

A FAIR & JUST COLORADO

League of Women Voters of Denver | March 15, 2022

ONE COLORADO OVERVIEW

One Colorado was founded in 2010 and is the state's largest advocacy organization for LGBTQ Coloradans and our families

Mission: To secure protections and opportunities for LGBTQ Coloradans and our families

Vision: A fair and just Colorado

Framework: Racial, economic, and gender justice



POLICY IMPACTING LGBTQ+ COLORADANS

2019

HB19-1129 Prohibit Conversion Therapy for Minors

HB19-1039 Jude's Law

2020

SB20-221 Ban on Gay and Trans Panic Defense

HB20-1061 HIV Prevention

Defeated 7 anti-LGBTQ bills

2021

HB21-1108 Gender Identity Expression Anti-Discrimination

HB21-1072 Equal Access Services for Out-of-home Placements

2022

HB22-1267 Culturally Relevant Healthcare Training

HB22-1153 Family Affirmation Act

HB22-XXXX Hate Crimes update

COLORADO ANTI-DISCRIMINATION ACT

C.R.S. section 24-34-601 *et seq.*

Prohibits discrimination in places of public accommodation

Public Accommodation means “any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public.”

COLORADO ANTI-DISCRIMINATION ACT, cont.

Discriminatory/Unlawful practice to: “Refuse, withhold from, or deny to an individual or a group full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.”

Because of: Disability, Race, Creed, Color, Sex, Sexual Orientation, Gender Identity, Gender Expression, Marital Status, National Origin or Ancestry.

HB 21-1108 Gender Expression

Defined as:

“AN INDIVIDUAL'S WAY OF REFLECTING AND EXPRESSING THE INDIVIDUAL'S GENDER TO THE OUTSIDE WORLD, TYPICALLY DEMONSTRATED THROUGH APPEARANCE, DRESS, AND BEHAVIOR.”

HB 21-1108 Gender Identity

Defined as:

“AN INDIVIDUAL'S INNATE SENSE OF THE INDIVIDUAL'S OWN GENDER, WHICH MAY OR MAY NOT CORRESPOND WITH THE INDIVIDUAL'S SEX ASSIGNED AT BIRTH.”

HB 21-1108 Sexual Orientation

Defined as:

“An individual's IDENTITY, OR ANOTHER INDIVIDUAL'S PERCEPTION THEREOF, IN RELATION TO THE GENDER OR GENDERS TO WHICH THE INDIVIDUAL IS SEXUALLY OR EMOTIONALLY ATTRACTED AND THE BEHAVIOR OR SOCIAL AFFILIATION THAT MAY RESULT FROM THE ATTRACTION.”

HEALTH FIRST COLORADO (COLORADO MEDICAID)

State policy: What is Health First Colorado?

Health First Colorado, Colorado's Medicaid program, is an income-based public health insurance program for eligible Coloradans. Medicaid was expanded in 2017 to include coverage for transgender services.

COLORADO DIVISION OF INSURANCE

- State's Insurance Unfair Practices Act Prohibitions on Discrimination Based Upon Sexual Orientation (Bulletin No. B-4.49)
- Issued new regulation 4-2-62 prohibiting discrimination under the Act on the basis of sexual orientation and gender identity.

2023 ESSENTIAL HEALTH BENEFITS BENCHMARK PLAN



“I am proud that Colorado continues to lead the nation in healthcare and health insurance reform,” and Lieutenant Governor and Director of the Office of Saving People Money on Health Care Dianne Primavera. **“Our Administration, including the Office of Saving People Money on Health Care and Commissioner Conway and the Division of Insurance, is dedicated to making access to high-quality, affordable, equitable care a reality for all Coloradans. Today’s announcement means that gender diverse Coloradans can stop guessing at how and which gender-affirming benefits are included in their coverage.”**

2023 ESSENTIAL HEALTH BENEFITS BENCHMARK PLAN

- Effective January 1, 2023
- Applies to plans regulated by the Colorado Division of Insurance
- Many Coloradans have insurance plans not regulated by the division of insurance
- Health First Colorado (Colorado Medicaid) also covers gender-affirming care



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LWV Denver Program Briefing: Employment Issues for Non-binary and Transgender Individuals

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What laws protect non-binary & transgender individuals from employment discrimination?

- Federal: Title VII of the Civil Rights Act of 1964 (Title VII)
 - Explicit coverage for individuals based on sex
 - Coverage “expanded” by the U.S. Supreme Court to cover sexual orientation and transgender status
 - Applies to companies with 15 or more employees
- State: Colorado Anti-Discrimination Act (CADA)
 - Explicit coverage for individuals based on sexual orientation, gender identity, gender expression
 - CADA allows for personal liability for individuals who “aided & abetted” in discriminatory or retaliatory conduct
 - Applies to all companies, regardless of size
- Both protect individuals from retaliation for engaging in protected activity & require going through an administrative process before filing suit

What is employment discrimination?

- You cannot treat someone differently because of their protected class (gender expression, transgender status, sex, etc.) or for expressing concerns about that different treatment (a/k/a retaliation)
 - Includes hiring, discipline, harassment, termination, pay, promotion/demotion, etc.
- How do you prove it?
 - Treatment before and after disclosure of protected class
 - Comments to/about you & members of the same protected class
 - Includes deliberately misusing preferred names & pronouns
 - Treatment of “similarly situated” employees
 - Subject to the same expectations, may have the same supervisor, etc.

Recent CADA Improvements

- Remedies are now (mostly) comparable to federal law, i.e., compensatory & punitive damages and attorney fees, & jury trials (Job Protection Civil Rights Enforcement Act)
- “Race” now includes hair texture, hair type, or protective hairstyle commonly or historically associated with race, e.g., corn rows, tight coils or curls, headwraps, etc. (Crown Act)
- Workers who are pregnant & recovering from childbirth and related conditions receive accommodations (Pregnant Workers Fairness Act)
- Includes explicit protection for “gender expression” (HB-21-1108)

What Issues Remain with CADA?

- Compensatory (emotional distress) damages for small employers
 - 1-4 employees, \$10,000
 - 5-14 employees, \$25,000
 - 15-100 employees, \$50,000 (same as federal law)
- 6 months to file a charge of discrimination
- No coverage for “individuals in the domestic service of any person” (nanny or housekeeper), employees of religious organizations or associations, or independent contractors
- Harassment is actionable only if it is “severe or pervasive” and if a complaint has been filed with the employer & employer has failed to act on it
- Cause finding rate of 5% or less by the CCRD

Protecting Opportunities & Workers' Rights (POWR) Act

- Introduced in 2021 as SB21-176; returning as HB22-???
- Definition of “employee” expanded to include individuals in domestic service and any individual performing services for pay for another
- Definition of “harass” no longer requires creation of a hostile work environment
 - Eliminates the “severe or pervasive” standard
- Makes failing to initiate an investigation of a complaint or taking remedial action in response to a complaint a discriminatory practice
- Expands time to file from 6 months to 300 days (on par with federal law)

Thank you!

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