

# EMPLOYMENT LAW SUMMARY

## Colorado: Fair Employment Laws – Overview



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In addition to the workplace discrimination protections provided to workers under federal law, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act, Colorado provides broad workplace discrimination protections to employees under the **Colorado Anti-Discrimination Act (CADA)**. The Colorado Civil Rights Division (CCRD) enforces employer compliance with the CADA.

This Employment Law Summary provides an overview of the CADA and highlights its impact on employers.

### COVERED EMPLOYERS

Unlike federal anti-discrimination laws, which typically apply to employers with 15 or more employees, the CADA applies to **all employers** in Colorado, regardless of size. Under an amendment effective Aug. 9, 2022, employees include all domestic servants.

The CADA contains limited exemptions for religious organizations and associations. However, religious organizations or associations that receive support partially or wholly from state taxes or public borrowing are **not** exempt from the CADA's requirements.

### PROHIBITED PRACTICES

The CADA prohibits differential treatment in employment based on a person's protected status. Protected statuses include **disability, race, creed, color, sex, pregnancy, childbirth and related conditions, sexual orientation, gender expression** and **gender identity, religion, age, national origin** and **ancestry**.

As of **Aug. 7, 2023**, protected statuses also specifically include **marital status**.

In particular, it is illegal for an employer to take the following actions based on an individual's protected status:

- Refuse to hire or promote the individual;
- Discharge or harass the individual;
- Discriminate against the individual in matters of compensation, terms, conditions or privileges of employment; or
- Deny participation in an apprenticeship training program, an on-the-job training program or any other occupational instructional, training or retaining program.

In addition, the CADA prohibits employers from:

- Aiding, compelling or coercing any discriminatory or unfair employment practice;
- Printing or circulating any statement, advertisement or publication that expresses a limitation, specification or discrimination in connection with prospective employment based on a protected status;
- Making any inquiry in connection with prospective employment that expresses a limitation, specification or discrimination based on a protected status; and

- Retaliating against any person who has opposed unlawful discrimination, filed a charge of discrimination, or testified, assisted or participated in any investigation, proceeding or hearing regarding a claim of discrimination.

The CADA also prohibits employers that have **26 or more employees** from discharging or refusing to hire an individual based solely on the fact that the individual is **married to or plans to marry another employee of the employer**. The law provides exceptions to this for circumstances where one spouse:

- Would directly or indirectly exercise supervisory, appointment, or dismissal authority over the other spouse;
- Would audit, verify, receive or be entrusted with money received or handled by the other spouse; or
- Has access to the employer's confidential information, including payroll and personnel records.

### **Exception for Child Care Positions**

As of **Aug. 9, 2022**, the CADA specifies that it is not unlawful for an employer to consider applicants' sex when hiring an individual to engage in child-care-related domestic service.

## **NOTICE REQUIREMENTS**

The CADA requires employers to conspicuously display the [Colorado Anti-Discrimination poster](#) in an easily accessible and well-lit location at each worksite. In addition, employers must provide [written notice](#) of the CADA's protections for pregnancy- or childbirth-related health conditions to all new employees at the time they start their employment.

### **Salary Range Posting Requirement**

For every posted job opening, employers must disclose the salary or wage rate or range, along with a general description of all the benefits and other compensation that will be offered to the hired applicant. Employers must also give current employees formal notice of any internal opportunities for promotion on the day the opportunity opens.

### **Expanded Notice Requirements**

On June 5, 2023, Colorado enacted a new law that expanded pay transparency and related requirements, effective **Jan. 1, 2024**. Under the new law, every job opportunity, not just those for promotions, must be made known to current employees. For this purpose, a job opportunity includes any current or anticipated vacancy for which the employer externally posts or is considering or interviewing candidates.

### ***Job Opportunity Notice Contents***

SB 105 also added content requirements for the new job opportunity notice. Specifically, a job opportunity notice must include the hourly wage or salary (or a range thereof), a general description of the benefits and other compensation, and the anticipated closing date for applications for the position. Separate rules apply for positions involving time-based or other automatic career progression.

### ***Temporary Exception for Certain Employers***

A partial exception is available for employers that are physically located outside of Colorado and have fewer than 15 employees working in Colorado, if all of those employees work remotely. Through July 1, 2029, these employers are only required to provide notice of any remote job opportunities.

### ***Selected Candidate Notice***

SB 105 also requires employers to provide current employees with information about the candidate selected for each job opportunity. This must be given within 30 calendar days after the candidate starts working. Required content includes the selected candidate's name, former job title (if hired from within) and new job title, plus information about how employees may demonstrate interest in similar job opportunities in the future.

## **DISABILITY**

The CADA prohibits employment practices that discriminate or harass on the basis of a person's disability. For the purposes of the CADA, the term "disability" is defined as:

- A physical or mental impairment that substantially limits one or more major life activities;
- Having a record of a physical or mental impairment; or

- Being regarded as having a physical or mental impairment.

## **REASONABLE ACCOMMODATION**

Employers must provide reasonable accommodations to individuals with known disabilities, unless they can demonstrate that an accommodation would impose an undue hardship on their business. Examples of reasonable accommodations include:

- Making facilities readily accessible to people with disabilities;
- Job restructuring;
- Modifying an employee's schedule;
- Acquiring modifying equipment or devices; and
- Other similar actions.

In determining whether an accommodation imposes an undue hardship on an employer's operations, the CCRD considers the following, among other, factors:

- The overall size of the employer's operations with respect to the number of employees, the number and type of facilities and the size of the employer's budget;
- The type of the employer's operations, including the composition and structure of the employer's workforce; and
- The nature, cost and funding needed for the accommodation.

## **MEDICAL TESTING AND PRE-EMPLOYMENT INQUIRIES**

Employers may not conduct pre-employment medical examinations, make pre-employment inquiries as to whether an applicant is disabled or inquire about the nature or severity of a disability. Employers may, however, make pre-employment inquiries into an applicant's ability to perform job-related functions.

In addition, the CADA does not prohibit employers from conditioning an offer of employment on the results of a medical examination conducted prior to employment, as long as all applicants are subject to the same examination regardless of disability.

## **PREGNANCY, CHILDBIRTH AND RELATED CONDITIONS**

Under an amendment to the CADA that went into effect on Aug. 10, 2016, employers are prohibited from engaging in discriminatory or unfair employment practices on the basis of an individual's pregnancy, physical recovery from childbirth or any related condition. The law also requires employers to take specific actions when an employee or applicant requests an accommodation for these conditions.

## **REASONABLE ACCOMMODATION**

If an employee or applicant asks for an accommodation to perform the essential functions of a job because of a pregnancy- or childbirth-related health condition, the employer is required to:

- Engage in a timely, good faith and interactive process with the employee or applicant to determine what type of accommodations would be reasonable and effective; and
- Provide the reasonable and effective accommodations, unless it would impose an undue hardship on the employer's business.

To determine whether an accommodation imposes an undue hardship, the CCRD will consider the same factors that apply for disability accommodations.

The law also specifically prohibits employers from the following in regard to an individual affected by pregnancy or related conditions:

- Denying employment opportunities or taking any other adverse employment action against the individual because she requested an accommodation;
- Requiring the individual to accept an accommodation that she did not request or that is not necessary for her to perform the essential functions of a job; and

- Requiring the individual to take leave if the employer could provide an accommodation that allows her to perform the essential functions of the job.

Before providing an accommodation, an employer may require the requesting employee or applicant to provide medical documentation that the accommodation is necessary. Examples of reasonable accommodations for pregnancy- or childbirth-related health conditions may include:

- Providing more frequent or longer periods for food, water, restroom and other breaks;
- Acquiring or modifying equipment or seating;
- Temporarily providing a less strenuous or hazardous position;
- Restructuring or modifying job duties or work schedules; and
- Providing assistance with manual labor.

However, an employer is **not** required to make these or any other accommodations if doing so requires the employer to:

- Hire new employees that the employer would not otherwise have hired;
- Discharge an employee, transfer another employee with more seniority or promote another employee who is not qualified to perform the new job;
- Create a new position, including a light duty position for the employee, unless a light duty position would be provided for another equivalent employee; or
- Provide the employee with paid leave beyond the leave it provides to similarly situated employees.

## AGE

The CADA prohibits discrimination and harassment on the basis of age against individuals who are 40 years old or older. However, the CADA does **not** prevent an employer from establishing the following programs or policies:

- **Bona fide seniority system**—Employers may utilize a bona fide seniority system, as long as the system does not attempt to evade the requirements of the CADA. The system must use an employee's length of service as the primary criterion and cannot give lesser rights to those with longer service. Employers are also required to communicate information about the system to the affected employees.
- **Bona fide employee benefit plans**—Employers may observe the terms of bona fide employee benefit plan, such as a retirement, pension or insurance plan, as long as the plan does not attempt to circumvent the requirements of the CADA. No employee benefit plan may require or permit the involuntary retirement of any individual because of age.
- **Mandatory retirement of top-level employees**—Employers may implement mandatory retirement policies for top-level employees over the age of 65 but under 70 under limited circumstances. To do so, the employee must have held an executive or high policy-making position for the two years preceding retirement and have an immediate non-forfeitable annual retirement income from a pension, profit-sharing savings or deferred compensation plan of at least \$44,000.

## CREED AND RELIGION

Under the CADA, "creed" and "religion" are defined as religious, moral or ethical beliefs that are sincerely held and include all aspects of religious observance and practice. Colorado employers are required to reasonably accommodate the religious beliefs and practices of employees and job applicants, unless doing so would cause undue hardship on the conduct of their business.

A reasonable religious accommodation is any adjustment to the work environment that allows an employee or job applicant to practice his or her religion. Examples of reasonable accommodations include flexible scheduling to allow individuals to observe the Sabbath and religious holidays or modification of an employer's dress and grooming requirements to allow for religious practice.

## SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION

The CADA specifically bars employers from discriminating on the basis of sexual orientation. The term "sexual orientation" is defined as a person's transgendered status or orientation toward heterosexuality, homosexuality or bisexuality. As of Sept. 14, 2021, the CADA also specifically bars employers from discriminating on the basis of gender identity and gender expression.

## HARASSMENT

Under the CADA, it is illegal for an employer, its agents or supervisory employees to harass any individual during the course of employment on the basis of a protected status. Harassment occurs when an intimidating, hostile or offensive work environment is created on the basis of a protected status. For the purposes of the CADA, harassment is not considered an illegal act unless:

- A complaint is filed with the appropriate workplace authority; and
- The authority fails to initiate a reasonable investigation of the complaint and take prompt remedial action if appropriate.

Sexual harassment in the workplace is explicitly banned under the CADA. "Sexual harassment" includes, but is not limited to, unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature.

With respect to conduct between co-workers, an employer is responsible for acts of workplace harassment where the employer, its agents or supervisory employees know or should have known of the conduct, unless the employer can show that it took immediate and appropriate remedial actions.

An employer may also be responsible for the acts of nonemployees with respect to workplace harassment of employees where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate remedial action. In reviewing these cases, the CCRD will consider the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of the nonemployees.

Colorado law encourages all employers to take the necessary steps to prevent harassment from occurring in the workplace. These steps may include affirmatively raising the issue of harassment with employees, expressing strong disapproval for all forms of harassment, developing appropriate policies and sanctions for addressing harassment and informing employees of their rights to file harassment complaints under company policy and the CADA.

## OFF-DUTY CONDUCT

The CADA makes it illegal for an employer to terminate an employee because that employee engaged in a lawful activity off the employer's premises during nonworking hours. Employers may only restrict an employee's off-duty lawful activities when the restriction:

- Is necessary to avoid, or to avoid the appearance of, a conflict of interest with any of the employee's responsibilities to the employer;
- Relates to a bona fide occupational requirement; or
- Is reasonably and rationally related to the employment activities and responsibilities of a particular employee or particular group of employees.

In June 2015, the Colorado Supreme Court ruled that the CADA does not protect an employee from termination for his or her off-duty use of medical marijuana, since it is not a "lawful activity" under federal law.

## PRE-EMPLOYMENT INQUIRIES

During the hiring process, employers must be aware of the CADA's restrictions on pre-employment inquiries. Under the CADA, employers may not ask certain questions of job applicants. All inquiries must be job-related to ensure a nondiscriminatory selection process.

In addition, **as of Sept. 1, 2021**, the [Colorado Chance to Complete Act](#) generally prohibits **all private employers** in Colorado from:

- Stating, in an advertisement or application for employment, that an individual with a criminal history may not apply for the job; and
- Asking about an applicant's criminal history on any initial written or electronic application form.

## PROHIBITED AGE INQUIRIES - EFFECTIVE JULY 1, 2024

On June 2, 2023, Colorado enacted [Senate Bill \(SB\) 58](#), which prohibits employers from asking job applicants to provide information that would reveal their age on a job application, effective **July 1, 2024**.

Under SB 58, an employer may not request or require an individual to provide any of the following on an initial job application:

- Age;
- Date of birth; or
- Dates of attendance at or graduation from an educational institution.

Employers may request or require certain information and materials—such as certifications, transcripts and similar documents—for purposes of verifying credentials for the position or complying with certain safety-related requirements or other rules. However, this is allowed only if an employer first notifies the applicant that any information identifying the applicant’s age, date of birth, or dates of attendance at or graduation from school may be redacted from those materials.

## ENFORCEMENT

The CCRD has the authority to initiate, receive and investigate complaints of discrimination. Individuals who believe they have been discriminated against may file complaints with the CCRD **within six months** of the alleged discrimination. As of **Aug. 9, 2022**, the time for filing complaints is increased to **300 days**. The CCRD has the power to issue subpoenas, hold hearings, oversee mediations, issue administrative decisions and enforce orders in state court.

After exhausting administrative remedies through the CCRD, individuals may file private lawsuits against their employers in state court.

The CADA allows individuals who are found to have been discriminated against to be awarded:

- Front pay;
- Back pay and interest on back pay;
- Reinstatement to former position;
- Hiring to a position denied based on discrimination; and
- Other equitable relief, such as compensatory and punitive damages.

As of Aug. 9, 2022, these remedies are available for age discrimination claims. For claims of age discrimination that occur prior to that date, the law provides more limited remedies.

However, the CADA places caps on combined compensatory and punitive damages that may be awarded. These limits are based on the size of the employer’s workforce and are outlined in the table below.

Number of Employees	Cap on Combined Compensatory and Punitive Damages
501 and more	\$300,000
201 to 500	\$200,000
101 to 200	\$100,000
15 to 100	\$50,000
5 to 14	\$25,000
1 to 4	\$10,000

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