

UTAH ANTIDISCRIMINATION ACT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill amends the Utah Antidiscrimination Act.

Highlighted Provisions:

This bill:

▶ removes a provision relating to the Utah Labor Commission Antidiscrimination and Labor Division (UALD) holding hearings upon receiving complaints;

▶ grants the UALD subpoena power during an investigation;

▶ permits the Career Service Review Office to request an investigation in certain circumstances;

▶ instructs the UALD to assign a mediator to offer mediation services between parties before an investigation begins;

▶ removes language instructing mediators to attempt a settlement between parties by conciliation and persuasion;

▶ removes a provision requiring a finding before an investigation begins; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **34A-5-102.5**, as enacted by Laws of Utah 2015, Chapter 13

32 **34A-5-104**, as last amended by Laws of Utah 2017, Chapter 18

33 **34A-5-107**, as last amended by Laws of Utah 2016, Chapter 132

34 **34A-5-108**, as last amended by Laws of Utah 2008, Chapter 382



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

37 Section 1. Section **34A-5-102.5** is amended to read:

38 **34A-5-102.5. Supremacy over local regulations -- No special class created for**
39 **other purposes.**

40 (1) [~~Consistent with the requirements of Subsection **34A-5-107**(15), this~~] This chapter
41 supersedes and preempts any ordinance, regulation, standard, or other legal action by a local
42 government entity, a state entity, or the governing body of a political subdivision that relates to
43 the prohibition of discrimination in employment.

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

46 Section 2. Section **34A-5-104** is amended to read:

47 **34A-5-104. Powers.**

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

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

52 (2) The division may:

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

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

56 (i) discrimination in:

57 (A) employment;

58 (B) an apprenticeship program;

- 59 (C) an on-the-job training program; or
- 60 (D) a vocational school; or
- 61 (ii) the existence of a discriminatory or prohibited employment practice by:
- 62 (A) a person;
- 63 (B) an employer;
- 64 (C) an employment agency;
- 65 (D) a labor organization;
- 66 (E) an employee or member of an employment agency or labor organization;
- 67 (F) a joint apprenticeship committee; and
- 68 (G) a vocational school;
- 69 (c) investigate and study the existence, character, causes, and extent of discrimination
- 70 in employment, apprenticeship programs, on-the-job training programs, and vocational schools
- 71 in this state by:
- 72 (i) employers;
- 73 (ii) employment agencies;
- 74 (iii) labor organizations;
- 75 (iv) joint apprenticeship committees; and
- 76 (v) vocational schools;
- 77 (d) formulate plans for the elimination of discrimination by educational or other
- 78 means;
- 79 [~~(e) hold hearings upon complaint made against;~~]
- 80 [~~(i) a person;~~]
- 81 [~~(ii) an employer;~~]
- 82 [~~(iii) an employment agency;~~]
- 83 [~~(iv) a labor organization;~~]
- 84 [~~(v) an employee or member of an employment agency or labor organization;~~]
- 85 [~~(vi) a joint apprenticeship committee; or~~]
- 86 [~~(vii) a vocational school;~~]
- 87 [(f)] (e) issue publications and reports of investigations and research that:
- 88 (i) promote good will among the various racial, religious, and ethnic groups of the
- 89 state; and

90 (ii) minimize or eliminate discrimination in employment because of race, color, sex,
91 religion, national origin, age, disability, sexual orientation, or gender identity;

92 [~~(g)~~] (f) prepare and transmit to the governor, at least once each year, reports
93 describing:

94 (i) [~~the division's~~] division proceedings [,] and investigations [~~, and hearings~~];

95 [~~(ii) the outcome of those hearings~~];

96 [~~(iii)~~] (ii) decisions the division renders; and

97 [~~(iv) the~~] (iii) other work performed by the division;

98 [~~(h)~~] (g) recommend policies to the governor, and submit recommendation to
99 employers, employment agencies, and labor organizations to implement those policies;

100 [~~(i)~~] (h) recommend legislation to the governor that the division considers necessary
101 concerning discrimination because of:

102 (i) race;

103 (ii) sex;

104 (iii) color;

105 (iv) national origin;

106 (v) religion;

107 (vi) age;

108 (vii) disability;

109 (viii) sexual orientation; or

110 (ix) gender identity; and

111 [~~(j)~~] (i) within the limits of appropriations made for [~~its~~] the division's operation,
112 cooperate with other agencies or organizations, both public and private, in the planning and
113 conducting of educational programs designed to eliminate discriminatory practices prohibited
114 under this chapter.

115 (3) [~~The~~] In addition to processing complaints made in accordance with this chapter,
116 the division shall investigate an alleged discriminatory practice involving an officer or
117 employee of state government [~~if~~] when requested [~~to do so~~] by the Career Service Review
118 Office.

119 (4) (a) In [~~a hearing~~] an investigation held under this chapter, the division may
120 subpoena a person to compel the person to:

121 (i) [~~subpoena witnesses and compel their attendance at the hearing;~~] cooperate and
 122 participate in an interview; or

123 [~~(ii) administer oaths and take the testimony of a person under oath; and]~~

124 [~~(iii)~~] (ii) [~~compel a person to~~] produce for examination a book, paper, or other
 125 information relating to the matters raised by the complaint.

126 [~~(b) The division director or a hearing examiner appointed by the division director may~~
 127 ~~conduct a hearing.~~]

128 [~~(c)~~] (b) If a [~~witness~~] person fails or refuses to obey a subpoena issued by the division,
 129 the division may petition the district court to enforce the subpoena.

130 [~~(d)~~] (c) If a [~~witness~~] person asserts a privilege against self-incrimination, testimony
 131 and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of
 132 Immunity.

133 (5) In 2018, before November 1, the division shall submit, in accordance with Section
 134 [68-3-14](#), a written report to the Business and Labor Interim Committee on the effectiveness of
 135 the commission and state law in addressing discrimination in matters of compensation.

136 Section 3. Section **34A-5-107** is amended to read:

137 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
 138 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

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

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

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

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

150 (2) An employer, labor organization, joint apprenticeship committee, or vocational
 151 school who has an employee or member who refuses or threatens to refuse to comply with this

152 chapter may file with the division a request for agency action asking the division for assistance
153 to obtain the employee's or member's compliance by conciliation or other remedial action.

154 (3) (a) Before ~~[a hearing is set or held as part of any adjudicative proceeding]~~ an
155 investigation begins into allegations of discriminatory or prohibited employment practice, the
156 division shall promptly assign ~~[an investigator to attempt a settlement]~~ a mediator to offer
157 mediation services between the parties by conference~~[-, conciliation, or persuasion].~~

158 (b) (i) If mediation services are refused or no settlement is reached, ~~[the]~~ the division
159 shall promptly assign an investigator.

160 (ii) The investigator shall make a prompt impartial investigation of all allegations made
161 in the request for agency action.

162 (c) The division and ~~[its]~~ the division's staff, agents, and employees~~[-(it)]~~ shall conduct
163 every investigation in fairness to all parties and agencies involved~~[-and].~~

164 ~~[(ii) may not attempt a settlement between the parties if it is clear that no~~
165 ~~discriminatory or prohibited employment practice has occurred.]~~

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

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

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

175 (c) A party may make a written request to the Division of Adjudication for an
176 evidentiary hearing to review de novo the director's or the director's designee's determination
177 and order within 30 days ~~[of the date]~~ from the day on which the determination and order for
178 dismissal is issued.

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

182 (5) (a) If the initial attempts at settlement are unsuccessful and the investigator

183 uncovers sufficient evidence during the investigation to support the allegations of a
184 discriminatory or prohibited employment practice set out in the request for agency action, the
185 investigator shall formally report these findings to the director or the director's designee.

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

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

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

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

194 (c) A party may file a written request to the Division of Adjudication for an evidentiary
195 hearing to review de novo the director's or the director's designee's determination and order
196 within 30 days ~~[of the date]~~ after the day on which the determination and order is issued.

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

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

203 ~~[(7) (a) Before the commencement of an evidentiary hearing:]~~

204 ~~[(i) the party filing the request for agency action may reasonably and fairly amend any~~
205 ~~allegation; and]~~

206 ~~[(ii) the respondent may amend its answer.]~~

207 ~~[(b) An amendment permitted under this Subsection (7) may be made:]~~

208 ~~[(i) during or after a hearing; and]~~

209 ~~[(ii) only with permission of the presiding officer.]~~

210 ~~[(8)]~~ (7) (a) If, upon reviewing all the evidence at a hearing, the presiding officer finds
211 that a respondent has not engaged in a discriminatory or prohibited employment practice, the
212 presiding officer shall issue an order dismissing the request for agency action containing the
213 allegation of a discriminatory or prohibited employment practice.

214 (b) The presiding officer may order that the respondent be reimbursed by the
215 complaining party for the respondent's [~~attorneys'~~] attorney fees and costs.

216 [~~(9)~~] (8) If, upon reviewing all the evidence at the hearing, the presiding officer finds
217 that a respondent has engaged in a discriminatory or prohibited employment practice, the
218 presiding officer shall issue an order requiring the respondent to:

219 (a) cease any discriminatory or prohibited employment practice;

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

221 (i) reinstatement;

222 (ii) back pay and benefits;

223 (iii) attorney fees; and

224 (iv) costs.

225 [~~(10)~~] (9) If a discriminatory practice described in Subsection [~~(9)~~] (8) includes
226 discrimination in matters of compensation, the presiding officer may provide, to the
227 complaining party, in addition to the amount available to the complaining party under
228 Subsection [~~(9)~~] (8)(b), an additional amount equal to the amount of back pay available to the
229 complaining party under Subsection [~~(9)~~] (8)(b)(ii) unless a respondent shows that:

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

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

233 [~~(11)~~] (10) Conciliation between the parties is to be urged and facilitated at all stages of
234 the adjudicative process.

235 [~~(12)~~] (11) (a) Either party may file with the Division of Adjudication a written request
236 for review before the commissioner or Appeals Board of the order issued by the presiding
237 officer in accordance with:

238 (i) Section [63G-4-301](#); and

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

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

242 [~~(13)~~] (12) An order of the commission under Subsection [~~(12)~~] (11)(a) is subject to
243 judicial review as provided in:

244 (a) Section [63G-4-403](#); and

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

246 [~~14~~] (13) The commission may make rules concerning procedures under this chapter
247 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

248 [~~15~~] (14) The commission and its staff may not divulge or make public information
249 gained from an investigation, settlement negotiation, or proceeding before the commission
250 except as provided in Subsections [~~15~~] (14)(a) through (d).

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

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

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

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

260 [~~16~~] (15) The procedures contained in this section are the exclusive remedy under
261 state law for employment discrimination based upon:

262 (a) race;

263 (b) color;

264 (c) sex;

265 (d) retaliation;

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

267 (f) age;

268 (g) religion;

269 (h) national origin;

270 (i) disability;

271 (j) sexual orientation; or

272 (k) gender identity.

273 [~~17~~] (16) (a) The commencement of an action under federal law for relief based upon
274 an act prohibited by this chapter bars the commencement or continuation of an adjudicative
275 proceeding before the commission in connection with the same claim under this chapter.

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

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

281 Section 4. Section 34A-5-108 is amended to read:

282 **34A-5-108. Judicial enforcement of division findings.**

283 (1) The commission or the attorney general at the request of the commission shall
284 commence an action under Section 63G-4-501 for civil enforcement of a final order of the
285 commission issued under Subsection 34A-5-107[~~(17)~~](8) if:

286 (a) the order finds that there is reasonable cause to believe that a respondent has
287 engaged or is engaging in discriminatory or prohibited employment practices made unlawful by
288 this chapter;

289 (b) counsel to the commission or the attorney general determines after reasonable
290 inquiry that the order is well grounded in fact and is warranted by existing law;

291 (c) the respondent has not received an order of automatic stay or discharge from the
292 United States Bankruptcy Court; and

293 (d) (i) the commission has not accepted a conciliation agreement to which the
294 aggrieved party and respondent are parties; or

295 (ii) the respondent has not conciliated or complied with the final order of the
296 commission within 30 days from the date the order is issued.

297 (2) If the respondent seeks judicial review of the final order under Section 63G-4-403,
298 pursuant to Section 63G-4-405 the commission may stay seeking civil enforcement pending the
299 completion of the judicial review.