

Chapter 5 Utah Antidiscrimination Act

34A-5-101 Title.

This chapter shall be known as the "Utah Antidiscrimination Act."

Renumbered and Amended by Chapter 375, 1997 General Session

34A-5-102 Definitions -- Unincorporated entities -- Joint employers -- Franchisors.

(1) As used in this chapter:

- (a) "Affiliate" means the same as that term is defined in Section 16-6a-102.
- (b) "Apprenticeship" means a program for the training of apprentices including a program providing the training of those persons defined as apprentices by Section 35A-6-102.
- (c) "Bona fide occupational qualification" means a characteristic applying to an employee that:
 - (i) is necessary to the operation; or
 - (ii) is the essence of the employee's employer's business.
- (d) "Court" means:
 - (i) the district court in the judicial district of the state in which the asserted unfair employment practice occurs; or
 - (ii) if the district court is not in session at that time, a judge of the court described in Subsection (1)(d)(i).
- (e) "Director" means the director of the division.
- (f) "Disability" means a physical or mental disability as defined and covered by the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.
- (g) "Division" means the Division of Antidiscrimination and Labor.
- (h) "Employee" means a person applying with or employed by an employer.
- (i)
 - (i) "Employer" means:
 - (A) the state;
 - (B) a political subdivision;
 - (C) a board, commission, department, institution, school district, trust, or agent of the state or a political subdivision of the state; or
 - (D) a person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.
 - (ii) "Employer" does not include:
 - (A) a religious organization, a religious corporation sole, a religious association, a religious society, a religious educational institution, or a religious leader, when that individual is acting in the capacity of a religious leader;
 - (B) any corporation or association constituting an affiliate, a wholly owned subsidiary, or an agency of any religious organization, religious corporation sole, religious association, or religious society; or
 - (C) the Boy Scouts of America or its councils, chapters, or subsidiaries.
- (j) "Employment agency" means a person:
 - (i) undertaking to procure employees or opportunities to work for any other person; or
 - (ii) holding the person out to be equipped to take an action described in Subsection (1)(j)(i).
- (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

- (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual (DSM-5).
A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.
- (p) "Joint apprenticeship committee" means an association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.
- (q) "Labor organization" means an organization that exists for the purpose in whole or in part of:
 - (i) collective bargaining;
 - (ii) dealing with employers concerning grievances, terms or conditions of employment; or
 - (iii) other mutual aid or protection in connection with employment.
- (r) "National origin" means the place of birth, domicile, or residence of an individual or of an individual's ancestors.
- (s) "On-the-job-training" means a program designed to instruct a person who, while learning the particular job for which the person is receiving instruction:
 - (i) is also employed at that job; or
 - (ii) may be employed by the employer conducting the program during the course of the program, or when the program is completed.
- (t) "Person" means:
 - (i) one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, or receivers;
 - (ii) the state; and
 - (iii) a political subdivision of the state.
- (u) "Pregnancy, childbirth, or pregnancy-related conditions" includes breastfeeding or medical conditions related to breastfeeding.
- (v) "Presiding officer" means the same as that term is defined in Section 63G-4-103.
- (w) "Prohibited employment practice" means a practice specified as discriminatory, and therefore unlawful, in Section 34A-5-106.
- (x) "Religious leader" means an individual who is associated with, and is an authorized representative of, a religious organization or association or a religious corporation sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual advisor.
- (y) "Retaliate" means the taking of adverse action by an employer, employment agency, labor organization, apprenticeship program, on-the-job training program, or vocational school against one of its employees, applicants, or members because the employee, applicant, or member:
 - (i) opposes an employment practice prohibited under this chapter; or
 - (ii) files charges, testifies, assists, or participates in any way in a proceeding, investigation, or hearing under this chapter.
- (z) "Sexual orientation" means an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual.
- (aa) "Undue hardship" means an action that requires significant difficulty or expense when considered in relation to factors such as the size of the entity, the entity's financial resources, and the nature and structure of the entity's operation.

- (bb) "Unincorporated entity" means an entity organized or doing business in the state that is not:
 - (i) an individual;
 - (ii) a corporation; or
 - (iii) publicly traded.
 - (cc) "Vocational school" means a school or institution conducting a course of instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to pursue a manual, technical, industrial, business, commercial, office, personal services, or other nonprofessional occupations.
- (2)
- (a) For purposes of this chapter, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who, directly or indirectly, holds an ownership interest in the unincorporated entity.
 - (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that the individual:
 - (i) is an active manager of the unincorporated entity;
 - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
 - (iii) is not subject to supervision or control in the performance of work by:
 - (A) the unincorporated entity; or
 - (B) a person with whom the unincorporated entity contracts.
 - (c) As part of the rules made under Subsection (2)(b), the commission may define:
 - (i) "active manager";
 - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
 - (iii) "subject to supervision or control in the performance of work."
- (3) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (4)
- (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
 - (i) a franchisee; or
 - (ii) a franchisee's employee.
 - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 330, 2016 General Session

Amended by Chapter 370, 2016 General Session

34A-5-102.5 Supremacy over local regulations -- No special class created for other purposes.

- (1) This chapter supersedes and preempts any ordinance, regulation, standard, or other legal action by a local government entity, a state entity, or the governing body of a political subdivision that relates to the prohibition of discrimination in employment.

- (2) This chapter shall not be construed to create a special or protected class for any purpose other than employment.

Amended by Chapter 317, 2018 General Session

34A-5-102.7 Nonseverability.

Laws of Utah 2015, Chapter 13, is the result of the Legislature's balancing of competing interests. Accordingly, if any phrase, clause, sentence, provision, or subsection enacted or amended in this chapter by Laws of Utah 2015, Chapter 13, is held invalid in a final judgment by a court of last resort, the remainder of the enactments and amendments of Laws of Utah 2015, Chapter 13, affecting this chapter shall be thereby rendered without effect and void.

Revisor instructions Chapter 13, 2015 General Session

Enacted by Chapter 13, 2015 General Session

34A-5-104 Powers.

- (1)
- (a) The commission has jurisdiction over the subject of employment practices and discrimination made unlawful by this chapter.
 - (b) The commission may adopt, publish, amend, and rescind rules, consistent with, and for the enforcement of this chapter.
- (2) The division may:
- (a) appoint and prescribe the duties of an investigator, other employee, or agent of the commission that the commission considers necessary for the enforcement of this chapter;
 - (b) receive, reject, investigate, and pass upon complaints alleging:
 - (i) discrimination in:
 - (A) employment;
 - (B) an apprenticeship program;
 - (C) an on-the-job training program; or
 - (D) a vocational school; or
 - (ii) the existence of a discriminatory or prohibited employment practice by:
 - (A) a person;
 - (B) an employer;
 - (C) an employment agency;
 - (D) a labor organization;
 - (E) an employee or member of an employment agency or labor organization;
 - (F) a joint apprenticeship committee; and
 - (G) a vocational school;
 - (c) investigate and study the existence, character, causes, and extent of discrimination in employment, apprenticeship programs, on-the-job training programs, and vocational schools in this state by:
 - (i) employers;
 - (ii) employment agencies;
 - (iii) labor organizations;
 - (iv) joint apprenticeship committees; and
 - (v) vocational schools;
 - (d) formulate plans for the elimination of discrimination by educational or other means;
 - (e) issue publications and reports of investigations and research that:

- (i) promote good will among the various racial, religious, and ethnic groups of the state; and
 - (ii) minimize or eliminate discrimination in employment because of race, color, sex, religion, national origin, age, disability, sexual orientation, or gender identity;
 - (f) prepare and transmit to the governor, at least once each year, reports describing:
 - (i) division proceedings and investigations;
 - (ii) decisions the division renders; and
 - (iii) other work performed by the division;
 - (g) recommend policies to the governor, and submit recommendation to employers, employment agencies, and labor organizations to implement those policies;
 - (h) recommend legislation to the governor that the division considers necessary concerning discrimination because of:
 - (i) race;
 - (ii) sex;
 - (iii) color;
 - (iv) national origin;
 - (v) religion;
 - (vi) age;
 - (vii) disability;
 - (viii) sexual orientation; or
 - (ix) gender identity; and
 - (i) within the limits of appropriations made for the division's operation, cooperate with other agencies or organizations, both public and private, in the planning and conducting of educational programs designed to eliminate discriminatory practices prohibited under this chapter.
- (3) In addition to processing complaints made in accordance with this chapter, the division shall investigate an alleged discriminatory practice involving an officer or employee of state government when requested by the Career Service Review Office.
- (4)
- (a) In an investigation held under this chapter, the division may subpoena a person to compel the person to:
 - (i) cooperate and participate in an interview; or
 - (ii) produce for examination a book, paper, or other information relating to the matters raised by the complaint.
 - (b) If a person fails or refuses to obey a subpoena issued by the division, the division may petition the district court to enforce the subpoena.
 - (c) If a person asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.
- (5) In 2018, before November 1, the division shall submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim Committee on the effectiveness of the commission and state law in addressing discrimination in matters of compensation.

Amended by Chapter 317, 2018 General Session

34A-5-106 Discriminatory or prohibited employment practices -- Permitted practices.

- (1) It is a discriminatory or prohibited employment practice to take an action described in Subsections (1)(a) through (g).
 - (a)

- (i) An employer may not refuse to hire, promote, discharge, demote, or terminate a person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against a person otherwise qualified, because of:
 - (A) race;
 - (B) color;
 - (C) sex;
 - (D) pregnancy, childbirth, or pregnancy-related conditions;
 - (E) age, if the individual is 40 years of age or older;
 - (F) religion;
 - (G) national origin;
 - (H) disability;
 - (I) sexual orientation; or
 - (J) gender identity.
- (ii) A person may not be considered "otherwise qualified," unless that person possesses the following required by an employer for any particular job, job classification, or position:
 - (A) education;
 - (B) training;
 - (C) ability, with or without reasonable accommodation;
 - (D) moral character;
 - (E) integrity;
 - (F) disposition to work;
 - (G) adherence to reasonable rules and regulations; and
 - (H) other job related qualifications required by an employer.
- (iii)
 - (A) As used in this chapter, "to discriminate in matters of compensation" means the payment of differing wages or salaries to employees having substantially equal experience, responsibilities, and skill for the particular job.
 - (B) Notwithstanding Subsection (1)(a)(iii)(A):
 - (I) nothing in this chapter prevents an increase in pay as a result of longevity with the employer, if the salary increase is uniformly applied and available to all employees on a substantially proportional basis; and
 - (II) nothing in this section prohibits an employer and employee from agreeing to a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or benefits if the employee is eligible for those payments.
- (b) An employment agency may not:
 - (i) refuse to list and properly classify for employment, or refuse to refer an individual for employment, in a known available job for which the individual is otherwise qualified, because of:
 - (A) race;
 - (B) color;
 - (C) sex;
 - (D) pregnancy, childbirth, or pregnancy-related conditions;
 - (E) religion;
 - (F) national origin;
 - (G) age, if the individual is 40 years of age or older;
 - (H) disability;
 - (I) sexual orientation; or
 - (J) gender identity; or

- (ii) comply with a request from an employer for referral of an applicant for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of:
 - (A) race;
 - (B) color;
 - (C) sex;
 - (D) pregnancy, childbirth, or pregnancy-related conditions;
 - (E) religion;
 - (F) national origin;
 - (G) age, if the individual is 40 years of age or older;
 - (H) disability;
 - (I) sexual orientation; or
 - (J) gender identity.
- (c)
 - (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):
 - (A) exclude an individual otherwise qualified from full membership rights in the labor organization;
 - (B) expel the individual from membership in the labor organization; or
 - (C) otherwise discriminate against or harass a member of the labor organization in full employment of work opportunity, or representation.
 - (ii) A labor organization may not take an action listed in this Subsection (1)(c) because of:
 - (A) race;
 - (B) sex;
 - (C) pregnancy, childbirth, or pregnancy-related conditions;
 - (D) religion;
 - (E) national origin;
 - (F) age, if the individual is 40 years of age or older;
 - (G) disability;
 - (H) sexual orientation; or
 - (I) gender identity.
- (d)
 - (i) Unless based upon a bona fide occupational qualification, or required by and given to an agency of government for a security reason, an employer, employment agency, or labor organization may not do the following if the statement, advertisement, publication, form, or inquiry violates Subsection (1)(d)(ii):
 - (A) print, circulate, or cause to be printed or circulated a statement, advertisement, or publication;
 - (B) use a form of application for employment or membership; or
 - (C) make any inquiry in connection with prospective employment or membership.
 - (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or inquiry that directly expresses a limitation, specification, or discrimination as to:
 - (A) race;
 - (B) color;
 - (C) religion;
 - (D) sex;
 - (E) pregnancy, childbirth, or pregnancy-related conditions;
 - (F) national origin;
 - (G) age, if the individual is 40 years of age or older;

- (H) disability;
 - (I) sexual orientation; or
 - (J) gender identity.
- (e) A person, whether or not an employer, an employment agency, a labor organization, or an employee or member of an employer, employment agency, or labor organization, may not:
- (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a discriminatory or prohibited employment practice;
 - (ii) obstruct or prevent a person from complying with this chapter, or any order issued under this chapter; or
 - (iii) attempt, either directly or indirectly, to commit an act prohibited in this section.
- (f)
- (i) An employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling an apprenticeship program or providing, coordinating, or controlling an on-the-job-training program, instruction, training, or retraining program may not:
 - (A) deny to, or withhold from, any qualified person the right to be admitted to or participate in an apprenticeship training program, on-the-job-training program, or other occupational instruction, training, or retraining program because of:
 - (I) race;
 - (II) color;
 - (III) sex;
 - (IV) pregnancy, childbirth, or pregnancy-related conditions;
 - (V) religion;
 - (VI) national origin;
 - (VII) age, if the individual is 40 years of age or older;
 - (VIII) disability;
 - (IX) sexual orientation; or
 - (X) gender identity;
 - (B) discriminate against or harass a qualified person in that person's pursuit of a program described in Subsection (1)(f)(i)(A) because of:
 - (I) race;
 - (II) color;
 - (III) sex;
 - (IV) pregnancy, childbirth, or pregnancy-related conditions;
 - (V) religion;
 - (VI) national origin;
 - (VII) age, if the individual is 40 years of age or older;
 - (VIII) disability;
 - (IX) sexual orientation; or
 - (X) gender identity;
 - (C) discriminate against a qualified person in the terms, conditions, or privileges of a program described in Subsection (1)(f)(i)(A), because of:
 - (I) race;
 - (II) color;
 - (III) sex;
 - (IV) pregnancy, childbirth, or pregnancy-related conditions;
 - (V) religion;
 - (VI) national origin;

- (VII) age, if the individual is 40 years of age or older;
 - (VIII) disability;
 - (IX) sexual orientation; or
 - (X) gender identity; or
- (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or published, a notice or advertisement relating to employment by the employer, or membership in or a classification or referral for employment by a labor organization, or relating to a classification or referral for employment by an employment agency, indicating a preference, limitation, specification, or discrimination based on:
- (I) race;
 - (II) color;
 - (III) sex;
 - (IV) pregnancy, childbirth, or pregnancy-related conditions;
 - (V) religion;
 - (VI) national origin;
 - (VII) age, if the individual is 40 years of age or older;
 - (VIII) disability;
 - (IX) sexual orientation; or
 - (X) gender identity.
- (ii) Notwithstanding Subsection (1)(f)(i)(D), if the following is a bona fide occupational qualification for employment, a notice or advertisement described in Subsection (1)(f)(i)(D) may indicate a preference, limitation, specification, or discrimination based on:
- (A) race;
 - (B) color;
 - (C) religion;
 - (D) sex;
 - (E) pregnancy, childbirth, or pregnancy-related conditions;
 - (F) age;
 - (G) national origin;
 - (H) disability;
 - (I) sexual orientation; or
 - (J) gender identity.
- (g) Subject to Subsection (7), an employer may not:
- (i) refuse to provide reasonable accommodations for an employee related to pregnancy, childbirth, breastfeeding, or related conditions:
 - (A) if the employee requests a reasonable accommodation; and
 - (B) unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer;
 - (ii) require an employee to terminate employment if another reasonable accommodation can be provided for the employee's pregnancy, childbirth, breastfeeding, or related conditions unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer; or
 - (iii) deny employment opportunities to an employee, if the denial is based on the need of the employer to make reasonable accommodations related to the pregnancy, childbirth, breastfeeding, or related conditions of an employee unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer.
- (2) Subsections (1)(a) through (1)(g) may not be construed to prevent:

- (a) the termination of employment of an individual who, with or without reasonable accommodation, is physically, mentally, or emotionally unable to perform the duties required by that individual's employment;
 - (b) the variance of insurance premiums or coverage on account of age; or
 - (c) a restriction on the activities of a person licensed in accordance with Title 32B, Alcoholic Beverage Control Act, with respect to an individual who is under 21 years of age.
- (3)
- (a) It is not a discriminatory or prohibited employment practice:
 - (i) for an employer to hire and employ an employee, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship or other training or retraining program to admit or employ an individual in the program on the basis of religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, disability, sexual orientation, or gender identity in those certain instances when religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin, disability, sexual orientation, or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;
 - (ii) for a school, college, university, or other educational institution to hire and employ an employee of a particular religion if:
 - (A) the school, college, university, or other educational institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religious corporation, association, or society; or
 - (B) the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion;
 - (iii) for an employer to give preference in employment to:
 - (A) the employer's:
 - (I) spouse;
 - (II) child; or
 - (III) son-in-law or daughter-in-law;
 - (B) a person for whom the employer is or would be liable to furnish financial support if the person were unemployed;
 - (C) a person to whom the employer during the preceding six months furnishes more than one-half of total financial support regardless of whether or not the employer was or is legally obligated to furnish support; or
 - (D) a person whose education or training is substantially financed by the employer for a period of two years or more.
 - (b) Nothing in this chapter applies to a business or enterprise on or near an Indian reservation with respect to a publicly announced employment practice of the business or enterprise under which preferential treatment is given to an individual because that individual is a native American Indian living on or near an Indian reservation.
 - (c) Nothing in this chapter may be interpreted to require an employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to an individual or to a group because of the race, color, religion, sex, age, national origin, disability, sexual orientation, or gender identity of the individual or group on account of an imbalance that may exist with respect to the total number or percentage of persons of a race, color, religion, sex, age,

national origin, disability, sexual orientation, or gender identity employed by an employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, age, national origin, disability, sexual orientation, or gender identity in any community or county or in the available work force in any community or county.

- (4) It is not a discriminatory or prohibited practice with respect to age to observe the terms of a bona fide seniority system or any bona fide employment benefit plan such as a retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire an individual.
- (5) Notwithstanding Subsection (4), or another statute to the contrary, a person may not be subject to involuntary termination or retirement from employment on the basis of age alone, if the individual is 40 years of age or older, except:
- (a) under Subsection (6); and
 - (b) when age is a bona fide occupational qualification.
- (6) Nothing in this section prohibits compulsory retirement of an employee who has attained at least 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if:
- (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit from the employee's employer's pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans; and
 - (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.
- (7)
- (a) For purposes of Subsection (1)(g), an employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation.
 - (b) A certification under Subsection (7)(a) shall include:
 - (i) the date the reasonable accommodation becomes medically advisable;
 - (ii) the probable duration of the reasonable accommodation; and
 - (iii) an explanatory statement as to the medical advisability of the reasonable accommodation.
 - (c) Notwithstanding Subsections (1)(g) and (7)(a), an employer may not require an employee to obtain a certification from the employee's health care provider for more frequent restroom, food, or water breaks.
 - (d) An employer is not required under Subsection (1)(g) or this Subsection (7) to permit an employee to have the employee's child at the workplace for purposes of accommodating pregnancy, childbirth, breastfeeding, or related conditions.
 - (e) An employer shall include in an employee handbook, or post in a conspicuous place in the employer's place of business, written notice concerning an employee's rights to reasonable accommodations for pregnancy, childbirth, breastfeeding, or related conditions.

Amended by Chapter 330, 2016 General Session

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

(1)

- (a) A person claiming to be aggrieved by a discriminatory or prohibited employment practice may, or that person's attorney or agent may, make, sign, and file with the division a request for agency action.
 - (b) A request for agency action shall be verified under oath or affirmation.
 - (c) A request for agency action made under this section shall be filed within 180 days after the alleged discriminatory or prohibited employment practice occurs.
 - (d) The division may transfer a request for agency action filed with the division pursuant to this section to the federal Equal Employment Opportunity Commission in accordance with a work-share agreement that is:
 - (i) between the division and the Equal Employment Opportunity Commission; and
 - (ii) in effect on the day on which the request for agency action is transferred.
- (2) An employer, labor organization, joint apprenticeship committee, or vocational school who has an employee or member who refuses or threatens to refuse to comply with this chapter may file with the division a request for agency action asking the division for assistance to obtain the employee's or member's compliance by conciliation or other remedial action.
- (3)
- (a) Before an investigation begins into allegations of discriminatory or prohibited employment practice, the division shall promptly assign a mediator to offer mediation services between the parties by conference.
 - (b)
 - (i) If mediation services are refused or no settlement is reached, the division shall promptly assign an investigator.
 - (ii) The investigator shall make a prompt impartial investigation of all allegations made in the request for agency action.
 - (c) The division and the division's staff, agents, and employees shall conduct every investigation in fairness to all parties and agencies involved.
 - (d) An aggrieved party may withdraw the request for agency action prior to the issuance of a final order.
- (4)
- (a) If the initial attempts at settlement are unsuccessful, and the investigator uncovers insufficient evidence during the investigation to support the allegations of a discriminatory or prohibited employment practice set out in the request for agency action, the investigator shall formally report these findings to the director or the director's designee.
 - (b)
 - (i) Upon receipt of the investigator's report described in Subsection (4)(a), the director or the director's designee may issue a determination and order for dismissal of the adjudicative proceeding.
 - (ii) A determination and order issued under this Subsection (4)(b) shall include a notice:
 - (A) of the right to request an evidentiary hearing under Subsection (4)(c); and
 - (B) that failure to request an evidentiary hearing under Subsection (4)(c) will result in the determination and order becoming final, in accordance with Subsection (4)(d).
 - (c) A party may make a written request to the Division of Adjudication for an evidentiary hearing to review de novo the director's or the director's designee's determination and order within 30 days from the day on which the determination and order for dismissal is issued.
 - (d) If the director or the director's designee receives no timely request for a hearing, the determination and order issued by the director or the director's designee becomes the final order of the commission.
- (5)

- (a) If the initial attempts at settlement are unsuccessful and the investigator uncovers sufficient evidence during the investigation to support the allegations of a discriminatory or prohibited employment practice set out in the request for agency action, the investigator shall formally report these findings to the director or the director's designee.
 - (b)
 - (i) Upon receipt of the investigator's report described in Subsection (5)(a), the director or the director's designee may issue a determination and order based on the investigator's report.
 - (ii) A determination and order issued under this Subsection (5)(b) shall:
 - (A) direct the respondent to cease any discriminatory or prohibited employment practice;
 - (B) provide relief to the aggrieved party as the director or the director's designee determines is appropriate;
 - (C) include a notice of the right to request an evidentiary hearing under Subsection (5)(c); and
 - (D) include a notice that failure to request an evidentiary hearing under Subsection (5)(c) will result in the determination and order becoming final, in accordance with Subsection (5)(d).
 - (c) A party may file a written request to the Division of Adjudication for an evidentiary hearing to review de novo the director's or the director's designee's determination and order within 30 days after the day on which the determination and order is issued.
 - (d) If the director or the director's designee receives no timely request for a hearing, the determination and order issued by the director or the director's designee in accordance with Subsection (5)(b) becomes the final order of the commission.
- (6) In an adjudicative proceeding to review the director's or the director's designee's determination that a prohibited employment practice has occurred, the division shall present the factual and legal basis of the determination and order issued under Subsection (5).
- (7)
 - (a) If, upon reviewing all the evidence at a hearing, the presiding officer finds that a respondent has not engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order dismissing the request for agency action containing the allegation of a discriminatory or prohibited employment practice.
 - (b) The presiding officer may order that the respondent be reimbursed by the complaining party for the respondent's attorney fees and costs.
- (8) If, upon reviewing all the evidence at the hearing, the presiding officer finds that a respondent has engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order requiring the respondent to:
 - (a) cease any discriminatory or prohibited employment practice;
 - (b) provide relief to the complaining party, including:
 - (i) reinstatement;
 - (ii) back pay and benefits;
 - (iii) attorney fees; and
 - (iv) costs.
- (9) If a discriminatory practice described in Subsection (8) includes discrimination in matters of compensation, the presiding officer may provide, to the complaining party, in addition to the amount available to the complaining party under Subsection (8)(b), an additional amount equal to the amount of back pay available to the complaining party under Subsection (8)(b)(ii) unless a respondent shows that:
 - (a) the act or omission that gave rise to the order was in good faith; and
 - (b) the respondent had reasonable grounds to believe that the act or omission was not discrimination in matters of compensation under this chapter.

- (10) Conciliation between the parties is to be urged and facilitated at all stages of the adjudicative process.
- (11)
- (a) Either party may file with the Division of Adjudication a written request for review before the commissioner or Appeals Board of the order issued by the presiding officer in accordance with:
 - (i) Section 63G-4-301; and
 - (ii) Chapter 1, Part 3, Adjudicative Proceedings.
 - (b) If there is no timely request for review, the order issued by the presiding officer becomes the final order of the commission.
- (12) An order of the commission under Subsection (11)(a) is subject to judicial review as provided in:
- (a) Section 63G-4-403; and
 - (b) Chapter 1, Part 3, Adjudicative Proceedings.
- (13) The commission may make rules concerning procedures under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (14) The commission and its staff may not divulge or make public information gained from an investigation, settlement negotiation, or proceeding before the commission except as provided in Subsections (14)(a) through (d).
- (a) Information used by the director or the director's designee in making a determination may be provided to all interested parties for the purpose of preparation for and participation in proceedings before the commission.
 - (b) General statistical information may be disclosed provided the identities of the individuals or parties are not disclosed.
 - (c) Information may be disclosed for inspection by the attorney general or other legal representatives of the state or the commission.
 - (d) Information may be disclosed for information and reporting requirements of the federal government.
- (15) The procedures contained in this section are the exclusive remedy under state law for employment discrimination based upon:
- (a) race;
 - (b) color;
 - (c) sex;
 - (d) retaliation;
 - (e) pregnancy, childbirth, or pregnancy-related conditions;
 - (f) age;
 - (g) religion;
 - (h) national origin;
 - (i) disability;
 - (j) sexual orientation; or
 - (k) gender identity.
- (16)
- (a) The commencement of an action under federal law for relief based upon an act prohibited by this chapter bars the commencement or continuation of an adjudicative proceeding before the commission in connection with the same claim under this chapter.
 - (b) The transfer of a request for agency action to the Equal Employment Opportunity Commission in accordance with Subsection (1)(d) is considered the commencement of an action under federal law for purposes of Subsection (16)(a).

- (c) Nothing in this Subsection (16) is intended to alter, amend, modify, or impair the exclusive remedy provision set forth in Subsection (15).

Amended by Chapter 317, 2018 General Session

34A-5-108 Judicial enforcement of division findings.

- (1) The commission or the attorney general at the request of the commission shall commence an action under Section 63G-4-501 for civil enforcement of a final order of the commission issued under Section 34A-5-107 if:
 - (a) the order finds that there is reasonable cause to believe that a respondent has engaged or is engaging in discriminatory or prohibited employment practices made unlawful by this chapter;
 - (b) counsel to the commission or the attorney general determines after reasonable inquiry that the order is well grounded in fact and is warranted by existing law;
 - (c) the respondent has not received an order of automatic stay or discharge from the United States Bankruptcy Court; and
 - (d)
 - (i) the commission has not accepted a conciliation agreement to which the aggrieved party and respondent are parties; or
 - (ii) the respondent has not conciliated or complied with the final order of the commission within 30 days from the date the order is issued.
- (2) If the respondent seeks judicial review of the final order under Section 63G-4-403, pursuant to Section 63G-4-405 the commission may stay seeking civil enforcement pending the completion of the judicial review.

Amended by Chapter 317, 2018 General Session

34A-5-109 Application to employee dress and grooming standards.

This chapter may not be interpreted to prohibit an employer from adopting reasonable dress and grooming standards not prohibited by other provisions of federal or state law, provided that the employer's dress and grooming standards afford reasonable accommodations based on gender identity to all employees.

Enacted by Chapter 13, 2015 General Session

34A-5-110 Application to sex-specific facilities.

This chapter may not be interpreted to prohibit an employer from adopting reasonable rules and policies that designate sex-specific facilities, including restrooms, shower facilities, and dressing facilities, provided that the employer's rules and policies adopted under this section afford reasonable accommodations based on gender identity to all employees.

Enacted by Chapter 13, 2015 General Session

34A-5-111 Application to the freedom of expressive association and the free exercise of religion.

This chapter may not be interpreted to infringe upon the freedom of expressive association or the free exercise of religion protected by the First Amendment of the United States Constitution and Article I, Sections 1, 4, and 15 of the Utah Constitution.

Enacted by Chapter 13, 2015 General Session

34A-5-112 Religious liberty protections -- Expressing beliefs and commitments in workplace -- Prohibition on employment actions against certain employee speech.

- (1) An employee may express the employee's religious or moral beliefs and commitments in the workplace in a reasonable, non-disruptive, and non-harassing way on equal terms with similar types of expression of beliefs or commitments allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business-related interests of the employer.
- (2) An employer may not discharge, demote, terminate, or refuse to hire any person, or retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified, for lawful expression or expressive activity outside of the workplace regarding the person's religious, political, or personal convictions, including convictions about marriage, family, or sexuality, unless the expression or expressive activity is in direct conflict with the essential business-related interests of the employer.

Enacted by Chapter 13, 2015 General Session