

Colorado Bar Association

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Chapter 9 - Discrimination

There are several types of discrimination that are illegal in the United States, such as discrimination based upon a person's disability, age, race, color, religion, sex and national origin. These types of discrimination may occur in several venues, such as employment, housing and other public accommodations.

Federal and state laws make it illegal to discriminate against people with disabilities. Under the federal Americans with Disabilities Act, it is illegal to discriminate against people with disabilities in employment, public accommodations and government services. There are also Colorado state laws prohibiting discrimination against people with disabilities in employment, public accommodations and housing.

The federal Age Discrimination in Employment Act makes it illegal for an employer to discriminate against employees because of their age.

Title VII of the Civil Rights Act of 1964, as amended, protects individuals because of their race, color, religion, sex and national origin in the areas of voting, public accommodations, public facilities, public education, federally-assisted programs and employment.

In Colorado, The Discriminatory or Unfair Employment Practices statute, prohibits discrimination against individuals in employment based on their disability, race, creed, color, sex, age, national origin or ancestry. It should be noted that there also are Colorado laws prohibiting discrimination in the areas of public accommodations and housing.

While the federal laws generally require an employer to employ at least 15 employees (the ADEA requires 20) to apply it, the Colorado law fills in the gap and applies to employers with at least two or more employees.

Employers are prohibited from discriminating against the following categories of employees in employment issues, such as job advertisements; hiring; pay and benefits, which affect compensation; promotion; demotion; and termination.

Age

The federal Age Discrimination in Employment Act (ADEA) makes it illegal for an employer to discriminate against a qualified employee because of his or her age. Employees who are 40 years or older are protected from discrimination based on their age. Employers are prohibited from treating qualified workers, 40 years or older, less favorably than an employee under the age of 40 because of the older worker's age. Employers covered by this statute include those

who employ 20 or more employees.

Colorado statute prohibiting age discrimination only protects those people ages 40 to 70. The ADEA does not have this upper-age restriction. Employers covered by the xml:namespace prefix = st1 />Colorado statute include those who employ two or more employees.

The Older Workers Benefit Protection Act (OWBPA) is an amendment to the ADEA limiting the manner in which an employee 40 years or older may waive his/her protections under the ADEA when eligible for an early retirement incentive plan. Under the OWBPA, an individual may not waive any right or claim under the ADEA unless the waiver is understood and voluntary. Any release executed by an employee as part of a severance program involving two or more employees (if at least one employee in the program is 40 years or older) is not considered valid unless the following minimum guidelines of the OWBPA are met:

1. The employee was granted a period of at least 45 days within which to consider the agreement.
2. The waiver is part of an understandable written agreement that specifically refers to rights under the ADEA.
3. The waiver must be accompanied by consideration (i.e. money) in addition to severance or other benefits to which the employee is already entitled to receive.
4. The waiver must advise the individual in writing to consult with an attorney before executing the waiver.
5. The waiver also must state that the offer remains revocable for at least seven days after the date of signature.

These statutes were enacted to protect older workers from stereotypes, including beliefs that older workers are slow, unable to adapt to change, unable to learn current technology or procedures, or that they should retire at a certain age.

Race, Color, Religion, Sex and National Origin

Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, (Title VII) prohibits employment discrimination and/or harassment based on race, color, religion, sex and national origin. Employment discrimination includes adverse actions directly affecting specific individuals in their employment or adverse actions that create an adverse impact on a protected group of employees. Employers covered by this statute include those who employ 15 or more employees.

Employers covered by the Colorado statute, which prohibits this type of discrimination, include those who employ two or more employees.

Disability

Employment Protections for People with Disabilities

Title I of the Americans with Disabilities Act (ADA) offers protection from discrimination based on disability for qualified people with disabilities. The law covers employers with 15 or more workers. Additionally, religious organizations are exempt.

Title II of the ADA offers protection from discrimination based on disability for qualified people with disabilities. The law covers state or local government employers, regardless of the number of workers employed.

The Colorado Civil Rights Act protects employees with disabilities regardless of the number of workers employed.

Section 504 of the Rehabilitation Act states that no qualified individual with a disability will be "excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance." This includes employment.

Definition of Disability

Under the civil rights protections listed above, the term disability means, with respect to an individual:

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

In order to be a covered employee, a worker must be able to perform the essential functions of his/her job with or without reasonable accommodation. Essential functions are the necessary duties and activities of the job position.

Before Filing a Charge of Discrimination

If you suspect you have been the subject of employment discrimination, you have the right to file a complaint, or charge, with the Equal Employment Opportunity Commission (EEOC), or the Colorado Civil Rights Division (CCRD). Before doing so, you should consider whether there are routes to open lines of communication within your employment setting:

- Are you represented by a union that can advocate for your rights?
- Does your company employ an ADA coordinator or someone who monitors compliance with discrimination laws? (You might be able to find this information through your human resources department.)
- Are you a federal/state employee who may be required to enter into an internal process before filing a charge with the EEOC/CCRD?
- Is there an internal grievance procedure, an administrator with decision-making powers, or a board where your issues will be heard and addressed?
- Is there an opportunity to negotiate/mediate with employer?
- Be aware of deadlines for filing charges listed on the next page.
- Develop a plan to address employment discrimination.

Where to File a Charge of Employment Discrimination based on disability:

- Colorado Civil Rights Division (CCRD)
1560 Broadway, Suite 1050
Denver, CO 80202
(303) 894-2997 or toll-free (800) 262-4845
Relay Colorado (711 plus regular phone number)

There are satellite offices in Pueblo and Grand Junction, but all intakes must be initiated by contacting the Denver office.

- CCRD has jurisdiction over businesses regardless of the number of employees.
- CCRD may offer either group or individual intake re: complaint.

Equal Employment Opportunity Commission (EEOC)
303 E. 17th Ave., Suite 510
Denver, CO 80203
(303) 866-1300 or toll-free (800) 669-4000
TTY: (303) 866-1950 or (800) 669-6820

EEOC has jurisdiction for businesses with 15 or more employees.

Timelines For Filing to Protect Your Legal Rights

CCRD — six months from the date of employment discrimination.
EEOC — 300 days from the date of employment discrimination.

To protect your legal rights, you must contact EEOC/CCRD within these timelines.

Federal, state, and/or union employees may have mandatory prerequisites to the deadlines listed above. Deadlines may be within a few days. Requirements may include filing with an internal EEO officer. Additionally, other employment claims may have different filing requirements and deadlines.

You must file a sworn written statement (charge) with EEOC or CCRD before a private lawsuit may be filed in court. You must receive a right-to-sue letter from EEOC/CCRD prior to filing such a suit (see filing a charge below).

FILING A CHARGE:

As the charging party, you should be prepared to provide the who, what, when, where and how:

- Your name, address, and telephone number.
- Employer's name, address and telephone number; number of employees, if known.
- A description and timeline of events, with any available documentation, to support your claim of disability discrimination.
- The names, addresses and phone numbers of anyone who could support your claim of employment discrimination (witnesses).
- Documentation of your disability.

When you file a charge of disability discrimination with the EEOC or CCRD, you will be assigned a charge number. An investigator will have primary responsibility for handling your complaint. The employer that you filed a charge against will have the opportunity to respond to your statements alleging discrimination.

You may be requested to submit additional information related to your charge. You may be offered the chance to mediate with your employer. This step is voluntary. After the claim has been investigated, EEOC/CCRD will determine if there is "cause" to your complaint that may initiate further agency action.

If they find there is "no cause," you will be provided with a right-to-sue letter that will enable you to file your complaint of discrimination in federal or state court. You will lose your right to sue if you do not file such a complaint in court within 90 days from the date of the letter, with additional time for mailing. If EEOC /CCRD find that there is "cause," they may choose to pursue a lawsuit on your behalf, or provide you with the right-to-sue letter.

Reasonable Accommodations

A reasonable accommodation is any change in the work environment or the way things are usually done that gives a person with a disability equal employment opportunities. An accommodation is considered reasonable if it is feasible, and meets the need of the person with a disability.

An employer must make a reasonable accommodation to an employee with a known disability unless the employer can show that the accommodation would cause an undue financial burden/hardship on the operations of its business, or that providing the accommodation would pose a direct threat to the health or safety of the employee or others.

Reasonable accommodations may be needed:

- During the application/interview process.
- To perform the essential functions of the job.
- For the enjoyment of equal terms, conditions and privileges of employment.

When an employee requests an accommodation, the employer can request medical documentation of the covered disability and the need for the accommodation. Any medical information provided to the employer is to be treated as confidential, and kept in a record separate from the employee personnel file.

An employee need not provide all of his/her medical files. They may submit only medical information that establishes a substantial limitation.

Requests for reasonable accommodations may include, but are not limited to:

- Changes in physical accessibility of location/work site.
- Job restructuring.
- Modified work schedule.
- Acquisition or modification of work equipment.
- Modification of training materials or examinations.

- Modifications of policies.
- Altering how an essential function of the job is performed.
- Reassignment to a vacant position.

Creating reasonable accommodations is an individualized process and will vary from person to person based on functional limitations. Keep in mind that reasonable accommodations are to be provided as to enable the employee to perform the essential functions of the job.

An employee's request for a reasonable accommodation may be written, but need not be. The employer and employee should engage in a productive and interactive exchange to determine an accommodation appropriate to the needs of the employee. If a specific accommodation is requested, the employer should consider the specified request, but may provide an equally-effective alternative.

Resources

If you believe that a federal program has discriminated against you, file a complaint with the federal agency that funds the program. Your U.S. senator or representative's office can tell you which federal agency to contact.

If you believe that your employer has discriminated against you, file a complaint with the Equal Employment Opportunity Commission (EEOC) or the Colorado Civil Rights Division (CCRD). (See Remedies discussion.)

- CCRD

<http://www.dora.state.co.us/civil-rights/>

Phone: (303) 894-2997

Toll-free, bilingual Spanish/English: (800) 262-4845

Fax: (303) 894-7830

TTY line: (303) 894-7832 TTY

- Colorado Department of Labor and Employment
(Unemployment Benefits)

<http://unempben.cdle.state.co.us/>

(303) 318-8000 (Denver-Metro Area)

(800) 388-5515 (Toll-free)

TTY: (303) 318-9016 (Denver-Metro Area)

TTY: (303) 894-7730 (Outside Denver-Metro Area)

- EEOC <http://www.eeoc.gov/>

E-mail: info@ask.eeoc.gov

Headquarters:

U.S. Equal Employment Opportunity Commission

1801 L St., N.W.

Washington, D.C. 20507

Phone: (202) 663-4900

TTY: (202) 663-4494

To be automatically connected with the nearest EEOC field office, call:

Phone: (800) 669-4000

TTY: (800) 669-6820

- Denver District Office:

303 E. 17th Ave., Suite 510

Denver, CO 80203

Phone: (303) 866-1300/1301

TTY: (303) 866-1950

Fax: (303) 866-1085

- Fair Housing Laws

http://www.fairhousinglaw.org/fair_housing_laws/

- Social Security Administration

<http://www.ssa.gov>

Phone: (800) 772-1213

TTY: (800) 325-0778

- United States Department of Justice

<http://www.usdoj.gov>

950 Pennsylvania Ave., NW

Washington, DC 20530-0001

E-mail: AskDOJ@usdoj.gov

Phone: (202) 353-1555