

ANTIDISCRIMINATION ACT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael J. Petersen

Senate Sponsor: John D. Johnson

LONG TITLE

General Description:

This bill amends the Utah Antidiscrimination Act.

Highlighted Provisions:

This bill:

- ▶ defines "political activity" and "political affiliation";
- ▶ prohibits employment discrimination based on an individual's political activity or political affiliation; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-5-102, as last amended by Laws of Utah 2016, Chapters 330 and 370

34A-5-106, as last amended by Laws of Utah 2016, Chapter 330

34A-5-107, as last amended by Laws of Utah 2018, Chapter 317

34A-5-112, as enacted by Laws of Utah 2015, Chapter 13

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



28 Section 1. Section 34A-5-102 is amended to read:

29 **34A-5-102. Definitions -- Unincorporated entities -- Joint employers --**

30 **Franchisors.**

31 (1) As used in this chapter:

32 (a) "Affiliate" means the same as that term is defined in Section 16-6a-102.

33 (b) "Apprenticeship" means a program for the training of apprentices including a
34 program providing the training of those persons defined as apprentices by Section 35A-6-102.

35 (c) "Bona fide occupational qualification" means a characteristic applying to an
36 employee that:

37 (i) is necessary to the operation; or

38 (ii) is the essence of the employee's employer's business.

39 (d) "Court" means:

40 (i) the district court in the judicial district of the state in which the asserted unfair
41 employment practice occurs; or

42 (ii) if the district court is not in session at that time, a judge of the court described in
43 Subsection (1)(d)(i).

44 (e) "Director" means the director of the division.

45 (f) "Disability" means a physical or mental disability as defined and covered by the
46 Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102.

47 (g) "Division" means the Division of Antidiscrimination and Labor.

48 (h) "Employee" means a person applying with or employed by an employer.

49 (i) (i) "Employer" means:

50 (A) the state;

51 (B) a political subdivision;

52 (C) a board, commission, department, institution, school district, trust, or agent of the
53 state or a political subdivision of the state; or

54 (D) a person employing 15 or more employees within the state for each working day in
55 each of 20 calendar weeks or more in the current or preceding calendar year.

56 (ii) "Employer" does not include:

57 (A) a religious organization, a religious corporation sole, a religious association, a

58 religious society, a religious educational institution, or a religious leader, when that individual

59 is acting in the capacity of a religious leader;

60 (B) any corporation or association constituting an affiliate, a wholly owned subsidiary,
61 or an agency of any religious organization, religious corporation sole, religious association, or
62 religious society; or

63 (C) the Boy Scouts of America or [its] the Boy Scouts of America's councils, chapters,
64 or subsidiaries.

65 (j) "Employment agency" means a person:

66 (i) undertaking to procure employees or opportunities to work for any other person; or

67 (ii) holding the person out to be equipped to take an action described in Subsection

68 (1)(j)(i).

69 (k) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.
70 105, of the federal government.

71 (l) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

72 (m) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

73 (n) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

74 (o) "Gender identity" has the meaning provided in the Diagnostic and Statistical
75 Manual (DSM-5). A person's gender identity can be shown by providing evidence, including,
76 but not limited to, medical history, care or treatment of the gender identity, consistent and
77 uniform assertion of the gender identity, or other evidence that the gender identity is sincerely
78 held, part of a person's core identity, and not being asserted for an improper purpose.

79 (p) "Joint apprenticeship committee" means an association of representatives of a labor
80 organization and an employer providing, coordinating, or controlling an apprentice training
81 program.

82 (q) "Labor organization" means an organization that exists for the purpose in whole or
83 in part of:

84 (i) collective bargaining;

85 (ii) dealing with employers concerning grievances, terms or conditions of employment;

86 or

87 (iii) other mutual aid or protection in connection with employment.

88 (r) "National origin" means the place of birth, domicile, or residence of an individual or
89 of an individual's ancestors.

90 (s) "On-the-job-training" means a program designed to instruct a person who, while
91 learning the particular job for which the person is receiving instruction:
92 (i) is also employed at that job; or
93 (ii) may be employed by the employer conducting the program during the course of the
94 program, or when the program is completed.
95 (t) "Person" means:
96 (i) one or more individuals, partnerships, associations, corporations, legal
97 representatives, trusts or trustees, or receivers;
98 (ii) the state; and
99 (iii) a political subdivision of the state.
100 (u) (i) "Political activity" means any of the following activities performed outside of
101 working hours, off of the employer's premises, and without the use of the employer's equipment
102 or other property:
103 (A) running for public office;
104 (B) campaigning for or against a candidate for public office; or
105 (C) participating, or not participating, in a fund-raising activity for the benefit of a
106 candidate, political party, or political advocacy group.
107 (ii) "Political activity" does not include:
108 (A) criminal activity;
109 (B) activity described in Subsection (1)(u)(i), if the individual performing the activity
110 is prevented or restricted from engaging in the activity under a federal act or the rules and
111 regulations promulgated under the federal act; or
112 (C) activity described in Subsection (1)(u)(i), if the individual performing the activity
113 is prevented or restricted from engaging in the activity under Section 67-5-13.
114 (v) "Political affiliation" means the state of belonging to or endorsing a political party.
115 [~~(u)~~] (w) "Pregnancy, childbirth, or pregnancy-related conditions" includes
116 breastfeeding or medical conditions related to breastfeeding.
117 [~~(v)~~] (x) "Presiding officer" means the same as that term is defined in Section
118 63G-4-103.
119 [~~(w)~~] (y) "Prohibited employment practice" means a practice specified as
120 discriminatory, and therefore unlawful, in Section 34A-5-106.

121 ~~[(x)]~~ (z) "Religious leader" means an individual who is associated with, and is an
122 authorized representative of, a religious organization or association or a religious corporation
123 sole, including a member of clergy, a minister, a pastor, a priest, a rabbi, an imam, or a spiritual
124 advisor.

125 ~~[(y)]~~ (aa) "Retaliate" means the taking of adverse action by an employer, employment
126 agency, labor organization, apprenticeship program, on-the-job training program, or vocational
127 school against one of its employees, applicants, or members because the employee, applicant,
128 or member:

129 (i) opposes an employment practice prohibited under this chapter; or

130 (ii) files charges, testifies, assists, or participates in any way in a proceeding,
131 investigation, or hearing under this chapter.

132 ~~[(z)]~~ (bb) "Sexual orientation" means an individual's actual or perceived orientation as
133 heterosexual, homosexual, or bisexual.

134 ~~[(aa)]~~ (cc) "Undue hardship" means an action that requires significant difficulty or
135 expense when considered in relation to factors such as the size of the entity, the entity's
136 financial resources, and the nature and structure of the entity's operation.

137 ~~[(bb)]~~ (dd) "Unincorporated entity" means an entity organized or doing business in the
138 state that is not:

139 (i) an individual;

140 (ii) a corporation; or

141 (iii) publicly traded.

142 ~~[(cc)]~~ (ee) "Vocational school" means a school or institution conducting a course of
143 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to
144 pursue a manual, technical, industrial, business, commercial, office, personal services, or other
145 nonprofessional occupations.

146 (2) (a) For purposes of this chapter, an unincorporated entity that is required to be
147 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to
148 be the employer of each individual who, directly or indirectly, holds an ownership interest in
149 the unincorporated entity.

150 (b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
151 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption

152 under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that
153 the individual:

- 154 (i) is an active manager of the unincorporated entity;
- 155 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
156 entity; or
- 157 (iii) is not subject to supervision or control in the performance of work by:
 - 158 (A) the unincorporated entity; or
 - 159 (B) a person with whom the unincorporated entity contracts.

160 (c) As part of the rules made under Subsection (2)(b), the commission may define:

- 161 (i) "active manager";
- 162 (ii) "directly or indirectly holds at least an 8% ownership interest"; and
- 163 (iii) "subject to supervision or control in the performance of work."

164 (3) For purposes of determining whether two or more persons are considered joint
165 employers under this chapter, an administrative ruling of a federal executive agency may not be
166 considered a generally applicable law unless that administrative ruling is determined to be
167 generally applicable by a court of law, or adopted by statute or rule.

168 (4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

- 169 (i) a franchisee; or
- 170 (ii) a franchisee's employee.

171 (b) With respect to a specific claim for relief under this chapter made by a franchisee or
172 a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise
173 that exercises a type or degree of control over the franchisee or the franchisee's employee not
174 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
175 and brand.

176 Section 2. Section **34A-5-106** is amended to read:

177 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**
178 **practices.**

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

181 (a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate a
182 person, or to retaliate against, harass, or discriminate in matters of compensation or in terms,

183 privileges, and conditions of employment against a person otherwise qualified, because of:

- 184 (A) race;
- 185 (B) color;
- 186 (C) sex;
- 187 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 188 (E) age, if the individual is 40 years [~~of age~~] old or older;
- 189 (F) religion;
- 190 (G) national origin;
- 191 (H) disability;
- 192 (I) sexual orientation; [~~or~~]
- 193 (J) gender identity[-];
- 194 (K) political activity; or
- 195 (L) political affiliation.

196 (ii) A person may not be considered "otherwise qualified," unless that person possesses
197 the following required by an employer for any particular job, job classification, or position:

- 198 (A) education;
- 199 (B) training;
- 200 (C) ability, with or without reasonable accommodation;
- 201 (D) moral character;
- 202 (E) integrity;
- 203 (F) disposition to work;
- 204 (G) adherence to reasonable rules and regulations; and
- 205 (H) other job related qualifications required by an employer.

206 (iii) (A) As used in this chapter, "to discriminate in matters of compensation" means
207 the payment of differing wages or salaries to employees having substantially equal experience,
208 responsibilities, and skill for the particular job.

209 (B) Notwithstanding Subsection (1)(a)(iii)(A):

210 (I) nothing in this chapter prevents an increase in pay as a result of longevity with the
211 employer, if the salary increase is uniformly applied and available to all employees on a
212 substantially proportional basis; and

213 (II) nothing in this section prohibits an employer and employee from agreeing to a rate

214 of pay or work schedule designed to protect the employee from loss of Social Security payment
215 or benefits if the employee is eligible for those payments.

216 (b) An employment agency may not:

217 (i) refuse to list and properly classify for employment, or refuse to refer an individual
218 for employment, in a known available job for which the individual is otherwise qualified,
219 because of:

220 (A) race;

221 (B) color;

222 (C) sex;

223 (D) pregnancy, childbirth, or pregnancy-related conditions;

224 (E) religion;

225 (F) national origin;

226 (G) age, if the individual is 40 years [~~of age~~] old or older;

227 (H) disability;

228 (I) sexual orientation; [~~or~~]

229 (J) gender identity; [~~or~~]

230 (K) political activity; or

231 (L) political affiliation; or

232 (ii) comply with a request from an employer for referral of an applicant for
233 employment if the request indicates either directly or indirectly that the employer discriminates
234 in employment on account of:

235 (A) race;

236 (B) color;

237 (C) sex;

238 (D) pregnancy, childbirth, or pregnancy-related conditions;

239 (E) religion;

240 (F) national origin;

241 (G) age, if the individual is 40 years [~~of age~~] old or older;

242 (H) disability;

243 (I) sexual orientation; [~~or~~]

244 (J) gender identity[~~;~~];

245 (K) political activity; or

246 (L) political affiliation.

247 (c) (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):

248 (A) exclude an individual otherwise qualified from full membership rights in the labor
249 organization;

250 (B) expel the individual from membership in the labor organization; or

251 (C) otherwise discriminate against or harass a member of the labor organization in full
252 employment of work opportunity, or representation.

253 (ii) A labor organization may not take an action listed in this Subsection (1)(c) because
254 of:

255 (A) race;

256 (B) sex;

257 (C) pregnancy, childbirth, or pregnancy-related conditions;

258 (D) religion;

259 (E) national origin;

260 (F) age, if the individual is 40 years [~~of age~~] old or older;

261 (G) disability;

262 (H) sexual orientation; [~~or~~]

263 (I) gender identity[-];

264 (J) political activity; or

265 (K) political affiliation.

266 (d) (i) Unless based upon a bona fide occupational qualification, or required by and
267 given to an agency of government for a security reason, an employer, employment agency, or
268 labor organization may not do the following if the statement, advertisement, publication, form,
269 or inquiry violates Subsection (1)(d)(ii):

270 (A) print, circulate, or cause to be printed or circulated a statement, advertisement, or
271 publication;

272 (B) use a form of application for employment or membership; or

273 (C) make any inquiry in connection with prospective employment or membership.

274 (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or
275 inquiry that directly expresses a limitation, specification, or discrimination as to:

- 276 (A) race;
- 277 (B) color;
- 278 (C) religion;
- 279 (D) sex;
- 280 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 281 (F) national origin;
- 282 (G) age, if the individual is 40 years [~~of age~~] old or older;
- 283 (H) disability;
- 284 (I) sexual orientation; [~~or~~]
- 285 (J) gender identity[~~;~~];
- 286 (K) political activity; or
- 287 (L) political affiliation.

288 (e) A person, whether or not an employer, an employment agency, a labor organization,
289 or an employee or member of an employer, employment agency, or labor organization, may
290 not:

291 (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a
292 discriminatory or prohibited employment practice;

293 (ii) obstruct or prevent a person from complying with this chapter, or any order issued
294 under this chapter; or

295 (iii) attempt, either directly or indirectly, to commit an act prohibited in this section.

296 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational
297 school providing, coordinating, or controlling an apprenticeship program or providing,
298 coordinating, or controlling an on-the-job-training program, instruction, training, or retraining
299 program may not:

300 (A) deny to, or withhold from, any qualified person the right to be admitted to or
301 participate in an apprenticeship training program, on-the-job-training program, or other
302 occupational instruction, training, or retraining program because of:

- 303 (I) race;
- 304 (II) color;
- 305 (III) sex;
- 306 (IV) pregnancy, childbirth, or pregnancy-related conditions;

- 307 (V) religion;
- 308 (VI) national origin;
- 309 (VII) age, if the individual is 40 years [~~of age~~] old or older;
- 310 (VIII) disability;
- 311 (IX) sexual orientation; [~~or~~]
- 312 (X) gender identity;
- 313 (XI) political activity; or
- 314 (XII) political affiliation;
- 315 (B) discriminate against or harass a qualified person in that person's pursuit of a
- 316 program described in Subsection (1)(f)(i)(A) because of:
 - 317 (I) race;
 - 318 (II) color;
 - 319 (III) sex;
 - 320 (IV) pregnancy, childbirth, or pregnancy-related conditions;
 - 321 (V) religion;
 - 322 (VI) national origin;
 - 323 (VII) age, if the individual is 40 years [~~of age~~] old or older;
 - 324 (VIII) disability;
 - 325 (IX) sexual orientation; [~~or~~]
 - 326 (X) gender identity;
 - 327 (XI) political activity; or
 - 328 (XII) political affiliation;
- 329 (C) discriminate against a qualified person in the terms, conditions, or privileges of a
- 330 program described in Subsection (1)(f)(i)(A), because of:
 - 331 (I) race;
 - 332 (II) color;
 - 333 (III) sex;
 - 334 (IV) pregnancy, childbirth, or pregnancy-related conditions;
 - 335 (V) religion;
 - 336 (VI) national origin;
 - 337 (VII) age, if the individual is 40 years [~~of age~~] old or older;

338 (VIII) disability;
339 (IX) sexual orientation; [or]
340 (X) gender identity; [or]
341 (XI) political activity; or
342 (XII) political affiliation; or
343 (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or
344 published, a notice or advertisement relating to employment by the employer, or membership in
345 or a classification or referral for employment by a labor organization, or relating to a
346 classification or referral for employment by an employment agency, indicating a preference,
347 limitation, specification, or discrimination based on:
348 (I) race;
349 (II) color;
350 (III) sex;
351 (IV) pregnancy, childbirth, or pregnancy-related conditions;
352 (V) religion;
353 (VI) national origin;
354 (VII) age, if the individual is 40 years [~~of age~~] old or older;
355 (VIII) disability;
356 (IX) sexual orientation; [or]
357 (X) gender identity[-];
358 (XI) political activity; or
359 (XII) political affiliation.
360 (ii) Notwithstanding Subsection (1)(f)(i)(D), if the following is a bona fide
361 occupational qualification for employment, a notice or advertisement described in Subsection
362 (1)(f)(i)(D) may indicate a preference, limitation, specification, or discrimination based on:
363 (A) race;
364 (B) color;
365 (C) religion;
366 (D) sex;
367 (E) pregnancy, childbirth, or pregnancy-related conditions;
368 (F) age;

369 (G) national origin;

370 (H) disability;

371 (I) sexual orientation; ~~[or]~~

372 (J) gender identity~~[-]~~;

373 (K) political activity; or

374 (L) political affiliation.

375 (g) Subject to Subsection (7), an employer may not:

376 (i) refuse to provide reasonable accommodations for an employee related to pregnancy,
377 childbirth, breastfeeding, or related conditions:

378 (A) if the employee requests a reasonable accommodation; and

379 (B) unless the employer demonstrates that the accommodation would create an undue
380 hardship on the operations of the employer;

381 (ii) require an employee to terminate employment if another reasonable
382 accommodation can be provided for the employee's pregnancy, childbirth, breastfeeding, or
383 related conditions unless the employer demonstrates that the accommodation would create an
384 undue hardship on the operations of the employer; or

385 (iii) deny employment opportunities to an employee, if the denial is based on the need
386 of the employer to make reasonable accommodations related to the pregnancy, childbirth,
387 breastfeeding, or related conditions of an employee unless the employer demonstrates that the
388 accommodation would create an undue hardship on the operations of the employer.

389 (2) Subsections (1)(a) through (1)(g) may not be construed to:

390 (a) prevent:

391 ~~[(a)]~~ (i) the termination of employment of an individual who, with or without
392 reasonable accommodation, is physically, mentally, or emotionally unable to perform the duties
393 required by that individual's employment;

394 ~~[(b)]~~ (ii) the variance of insurance premiums or coverage on account of age; ~~[or]~~

395 ~~[(c)]~~ (iii) a restriction on the activities of a person licensed in accordance with Title
396 32B, Alcoholic Beverage Control Act, with respect to an individual who is under 21 years ~~[of~~
397 ~~age]~~ old[-]; or

398 (iv) the enforcement of Section 78A-2-221 or 78A-7-206 regarding political activity; or

399 (b) conflict with the provisions of Section 10-3-1108, 17-30-22, 17-30a-314, 17-33-11,

400 [67-5-13](#), or [67-19-19](#).

401 (3) (a) It is not a discriminatory or prohibited employment practice:

402 (i) for an employer to hire and employ an employee, for an employment agency to
403 classify or refer for employment an individual, for a labor organization to classify ~~[its]~~ the labor
404 organization's membership or to classify or refer for employment an individual, or for an
405 employer, labor organization, or joint labor-management committee controlling an
406 apprenticeship or other training or retraining program to admit or employ an individual in the
407 program on the basis of religion, sex, pregnancy, childbirth, or pregnancy-related conditions,
408 age, national origin, disability, sexual orientation, ~~[or]~~ gender identity, political activity, or
409 political affiliation in those certain instances when religion, sex, pregnancy, childbirth, or
410 pregnancy-related conditions, age, if the individual is 40 years ~~[of age]~~ old or older, national
411 origin, disability, sexual orientation, ~~[or]~~ gender identity, political activity, or political
412 affiliation is a bona fide occupational qualification reasonably necessary to the normal
413 operation of that particular business or enterprise;

414 (ii) for a school, college, university, or other educational institution to hire and employ
415 an employee of a particular religion if:

416 (A) the school, college, university, or other educational institution is, in whole or in
417 substantial part, owned, supported, controlled, or managed by a particular religious corporation,
418 association, or society; or

419 (B) the curriculum of the school, college, university, or other educational institution is
420 directed toward the propagation of a particular religion;

421 (iii) for an employer to give preference in employment to:

422 (A) the employer's:

423 (I) spouse;

424 (II) child; or

425 (III) son-in-law or daughter-in-law;

426 (B) a person for whom the employer is or would be liable to furnish financial support if
427 the person were unemployed;

428 (C) a person to whom the employer during the preceding six months furnishes more
429 than one-half of total financial support regardless of whether or not the employer was or is
430 legally obligated to furnish support; or

431 (D) a person whose education or training is substantially financed by the employer for
432 a period of two years or more.

433 (b) Nothing in this chapter applies to a business or enterprise on or near an Indian
434 reservation with respect to a publicly announced employment practice of the business or
435 enterprise under which preferential treatment is given to an individual because that individual
436 is a native American Indian living on or near an Indian reservation.

437 (c) Nothing in this chapter may be interpreted to require an employer, employment
438 agency, labor organization, vocational school, joint labor-management committee, or
439 apprenticeship program subject to this chapter to grant preferential treatment to an individual or
440 to a group because of the race, color, religion, sex, age, national origin, disability, sexual
441 orientation, [~~or~~] gender identity, political activity, or political affiliation of the individual or
442 group on account of an imbalance that may exist with respect to the total number or percentage
443 of persons of a race, color, religion, sex, age, national origin, disability, sexual orientation, [~~or~~]
444 gender identity, or political affiliation, or engaged in a political activity employed by an
445 employer, referred or classified for employment by an employment agency or labor
446 organization, admitted to membership or classified by a labor organization, or admitted to or
447 employed in, any apprenticeship or other training program, in comparison with the total
448 number or percentage of persons of that race, color, religion, sex, age, national origin,
449 disability, sexual orientation, [~~or~~] gender identity, or political affiliation, or engaged in that
450 political activity in any community or county or in the available work force in any community
451 or county.

452 (4) It is not a discriminatory or prohibited practice with respect to age to observe the
453 terms of a bona fide seniority system or any bona fide employment benefit plan such as a
454 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this
455 chapter, except that an employee benefit plan may not excuse the failure to hire an individual.

456 (5) Notwithstanding Subsection (4), or another statute to the contrary, a person may not
457 be subject to involuntary termination or retirement from employment on the basis of age alone,
458 if the individual is 40 years [~~of age~~] old or older, except:

459 (a) under Subsection (6); and

460 (b) when age is a bona fide occupational qualification.

461 (6) Nothing in this section prohibits compulsory retirement of an employee who has

462 attained at least 65 years [of age] old, and who, for the two-year period immediately before
463 retirement, is employed in a bona fide executive or a high policymaking position, if:

464 (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit
465 from the employee's employer's pension, profit-sharing, savings, or deferred compensation
466 plan, or any combination of those plans; and

467 (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.

468 (7) (a) For purposes of Subsection (1)(g), an employer may require an employee to
469 provide a certification from the employee's health care provider concerning the medical
470 advisability of a reasonable accommodation.

471 (b) A certification under Subsection (7)(a) shall include:

472 (i) the date the reasonable accommodation becomes medically advisable;

473 (ii) the probable duration of the reasonable accommodation; and

474 (iii) an explanatory statement as to the medical advisability of the reasonable
475 accommodation.

476 (c) Notwithstanding Subsections (1)(g) and (7)(a), an employer may not require an
477 employee to obtain a certification from the employee's health care provider for more frequent
478 restroom, food, or water breaks.

479 (d) An employer is not required under Subsection (1)(g) or this Subsection (7) to
480 permit an employee to have the employee's child at the workplace for purposes of
481 accommodating pregnancy, childbirth, breastfeeding, or related conditions.

482 (e) An employer shall include in an employee handbook, or post in a conspicuous place
483 in the employer's place of business, written notice concerning an employee's rights to
484 reasonable accommodations for pregnancy, childbirth, breastfeeding, or related conditions.

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

486 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
487 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

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

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

492 (c) A request for agency action made under this section shall be filed within 180 days

493 after the alleged discriminatory or prohibited employment practice occurs.

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

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

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

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

503 (3) (a) Before an investigation begins into allegations of discriminatory or prohibited
504 employment practice, the division shall promptly assign a mediator to offer mediation services
505 between the parties by conference.

506 (b) (i) If mediation services are refused or no settlement is reached, the division shall
507 promptly assign an investigator.

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

510 (c) The division and the division's staff, agents, and employees shall conduct every
511 investigation in fairness to all parties and agencies involved.

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

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

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

521 (ii) A determination and order issued under this Subsection (4)(b) shall include a
522 notice:

523 (A) of the right to request an evidentiary hearing under Subsection (4)(c); and

524 (B) that failure to request an evidentiary hearing under Subsection (4)(c) will result in
525 the determination and order becoming final, in accordance with Subsection (4)(d).

526 (c) A party may make a written request to the Division of Adjudication for an
527 evidentiary hearing to review de novo the director's or the director's designee's determination
528 and order within 30 days from the day on which the determination and order for dismissal is
529 issued.

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

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

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

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

541 (A) direct the respondent to cease any discriminatory or prohibited employment
542 practice;

543 (B) provide relief to the aggrieved party as the director or the director's designee
544 determines is appropriate;

545 (C) include a notice of the right to request an evidentiary hearing under Subsection
546 (5)(c); and

547 (D) include a notice that failure to request an evidentiary hearing under Subsection
548 (5)(c) will result in the determination and order becoming final, in accordance with Subsection
549 (5)(d).

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

553 (d) If the director or the director's designee receives no timely request for a hearing, the
554 determination and order issued by the director or the director's designee in accordance with

555 Subsection (5)(b) becomes the final order of the commission.

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

559 (7) (a) If, upon reviewing all the evidence at a hearing, the presiding officer finds that a
560 respondent has not engaged in a discriminatory or prohibited employment practice, the
561 presiding officer shall issue an order dismissing the request for agency action containing the
562 allegation of a discriminatory or prohibited employment practice.

563 (b) The presiding officer may order that the respondent be reimbursed by the
564 complaining party for the respondent's attorney fees and costs.

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

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

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

570 (i) reinstatement;

571 (ii) back pay and benefits;

572 (iii) attorney fees; and

573 (iv) costs.

574 (9) If a discriminatory practice described in Subsection (8) includes discrimination in
575 matters of compensation, the presiding officer may provide, to the complaining party, in
576 addition to the amount available to the complaining party under Subsection (8)(b), an
577 additional amount equal to the amount of back pay available to the complaining party under
578 Subsection (8)(b)(ii) unless a respondent shows that:

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

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

582 (10) Conciliation between the parties is to be urged and facilitated at all stages of the
583 adjudicative process.

584 (11) (a) Either party may file with the Division of Adjudication a written request for
585 review before the commissioner or Appeals Board of the order issued by the presiding officer

586 in accordance with:

- 587 (i) Section 63G-4-301; and
- 588 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

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

591 (12) An order of the commission under Subsection (11)(a) is subject to judicial review
592 as provided in:

- 593 (a) Section 63G-4-403; and
- 594 (b) Chapter 1, Part 3, Adjudicative Proceedings.

595 (13) The commission may make rules concerning procedures under this chapter in
596 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

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

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

609 (15) The procedures contained in this section are the exclusive remedy under state law
610 for employment discrimination based upon:

- 611 (a) race;
- 612 (b) color;
- 613 (c) sex;
- 614 (d) retaliation;
- 615 (e) pregnancy, childbirth, or pregnancy-related conditions;
- 616 (f) age;

- 617 (g) religion;
618 (h) national origin;
619 (i) disability;
620 (j) sexual orientation; [or]
621 (k) gender identity[-];
622 (l) political activity; or
623 (m) political affiliation.

624 (16) (a) The commencement of an action under federal law for relief based upon an act
625 prohibited by this chapter bars the commencement or continuation of an adjudicative
626 proceeding before the commission in connection with the same claim under this chapter.

627 (b) The transfer of a request for agency action to the Equal Employment Opportunity
628 Commission in accordance with Subsection (1)(d) is considered the commencement of an
629 action under federal law for purposes of Subsection (16)(a).

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

632 Section 4. Section **34A-5-112** is amended to read:

633 **34A-5-112. Religious liberty protections -- Expressing beliefs and commitments**
634 **in workplace -- Prohibition on employment actions against certain employee speech.**

635 (1) An employee may express the employee's religious [or], moral, or political beliefs
636 and commitments in the workplace in a reasonable, non-disruptive, and non-harassing way on
637 equal terms with similar types of expression of beliefs or commitments allowed by the
638 employer in the workplace, unless the expression is in direct conflict with the essential
639 business-related interests of the employer.

640 (2) An employer may not discharge, demote, terminate, or refuse to hire any person, or
641 retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and
642 conditions of employment against any person otherwise qualified, for lawful expression or
643 expressive activity outside of the workplace regarding the person's religious, political, or
644 personal convictions, including convictions about marriage, family, or sexuality, unless the
645 expression or expressive activity is in direct conflict with the essential business-related
646 interests of the employer.