

Fair Employment Laws – Colorado Anti-Discrimination Act

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).

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**, regardless of size. 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, sexual orientation, religion, age, marriage to a co-worker, national origin and ancestry**.

In particular, it is illegal for an employer, on the basis of an individual's protected status, to:

- Refuse to hire or promote an individual;
- Discharge or harass an individual;
- Discriminate against an individual in matters of compensation, terms, conditions or privileges of employment;
- Aid, compel or coerce any discriminatory or unfair employment practice;
- Print or circulate any statement, advertisement or publication that expresses a limitation, specification or discrimination in connection with prospective employment;
- Make any inquiry in connection with prospective employment that expresses a limitation, specification or discrimination based on a protected status;
- Deny participation in an apprenticeship training program, an on-the-job training program or any other occupational instructional, training or retaining program; or
- Discriminate 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.

In limited circumstances where individuals are employed in positions connected with the carrying out of a religion, religious corporations, associations, educational institutions or societies, those individuals may be exempt from the CADA.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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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 Accommodations

Employers must provide reasonable accommodations to individuals with known disabilities, unless it can be demonstrated that the accommodation would impose an undue hardship on the employer.

Reasonable accommodations include, but are not limited to, making facilities readily accessible to people with disabilities, job restructuring, modifying an employee's schedule, acquiring modifying equipment or devices or other similar actions.

In determining whether an accommodation imposes an undue hardship on an employer's operations, the Colorado Civil Rights Division (CCRD) considers a number of factors, including, but not limited to:

- 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.

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

AGE

The CADA prohibits discrimination or harassment in the course of employment 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 nonforefeitable annual

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retirement income from a pension, profit-sharing savings or deferred compensation plan of at least \$44,000.

CREED AND RELIGIOUS DISCRIMINATION

Under Colorado law, “creed” and “religion” are defined as religious, oral 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 the employer’s 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.

PREGNANCY AND CHILDBIRTH

According to regulations issued by the CCCR, disabilities caused by pregnancy, miscarriage, abortion and childbirth are considered temporary disabilities for employment-related purposes. Consequently, employers’ written and unwritten leave policies must treat pregnancy-related disabilities in the same manner as other temporary disabilities with respect to matters such as duration of leave, availability of extensions, reinstatement and health insurance coverage.

SEXUAL ORIENTATION

Unlike the federal anti-discrimination laws, the CADA bars employers from discriminating on the basis of sexual orientation. Under Colorado law, “sexual orientation” is defined as a person’s orientation toward heterosexuality, homosexuality, bisexuality or his or her transgender status. Accordingly, Colorado employers may be subject to sexual orientation discrimination claims under the CADA for instances that are not covered under federal discrimination law.

HARASSMENT

It is illegal for an employer, its agents or supervisory employees to harass a person 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 CCCR 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.

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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.

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.

For guidance on permissible and illegal inquiries under the CADA, employers may consult the [Pre-employment Inquiry Guide](#) published by the CCRD.

ENFORCEMENT

The CCRD is empowered to enforce the CADA. 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. 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.

Penalties

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.

For discrimination occurring after Jan. 1, 2015, plaintiffs have the right to a jury trial and expanded remedies including:

- Compensatory damages for intentional discrimination;
- Punitive damages when employers act with malice or reckless indifference; and
- Attorney's fees for prevailing plaintiffs.

The CADA places a cap on combined compensatory and punitive damages based on the size of the employer's workforce. These caps are as follows:

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

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15 to 100	\$50,000
5 to 14	\$25,000
1 to 4	\$10,000

POSTING REQUIREMENT

Employers are required to display the Colorado Anti-Discrimination poster. This poster may be obtained from the CCRD's [website](#) and must be posted conspicuously in an easily accessible and well-lit location at each worksite.

MORE INFORMATION

For more information on Colorado's fair employment laws, please visit the CCRD's [website](#).