* who have fewer than 15 Colorado-based employees who all work remotely, clarifying that such employers only are required to provide their Colorado employees *notice of remote job opportunities*, not all promotional opportunities company-wide. This exception sunsets July 1, 2029.

The amendments also add a definition of “Job Opportunity” and “Vacancy,” which make clear that all vacancies, even entry level positions, must be posted. This moves away from the “promotion” verbiage included in the original EPEWA. However,

in doing so, the State specifically carved out “Career Development” and “Career Progression” positions from the definition of “Job Opportunity.” As such, employers will no longer have to provide notice to current employees of career development or career progression promotions. Career Development is defined as 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.” Career Progression is defined as “...a regular or automatic movement from one position to another based on time in a specific role or other objective metrics.” The Colorado Department of Labor and Employment (“CDLE”) likely will issue guidance this fall clarifying these definitions and offering additional insight on which positions can be categorized as Career Development or Career Progression. For positions with Career Progression opportunities, employers also must make available to all eligible employees 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.

As a reminder, these new changes do not take effect until January 1, 2024. As such, employers must continue to post positions that fall within the scope of Career Development or Career Progression until that time.

SB 23-105 also adds a new “post-selection” notice requirement. Specifically, employers must now make “reasonable efforts” to publish, within thirty calendar days after a candidate is selected to fill a position, the following information:

- » The name of the candidate selected for the job opportunity;
- » The selected candidate’s former job title if selected while already employed by the employer;
- » The selected candidate’s new job title; and
- » 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.

The post-selection notice must be provided to at least the employees with whom the candidate will regularly work.

The EPEWA amendments also expand the damages for a wage discrimination claim to allow recovery of back pay for up to six years instead of three years and requires the CDLE to create an investigation and formal mediation process for wage discrimination complaints.

Senate Bill 23-111—Public Employee Protections

Senate Bill 23-111, also known as the “Protection for Public Workers Act” (“PPWA”) affords rights to public employees that are similar to those guaranteed to private employees under the National Labor Relations Act (“NLRA”) and Colorado Labor Peace Act (“CLPA”). The NLRA and CLPA apply to union-member employees in private workplaces, as well as some protections which extend to non-union employees, including freedom from retaliation for engaging in “concerted protected activity.”

Under SB 23-111, public employees are now protected from discrimination, interference, or retaliation when they engage in certain workplace activity. Such activities include:

- » Discussion or expression of views regarding public employee representation, workplace issues, or their rights;
- » Engaging in protected concerted activity for the purpose of mutual aid or protection;
- » Fully participating in the political process while off duty and not in uniform, including i) speaking with members of the public employer’s governing body on terms and conditions of employment and any matter of public concern; and ii) engaging in other political activities in the same manner as other citizens; or
- » Organizing, forming, joining, or assisting an employee organization or refraining from organizing, forming, joining, or assisting an employee organization.

Importantly, the PPWA allows public employees to speak with members of their employer’s governing body (i.e., the Board of Directors) regarding the terms and conditions of their employment and any matter of public concern, as long as such discussions occur while the employee is *off-duty and not in uniform* at the time. The PPWA specifies that employers may limit employee rights “if necessary to maintain the non-partisan role of the employer;” however, it is unclear what this language was intended to convey. It is also unclear how the rights granted under the PPWA will interact with potentially contradictory terms of collective bargaining agreements in those public employer workplaces with recognized unions.

Finally, it is important to know that at the time of signing SB 23-111 into law, Governor Polis issued a corresponding Signing Statement aimed at limiting the potentially broad scope of the bill. Governor Polis stated that provisions of SB 23-111 must be clarified in the future to ensure that public employers can continue carrying out their mission and maintain the ability to enforce workplace policies and job performance. The Signing Statement directs CDLE to adopt new rules clarifying that employers can manage and discipline employees as needed in light of SB 23-111.

Importantly, the PPWA allows public employees to speak with members of their employer’s governing body (i.e., the Board of Directors) regarding the terms and conditions of their employment and any matter of public concern, as long as such discussions occur while the employee is off-duty and not in uniform at the time.

The CDLE has indicated that its first round of regulations interpreting PPWA would be issued in November 2023. Once issued, we encourage districts to work with their legal counsel to understand the scope of PPWA and potential adoption of policies to clarify its scope. At a minimum, districts should review their handbooks or employment policies and make any necessary updates to policies that may limit contact between employees and the governing body.

The enforcement mechanisms outlined in the statute become effective in July 2024.

Senate Bill 23-172 – POWR

The Protecting Opportunities and Workers’ Rights (“POWR”) Act makes significant changes to the Colorado Anti-Discrimination Act (“CADA”), effective August 7, 2023.

1. Changes to Definition of Harassment

POWR redefines workplace “harassment,” using a reduced standard and rejecting the past “severe and pervasive” standard that a plaintiff must prove in order to prevail on a claim of harassment under the CADA. The severe and pervasive standard required the plaintiff to show that the harassment they endured was so severe and pervasive that the terms and conditions of their employment were altered. Usually, this meant proving constant or near-constant harassment and/or harassment that was egregious in nature (rather than passing discriminatory comments, off-color remarks, or isolated instances of harassment). Under POWR, an employee need only show that the allegedly harassing conduct was both subjectively offensive and objectively harassing, in that any reasonable person in the employee’s protected class would have felt offended by the conduct. POWR further contains various enumerated factors to assist employers in determining

Continued on page 19



Providing Special District Management and Accounting Services for Over 25 Years
 Evergreen, CO | **303.674.3379** | SimonsonAndAssociates.com | mail@simonson.com



**McGEADY
 BECHER**
 Special District Law

450 E. 17th Avenue, Suite 400
 Denver, CO 80203
 303-592-4380
www.SpecialDistrictLaw.com

RELIABILITY. EFFICIENCY. CREATIVITY. DELIVERY.

Thank you to all the Special District's
 we have partnered with under
 Barney Fix's leadership. Our team
 looks forward to continuing to provide
 exceptional service in the future.

John Kuosman
 303.800.9034
John.Kuosman@merrick.com



DISTRICT ENGINEERING SOLUTIONS

WATER, WASTEWATER, & REUSE
 STORMWATER
 ARTERIAL STREETS & ROADWAYS
 GIS & SURVEY
 FINANCIAL SUPPORT SERVICES



We have the tools to help you...

Engineering & Mapping
 Facility Development
 District Management
 Accounting & Finance Services
 Planning
 Administrative Support



Mulhern MRE, Inc. | 303.649.9857
 Visit our website at www.mulhernmre.com



**County
 Health Pool**

A Better Healthcare Choice for *all local governments*

Medical
 Dental
 Vision
 Life
 COBRA
 HIPAA

As an SDA member, take control of
 health care costs by pooling with other
 local governments, a long-term, cost-
 saving option that has been meeting
 insurance needs since 1984.

For more information or a quote, contact:

Meredith Burcham
 County Technical Services Inc.
 800 Grant Street, Suite 400
 Denver, Colorado 80203
 303-861-0507
mburcham@ctsi.org

**Seter &
 Vander Wall, P.C.**

ATTORNEYS AT LAW

303.770.2700 | www.svwpc.com | svw@svwpc.com

7400 E. Orchard Road, Suite 3300, Greenwood Village Colorado 80111

Representing and
 advocating for
 local governments

whether conduct rises to the level of unlawful harassment, such as the place in which the conduct occurred, the duration of the conduct, the existence or absence of a power differential between the parties, and more.

Although the standard for legal claims is reduced, it must still fall within one of the following three categories to be actionable:

- » Submission to the conduct or communication is explicitly or implicitly made a term or condition of the individual's employment;
- » Submission to, objection to, or rejection of the conduct or communication is used as a basis for employment decisions affecting the individual; or
- » The conduct or communication has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

POWR codifies existing case law that has held that "petty slights, minor annoyances, and lack of good manners do not constitute harassment," unless the slights, annoyances, or lack of manners, when taken individually or in combination under the circumstances, meet the definition of harassment set forth above.

POWR also codifies and slightly redefines the affirmative defense to claims of harassment by a supervisor, by requiring the employer to establish that it has a program that is reasonably designed to prevent harassment, deter future harassers, and protect employees from harassment. To establish the existence of such a "program," an employer must demonstrate that the employer takes reasonable actions to investigate the alleged unlawful conduct and it takes prompt and reasonable remedial action to address complaints of harassment. The employer must be able to show that they communicated the existence and details of this "program" to all supervisory and nonsupervisory employees, and that the employee claiming to have been harassed unreasonably failed to take advantage of such program by, for example, failing to report the conduct.

2. Changes to Reasonable Accommodations for Disabilities

POWR also adds a new standard for determining if reasonable accommodations of a disability are required. Previously, a disability that had "a significant impact on the job" would not require accommodation. Now, to deny a request for a reasonable accommodation, an employer must show that

no reasonable accommodation "would allow the individual to satisfy the essential functions of the job."

3. Restrictions on Nondisclosure Requirements

POWR specifies the requirements that must be satisfied for a nondisclosure provision to be enforceable in an agreement between an employer and an employee or a prospective employee. Such non-disclosure agreements must be mutual and cannot preclude an employee from disclosing the underlying facts of the alleged harassment to third parties, including the existence and terms of a settlement agreement to specific third parties, such as "immediate family members" and medical providers.

4. Record-Keeping

Employers must maintain personnel and employment records for at least five years and, with regard to complaints of discriminatory or unfair employment practices, maintain those records in a designated repository.

HB23-1045—Military Leave

Colorado's military leave law was amended in March 2023. Now, public employees must be granted paid leave related to military or National Guard service for up to the equivalent of three weeks of work on the employee's regular work schedule in the leave year established by the employer. Previously, employers were required to give up to 15 days paid leave. Employees returning from military leave must be restored to their previous, or similar, position and they must receive the same pay, status, and seniority as they had prior to military leave.

HB23-1076—Expansion of Workers' Compensation Benefits

Effective August 7, 2023, HB23-1076 amended the Workers' Compensation Act of Colorado and expanded the existing medical-impairment-benefits limit from 12 to 36 weeks. Further, when an employee's temporary total disability benefits end, HB23-1076 allows the employee to ask to return to regular work with a doctor's written release.

Conclusion

Federal and state courts and legislatures continue to impose new requirements for public employers and change the employment law landscape in Colorado. As we get ready to wrap up the year, it is a good time to review your district's policies and confirm compliance with these various changes, particularly to your district's leave policies; reporting policies for harassment claims; religious and disability accommodations practices; and job posting practices. 🍌



**COLLINS | COLE
FLYNN | WINN | ULMER**

Serving Those Who Serve Their Communities

Colorado's Local Government Attorneys

- Special District General Counsel
- Special District Organizations & Consolidations
- Local Government Elections
- Authorities
- Municipal Law

www.cogovlaw.com

Delivering Sound Solutions and Exceptional Service

WE CAN HELP WITH »

District Management
District Administration
Finance & Accounting
Capital Management
Facilities Management
Municipal Services
Fire/EMS Admin. Management

LOVELAND 970.669.3611 | DENVER 303.333.4380
WWW.PCGI.COM



PINNACLE
CONSULTING GROUP, INC



**PROVIDING WATER AND WASTEWATER SERVICES
FOR SPECIAL DISTRICTS IN COLORADO,
NATIONWIDE, AND INTERNATIONALLY**

303.431.6100

MARTIN/MARTIN
CONSULTING ENGINEERS

martinmartin.com

Renew Your SDA Membership Today and Receive a 25% Discount!

Our 2024 membership renewals just opened, and now is the perfect time to renew yours! **And here's the best part: if you're a district and you renew by March 1, 2024 (and pay by July 1, 2024), you will receive a 25% discount!**

Renewing is quick and easy. Simply go online to the SDA website at www.sdaco.org (and if you're a district, remember to have your 2024 budget information handy as you go through the process).

If you have any questions or need any assistance, please feel free to contact Karla Boughey, Membership Services Coordinator, at 303-863-1733.

Don't delay; go online and renew today!



Welcome

New SDA Members

District Members

Bennett North Metropolitan District Nos. 1-4
Crystal Oaks Metropolitan District
Eagle Valley Transportation Authority
Foster Farm Business Improvement District
Fourth North Business Improvement District
Gardens at North Carefree Metropolitan District
Golden Overlook Metropolitan District
Harvest Mile Metropolitan District
Hunters Overlook Metropolitan District Nos. 2 and 3
Hunters Overlook Metropolitan District Nos. 5-7
Kiowa Fire Protection District
La Plata Conservation District
Lanterns Metropolitan District No. 3
Littleton Downtown Development Authority
Overlook Park Metropolitan District
Quebec Highlands Metropolitan District
Range Metropolitan District Nos. 1-3
RRC Authority
Santa Fe Park Authority
Severance Shores Metropolitan District Nos. 2 and 4
Sky Ranch Metropolitan District Nos. 6-8
Southglenn Metropolitan District No. 2
Triveni Square Metropolitan District Nos. 1 and 2

Associate Members

Bechtel & Santo
Bluestar Capital Advisors
Capital Asset Finance Corporation
Colorado Association Services
Dunakilly
Eric J. Gross Attorney PC
Greenberg Traurig
Hammers Construction
Mailing.com
Partners Group
Public Alignment Communication
Seca Secure
Signarama Brighton
University of Colorado, Denver School of Public Affairs
Validos



HIGHSTREET

TCW Risk Management

We offer comprehensive insurance solutions specializing in Colorado's public sector, providing the level of service you deserve.

Mark Carlson

President

Cindy Myers

President, Employee Benefits

Employee Benefits

Property and Liability

Workers' Compensation

303.368.5757 | 800.530.3001

www.hsip.com/tcw

384 Inverness Parkway, Suite 170, Englewood, CO 80112



RAMEY ENVIRONMENTAL COMPLIANCE

Providing Innovative

Water & Wastewater Treatment Solutions

in the Rocky Mountain Region for Over 20 Years

Maintenance | Operations | Management | Project Development | Custom Solutions



Start the conversation today...

(303) 833-5505

www.RECinc.net



Scan this QR Code with your 'smart' phone to visit us on the Web

Don't Miss Out on Your Discount. Apply Today for the **Training Credit** Program.

- Property and Liability members can save 5% or 10% off next year's Liability premium.
- Learn more about the Training Credit Program at csdpool.org/training/credit
- A new year of training begins October 1 and runs through September 30.



csdpool.org

