

LABOR REMEDY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: Sophia M. DiCaro

LONG TITLE

General Description:

This bill amends provisions related to discriminatory employment practices.

Highlighted Provisions:

This bill:

- ▶ amends a definition;
- ▶ provides that a person who is subject to discrimination in matters of compensation may receive a remedy in an additional amount equal to the back pay amount already available; and
- ▶ requires the Division of Antidiscrimination and Labor to report to the Business and Labor Interim Committee annually regarding discrimination in matters of compensation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[34A-5-104](#), as last amended by Laws of Utah 2015, Chapter 13

[34A-5-107](#), as last amended by Laws of Utah 2015, Chapter 13

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-5-104** is amended to read:

30 **34A-5-104. Powers.**

31 (1) (a) The commission has jurisdiction over the subject of employment practices and
32 discrimination made unlawful by this chapter.

33 (b) The commission may adopt, publish, amend, and rescind rules, consistent with, and
34 for the enforcement of this chapter.

35 (2) The division may:

36 (a) appoint and prescribe the duties of an investigator, other employee, or agent of the
37 commission that the commission considers necessary for the enforcement of this chapter;

38 (b) receive, reject, investigate, and pass upon complaints alleging:

39 (i) discrimination in:

40 (A) employment;

41 (B) an apprenticeship program;

42 (C) an on-the-job training program; or

43 (D) a vocational school; or

44 (ii) the existence of a discriminatory or prohibited employment practice by:

45 (A) a person;

46 (B) an employer;

47 (C) an employment agency;

48 (D) a labor organization;

49 (E) an employee or member of an employment agency or labor organization;

50 (F) a joint apprenticeship committee; and

51 (G) a vocational school;

52 (c) investigate and study the existence, character, causes, and extent of discrimination
53 in employment, apprenticeship programs, on-the-job training programs, and vocational schools
54 in this state by:

55 (i) employers;

56 (ii) employment agencies;

57 (iii) labor organizations;

- 58 (iv) joint apprenticeship committees; and
- 59 (v) vocational schools;
- 60 (d) formulate plans for the elimination of discrimination by educational or other
- 61 means;
- 62 (e) hold hearings upon complaint made against:
- 63 (i) a person;
- 64 (ii) an employer;
- 65 (iii) an employment agency;
- 66 (iv) a labor organization;
- 67 (v) an employee or member of an employment agency or labor organization;
- 68 (vi) a joint apprenticeship committee; or
- 69 (vii) a vocational school;
- 70 (f) issue publications and reports of investigations and research that:
- 71 (i) promote good will among the various racial, religious, and ethnic groups of the
- 72 state; and
- 73 (ii) minimize or eliminate discrimination in employment because of race, color, sex,
- 74 religion, national origin, age, disability, sexual orientation, or gender identity;
- 75 (g) prepare and transmit to the governor, at least once each year, reports describing:
- 76 (i) the division's proceedings, investigations, and hearings;
- 77 (ii) the outcome of those hearings;
- 78 (iii) decisions the division renders; and
- 79 (iv) the other work performed by the division;
- 80 (h) recommend policies to the governor, and submit recommendation to employers,
- 81 employment agencies, and labor organizations to implement those policies;
- 82 (i) recommend legislation to the governor that the division considers necessary
- 83 concerning discrimination because of:
- 84 (i) race;
- 85 (ii) sex;

- 86 (iii) color;
- 87 (iv) national origin;
- 88 (v) religion;
- 89 (vi) age;
- 90 (vii) disability;
- 91 (viii) sexual orientation; or
- 92 (ix) gender identity; and
- 93 (j) within the limits of appropriations made for its operation, cooperate with other
- 94 agencies or organizations, both public and private, in the planning and conducting of
- 95 educational programs designed to eliminate discriminatory practices prohibited under this
- 96 chapter.

97 (3) The division shall investigate an alleged discriminatory practice involving an

98 officer or employee of state government if requested to do so by the Career Service Review

99 Office.

100 (4) (a) In a hearing held under this chapter, the division may:

- 101 (i) subpoena witnesses and compel their attendance at the hearing;
- 102 (ii) administer oaths and take the testimony of a person under oath; and
- 103 (iii) compel a person to produce for examination a book, paper, or other information
- 104 relating to the matters raised by the complaint.

105 (b) The division director or a hearing examiner appointed by the division director may

106 conduct a hearing.

107 (c) If a witness fails or refuses to obey a subpoena issued by the division, the division

108 may petition the district court to enforce the subpoena.

109 (d) If a witness asserts a privilege against self-incrimination, testimony and evidence

110 from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

111 (5) In 2018, before November 1, the division shall report to the Business and Labor

112 Interim Committee on the effectiveness of the commission and state law in addressing

113 discrimination in matters of compensation.

114 Section 2. Section 34A-5-107 is amended to read:

115 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
116 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

117 (1) (a) A person claiming to be aggrieved by a discriminatory or prohibited
118 employment practice may, or that person's attorney or agent may, make, sign, and file with the
119 division a request for agency action.

120 (b) A request for agency action shall be verified under oath or affirmation.

121 (c) A request for agency action made under this section shall be filed within 180 days
122 after the alleged discriminatory or prohibited employment practice occurs.

123 (d) The division may transfer a request for agency action filed with the division
124 pursuant to this section to the federal Equal Employment Opportunity Commission in
125 accordance with a work-share agreement that is:

126 (i) between the division and the Equal Employment Opportunity Commission; and

127 (ii) in effect on the day on which the request for agency action is transferred.

128 (2) An employer, labor organization, joint apprenticeship committee, or vocational
129 school who has an employee or member who refuses or threatens to refuse to comply with this
130 chapter may file with the division a request for agency action asking the division for assistance
131 to obtain the employee's or member's compliance by conciliation or other remedial action.

132 (3) (a) Before a hearing is set or held as part of any adjudicative proceeding, the
133 division shall promptly assign an investigator to attempt a settlement between the parties by
134 conference, conciliation, or persuasion.

135 (b) If no settlement is reached, the investigator shall make a prompt impartial
136 investigation of all allegations made in the request for agency action.

137 (c) The division and its staff, agents, and employees:

138 (i) shall conduct every investigation in fairness to all parties and agencies involved;

139 and

140 (ii) may not attempt a settlement between the parties if it is clear that no discriminatory
141 or prohibited employment practice has occurred.

142 (d) An aggrieved party may withdraw the request for agency action prior to the
143 issuance of a final order.

144 (4) (a) If the initial attempts at settlement are unsuccessful, and the investigator
145 uncovers insufficient evidence during the investigation to support the allegations of a
146 discriminatory or prohibited employment practice set out in the request for agency action, the
147 investigator shall formally report these findings to the director or the director's designee.

148 (b) Upon receipt of the investigator's report described in Subsection (4)(a), the director
149 or the director's designee may issue a determination and order for dismissal of the adjudicative
150 proceeding.

151 (c) A party may make a written request to the Division of Adjudication for an
152 evidentiary hearing to review de novo the director's or the director's designee's determination
153 and order within 30 days of the date the determination and order for dismissal is issued.

154 (d) If the director or the director's designee receives no timely request for a hearing, the
155 determination and order issued by the director or the director's designee becomes the final order
156 of the commission.

157 (5) (a) If the initial attempts at settlement are unsuccessful and the investigator
158 uncovers sufficient evidence during the investigation to support the allegations of a
159 discriminatory or prohibited employment practice set out in the request for agency action, the
160 investigator shall formally report these findings to the director or the director's designee.

161 (b) (i) Upon receipt of the investigator's report described in Subsection (5)(a), the
162 director or the director's designee may issue a determination and order based on the
163 investigator's report.

164 (ii) A determination and order issued under this Subsection (5)(b) shall:

165 (A) direct the respondent to cease any discriminatory or prohibited employment
166 practice; and

167 (B) provide relief to the aggrieved party as the director or the director's designee
168 determines is appropriate.

169 (c) A party may file a written request to the Division of Adjudication for an evidentiary

170 hearing to review de novo the director's or the director's designee's determination and order
171 within 30 days of the date the determination and order is issued.

172 (d) If the director or the director's designee receives no timely request for a hearing, the
173 determination and order issued by the director or the director's designee in accordance with
174 Subsection (5)(b) becomes the final order of the commission.

175 (6) In an adjudicative proceeding to review the director's or the director's designee's
176 determination that a prohibited employment practice has occurred, the division shall present the
177 factual and legal basis of the determination or order issued under Subsection (5).

178 (7) (a) Before the commencement of an evidentiary hearing:

179 (i) the party filing the request for agency action may reasonably and fairly amend any
180 allegation; and

181 (ii) the respondent may amend its answer.

182 (b) An amendment permitted under this Subsection (7) may be made:

183 (i) during or after a hearing; and

184 (ii) only with permission of the presiding officer.

185 (8) (a) If, upon reviewing all the evidence at a hearing, the presiding officer finds that a
186 respondent has not engaged in a discriminatory or prohibited employment practice, the
187 presiding officer shall issue an order dismissing the request for agency action containing the
188 allegation of a discriminatory or prohibited employment practice.

189 (b) The presiding officer may order that the respondent be reimbursed by the
190 complaining party for the respondent's attorneys' fees and costs.

191 (9) If, upon reviewing all the evidence at the hearing, the presiding officer finds that a
192 respondent has engaged in a discriminatory or prohibited employment practice, the presiding
193 officer shall issue an order requiring the respondent to:

194 (a) cease any discriminatory or prohibited employment practice; [and]

195 (b) provide relief to the complaining party, including:

196 (i) reinstatement;

197 (ii) back pay and benefits;

198 (iii) attorney fees; and

199 (iv) costs.

200 (10) If a discriminatory practice described in Subsection (9) includes discrimination in
201 matters of compensation, the presiding officer may provide, to the complaining party, in
202 addition to the amount available to the complaining party under Subsection (9)(b), an
203 additional amount equal to the amount of back pay available to the complaining party under
204 Subsection (9)(b)(ii) unless a respondent shows that:

205 (a) the act or omission that gave rise to the order was in good faith; and

206 (b) the respondent had reasonable grounds to believe that the act or omission was not
207 discrimination in matters of compensation under this chapter.

208 [~~10~~] (11) Conciliation between the parties is to be urged and facilitated at all stages of
209 the adjudicative process.

210 [~~11~~] (12) (a) Either party may file with the Division of Adjudication a written request
211 for review before the commissioner or Appeals Board of the order issued by the presiding
212 officer in accordance with:

213 (i) Section 63G-4-301; and

214 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

215 (b) If there is no timely request for review, the order issued by the presiding officer
216 becomes the final order of the commission.

217 [~~12~~] (13) An order of the commission under Subsection [~~11~~] (12)(a) is subject to
218 judicial review as provided in:

219 (a) Section 63G-4-403; and

220 (b) Chapter 1, Part 3, Adjudicative Proceedings.

221 [~~13~~] (14) The commission may make rules concerning procedures under this chapter
222 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

223 [~~14~~] (15) The commission and its staff may not divulge or make public information
224 gained from an investigation, settlement negotiation, or proceeding before the commission
225 except as provided in Subsections [~~14~~] (15)(a) through (d).

226 (a) Information used by the director or the director's designee in making a
227 determination may be provided to all interested parties for the purpose of preparation for and
228 participation in proceedings before the commission.

229 (b) General statistical information may be disclosed provided the identities of the
230 individuals or parties are not disclosed.

231 (c) Information may be disclosed for inspection by the attorney general or other legal
232 representatives of the state or the commission.

233 (d) Information may be disclosed for information and reporting requirements of the
234 federal government.

235 [~~15~~] (16) The procedures contained in this section are the exclusive remedy under
236 state law for employment discrimination based upon:

237 (a) race;

238 (b) color;

239 (c) sex;

240 (d) retaliation;

241 (e) pregnancy, childbirth, or pregnancy-related conditions;

242 (f) age;

243 (g) religion;

244 (h) national origin;

245 (i) disability;

246 (j) sexual orientation; or

247 (k) gender identity.

248 [~~16~~] (17) (a) The commencement of an action under federal law for relief based upon
249 an act prohibited by this chapter bars the commencement or continuation of an adjudicative
250 proceeding before the commission in connection with the same claim under this chapter.

251 (b) The transfer of a request for agency action to the Equal Employment Opportunity
252 Commission in accordance with Subsection (1)(d) is considered the commencement of an
253 action under federal law for purposes of Subsection [~~16~~] (17)(a).

254 (c) Nothing in this Subsection [~~(16)~~] (17) is intended to alter, amend, modify, or impair
255 the exclusive remedy provision set forth in Subsection [~~(15)~~] (16).