

DEPARTMENT OF REGULATORY AGENCIES

Civil Rights Commission

STATE OF COLORADO CIVIL RIGHTS COMMISSION RULES AND REGULATIONS

3 CCR 708-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

INTRODUCTION

Rule 10.1 – Statement of Purpose.

The purpose of the Rules and Regulations of the Colorado Civil Rights Commission (hereinafter the "Rules") is to implement Parts 3 through 7 of Article 34 of Title 24, Colorado Revised Statutes (C.R.S.), as amended. These Rules are to serve as a set of standards, to provide guidance, and indicate factors which will be taken into consideration in determining whether or not there has been a violation of the Law. These Rules shall be liberally construed to prohibit discriminatory or unfair practices in employment, housing, places of public accommodation and advertising.

Rule 10.2 – Definitions.

- (A) "Administrative Law Judge" (ALJ) means a hearing officer appointed by the Commission through the Office of Administrative Courts of the Department of Personnel and Administration or a hearing officer appointed by the Governor at the request of the Commission, for purposes of conducting an administrative hearing authorized by the Law.
- (B) "Auxiliary Aids" means services or devices that enable persons with disabilities to have an equal opportunity to participate in, and enjoy the benefits of public accommodations, public entities, and other activities, programs, employment, housing, and services. Such services or devices may include, but are not limited to, the following: qualified readers, qualified interpreters, service animals, breathing equipment, wheelchairs, walkers, and orthopedic appliances.
- (C) "Bona Fide Occupational Qualification" (BFOQ) means employment qualifications that employers are allowed to consider while making decisions about hiring and retention of employees. The qualification should relate to an essential job duty and is necessary for operation of the particular business.
- (D) "Charging Party" or "Complainant" means a person alleging a discriminatory or unfair practice prohibited by the Law.
- (E) "Commission" means the Colorado Civil Rights Commission created by § 24-34-303, C.R.S.
- (F) "Commissioner" means a duly appointed member of the Commission.
- (G) "Covered Entity" means any person, business, or institution required to comply with the anti-discrimination provisions of the Law.
- (H) "Creed" means all aspects of religious beliefs, observances or practices, as well as sincerely-held moral and ethical beliefs as to what is right and wrong, and/or addresses ultimate ideas or questions regarding the meaning of existence, as well as the beliefs or teachings of a particular

religion, church, denomination or sect. A creed does not include political beliefs, association with political beliefs or political interests, or membership in a political party.

- (I) "Days" means calendar days.
- (J) "Director" means the director of the Colorado Civil Rights Division, which office is created by §24-34-302, C.R.S.
- (K) "Discriminatory or Unfair Practice" means one or more acts, practices, commissions or omissions prohibited by the Law.
- (L) "Division" means the Colorado Civil Rights Division, created by § 24-34-302, C.R.S.
- (M) "Domestic Service" means the performance of tasks such as housecleaning, cooking, childcare, gardening and personal services by an individual in a private household.
- (N) "Employee," within the meaning of § 24-34-401(2), C.R.S., means any person who performs services for remuneration on behalf of an employer. An "employee" does not include the following:
 - (1) A person in the domestic service of any person;
 - (2) An independent contractor, as provided in Rule 75;
 - (3) A non-paid or uncompensated volunteer of a nonprofit organization or governmental agency;
 - (4) A partner, officer, member of a board of directors, or major shareholder, however if the individual is subject to the organization's direction and control and/or does not participate in managing the organization, then the individual shall be considered an employee;
 - (5) An elected governmental official or a person appointed to serve the remainder of a term of an elected governmental official; or
 - (6) A religious minister, whether lay or ordained, or other employee of a church or religious organization whose job duties are primarily of a ministerial, religious, spiritual or non-secular nature.
- (O) "Employer" shall have the meaning set forth in § 24-34-401, C.R.S., and references in these rules to "employers" shall include employment agencies and labor organizations.
- (P) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.
- (Q) "Gender identity" means an innate sense of one's own gender.
- (R) "Gender expression" means external appearance, characteristics or behaviors typically associated with a specific gender.
- (S) "Investigation" means the systematic inquiry into the allegations of a charge by the Division and its Staff pursuant to its authority under 24-34-302 and 306.
- (T) "Law" means Parts 3 through 7 of Article 34 of Title 24, of the Colorado Revised Statutes. Whenever these Rules refer to a provision of the Law or any other statutory or regulatory

provision, the reference shall mean the current statutory or regulatory provision in effect, as hereinafter amended, revised, or re-codified.

- (U) "Mail" means first class, postage pre-paid, United States mail, facsimile, or electronic mail.
- (V) "Major life activities" means life functions, including, but not limited to, the following: caring for one's self, performing manual tasks, walking, standing, seeing, hearing, speaking, breathing, eating, sleeping, procreating, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include major bodily functions, including, but not limited to the following: functions of the immune system; cell growth; digestive, bladder and bowel functions; neurological and brain functions; respiratory and circulatory functions; endocrine functions; and reproductive functions.
- (W) "Mental impairment" means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "mental impairment" includes, but is not limited to, such diseases and conditions as the following: emotional illness, anxiety disorders, mood disorders, post-traumatic stress disorder, depression, schizophrenia, and bipolar disorder.
- (X) "National origin" refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came.
- (Y) "Party" or "parties" means the Charging Party/Complainant and/or the Respondent.
- (Z) "Petitioner" means a party who applies to the appropriate court for judicial review or enforcement of final agency action or a party seeking declaratory relief under these Rules.
- (AA) "Physical impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems including, but not limited to, the following: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine. The term "physical impairment" also includes, but is not limited to, such diseases and conditions as the following: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, cancer, heart disease, diabetes, and human immunodeficiency virus (HIV) infection.
- (BB) "Religion" means all aspects of religious observance, belief and practice. A person does not have to be a member or follower of a particular organized religion, sect or faith tradition to have a religion.
- (CC) "Respondent" means any person, agency, organization, or other entity against whom a charge is filed pursuant to any provisions of the Law.
- (DD) "Sexual orientation," means a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person's perception thereof.
- (EE) "Substantially limits" means the inability to perform a major life activity that most people in the general population can perform, or a significant restriction as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which most people in the general population can perform that same major life activity.
- (FF) "Staff" means the Director and all persons employed to carry out the functions and duties of the Division pursuant to § 24-34-302, C.R.S.

- (GG) "Transgender" means having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.

PRACTICE AND PROCEDURE

Rule 10.3 – REPEALED

Rule 10.4 – Charges.

- (A) Who May File.

Any aggrieved person, directly or by an attorney, or the Commission, a Commissioner or the Attorney General may file a charge with the Division. Housing charges may be filed as designated above but may also be filed by an aggrieved person with the assistance of a non-attorney representative authorized by such aggrieved person or organization.

- (B) Charge Intake Procedures.

A potential Charging Party or Complainant shall cooperate in submitting all information and forms required by the Division prior to the filing of a charge. Intake forms may include, but are not limited to, the following: intake questionnaires; statements or affidavits of discrimination; minimizing damages statements; and disability questionnaires (where applicable). The submission of an intake form does not constitute the filing of a charge of discrimination. As described further below in this Rule, only a signed and verified charge in a form and content approved by the Division shall be accepted and filed as a charge of discrimination.

- (C) Contents.

(1) Charges of Discrimination in Employment and Places of Public Accommodation.

- (a) Charges alleging discrimination in employment and places of public accommodation, including charges alleging discriminatory advertising practices related to employment or places of public accommodation, shall contain the following information:
 - (b) The full name and mailing address of the Charging Party;
 - (c) The full name and mailing address of the Respondent;
 - (d) The basis of the alleged discrimination or unfair practice, identifying one or more protected classes and/or alleged retaliatory treatment;
 - (e) A statement of the jurisdictional authority for filing of the charge;
 - (f) A statement of personal harm that summarizes the discrete claim or claims of discriminatory treatment or unfair practices alleged against the Respondent;
 - (g) The Respondent's position, if known, with regard to the complaint;
 - (h) A statement of discrimination, consisting of a short and plain statement of the facts that give rise to the alleged discriminatory or unfair practice in employment, places of public accommodation, or advertising; and
 - (i) The most recent date the alleged discriminatory or unfair practice occurred.

(2) **Charges of Discrimination in Housing.**

Charges alleging discrimination in housing shall contain the following information:

- (a) The full name and mailing address of the Charging Party/Complainant.
- (b) The full name and mailing address of other persons aggrieved by the discriminatory treatment or unfair housing practice.
- (c) The full name and mailing address of the Respondent.
- (d) A short summary of the discrete claim or claims of discriminatory treatment or unfair housing practices alleged against the Respondent.
- (e) A statement of the jurisdictional authority for filing of the charge.
- (f) The basis of the alleged discrimination or unfair housing practice, identifying one or more protected classes and/or alleged retaliatory treatment.
- (g) The address and location of the property in question, or if no property is involved, the city and state where the alleged discrimination occurred.
- (h) A brief and concise statement of the facts regarding the alleged violation(s).
- (i) The most recent date on which the alleged discriminatory or unfair housing practice occurred.

(D) **Time Limits on Filing.**

- (1) Charges shall be filed within the time limits specified by the Law. In computing any applicable time period, the date of the alleged discriminatory act shall not be counted. If the last date upon which a timely charge may be filed falls upon a Saturday, Sunday or State of Colorado legal holiday, the charge shall be deemed timely if filed with the Division on the next regular business day.
- (2) Any untimely charge shall be barred and/or dismissed.
- (3) A signed charge shall be deemed filed as of the date of receipt at an official office of the Division.
- (4) For purposes of Part 4 of the Law, the date of the alleged discriminatory act is the date that the Charging Party first received notice of the adverse employment action at issue.

(E) **Filing, Review and Notice.**

- (1) Charges shall be in writing and shall be signed and verified by the Charging Party or their attorney. Charges shall be filed with the Division at any of its official offices or at other offices designated by the Division to accept written charges of discrimination. Charges shall be filed by either by personal delivery or mail.
- (2) Staff shall be available at the Division's offices to assist in the drafting and filing of charges and to review and approve charges submitted for appropriate form and content prior to filing.

- (3) Upon filing of the charge, the Division shall serve a copy of the charge and a notice by regular first class U.S. mail, postage pre-paid, to the last known address of the parties. The notice shall acknowledge the filing of the charge and advise the parties of the time limits applicable to charge processing and of the procedural rights and obligations of parties required by the Law and these Rules.

(F) Amendments.

- (1) Subject to the approval of the Division, charges may be amended under certain circumstances. Amendments to the charge may include, but are not limited to: amendments to cure technical defects and errors or omissions, including failure to sign or verify a charge; to clarify or amplify the allegations therein; to join additional or substitute parties; or to allege additional acts of unlawful, unfair or discriminatory practices arising from the subject matter of the original charge. Such amendments and amendments alleging additional acts which constitute unlawful, unfair, or discriminatory practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received.
- (2) Amendments shall be filed in the same manner as provided by the Law and these Rules for the filing and serving of the original charge.

(G) Withdrawal.

The Director may allow withdrawal of a charge or its amendments prior to the time a complaint has been issued by the Commission. Thereafter, withdrawal of charges and of complaints may only be made with the approval of the Commission.

Rule 10.5 – Mediation, Investigation, Dismissal and Conciliation.

(A) Voluntary Mediation.

- (1) The Division may invite the parties to meet in an attempt to mediate and informally resolve the charge at any stage of the administrative process prior to the issuance of a determination of probable cause or no probable cause.
- (2) Nothing said or done during endeavors at mediation shall be disclosed by any party or used as evidence in any subsequent proceeding, unless the parties agree otherwise.
- (3) Upon request, the parties shall provide copies of settlement agreements entered into pursuant to mediation or private settlement negotiations to the Division, regardless of confidentiality provisions contained in such agreements. Settlement agreements received by the Division shall be treated as confidential pursuant to § 24-34-306(3), C.R.S.

(B) Requests for Information.

The Division may request production from the parties; any witnesses, statements, testimony, information, documents, evidence, or the inspection of places or things, reasonably calculated to lead to the discovery of evidence relevant to the allegations or circumstances of the charge.

- (1) If a Charging Party fails or refuses to cooperate with a request for information, or otherwise unduly obstructs or delays the investigation, the Director may find that the charge lacks probable cause and dismiss the same.
- (2) Notwithstanding the Division's presumption that the conduct of any Respondent is fair and not discriminatory pursuant to § 24-34-305(3), C.R.S., if a Respondent fails or

refuses to cooperate with a request for information, a rebuttable presumption may be created that the particular piece of information requested is harmful to the Respondent's position.

(C) Determinations of Probable Cause and Dismissal.

(1) No Probable Cause Determinations.

If it is determined, based upon the information gathered during the investigation, that probable cause for crediting the allegations of a charge does not exist, the Director shall dismiss the charge and notify the parties of such determination in writing by mail. The notice shall advise the Charging Party of the right to appeal the no probable cause determination to the Commission and that if the Charging Party wishes to file a suit in district court, such lawsuit must be filed within ninety (90) days of the date of mailing of the determination.

(2) Probable Cause Determinations.

If it is determined based upon the information gathered during the investigation that probable cause for crediting the allegations of a charge exists, the Director shall notify the parties of such determination in writing by mail and order the parties to attempt to resolve the charge through conciliation (compulsory mediation).

(3) No Probable Cause Dismissal for Other Reasons.

The Director may, without deciding on the merits of the alleged acts of discrimination, dismiss a charge for the following reasons: lack of jurisdiction; voluntary withdrawal of the charge; settlement of the charge; receipt of a request for issuance of a right to sue notice; referral of the charge to the Equal Employment Opportunity Commission (EEOC), U.S. Department of Housing and Urban Development (HUD), or the Colorado State Personnel Board; failure or refusal by the Charging Party/Complainant to cooperate in the investigation; inability of the Division to locate the Charging Party; and for any other reasonable grounds documented by the Division during the investigation that, in the discretion of the Director, warrant administrative closure of the case.

(D) Conciliation.

(1) If the Director determines that probable cause exists, the Division shall attempt to eliminate or remedy the discriminatory practice through an agreement reached through compulsory mediation (conciliation).

(2) Conciliation entails the negotiation of a mutual agreement between the parties by a mediator, who may or may not be a staff member of the Division. The mediator shall contact the parties to initiate the conciliation.

(3) Types of relief sought in conciliation may include, but are not limited to, the following:

(a) Cease and Desist from a discriminatory practice;

(b) Back pay;

(c) Hiring of employee(s), with or without back pay;

(d) Reinstatement of employee(s), with or without back pay;

- (e) Upgrading or promoting of employee(s), with or without back pay;
 - (f) Referring of applicants for employment by an employment agency;
 - (g) Restoring membership in a labor organization;
 - (h) Admission to or continued enrollment in an apprentice or training program;
 - (i) Admission to or continued enrollment in a vocational school;
 - (j) Public and private apologies;
 - (k) Posting of anti-discrimination notices;
 - (l) Remedial affirmative activities to overcome a discriminatory practice;
 - (m) Policy and procedure modifications;
 - (n) Education and training of Respondent management and staff;
 - (o) Reporting to and monitoring by the Division as to the manner of compliance;
 - (p) Housing-specific remedies provided Part 5, Title 24, Article 34, C.R.S.; and
 - (q) Public Accommodations-specific remedies provided in Parts 6 and 7, Title 24, Article 34, C.R.S.
- (4) The assigned mediator shall determine when conciliation efforts are unsuccessful and a voluntary agreement is not likely to result. The Division may terminate its efforts to conciliate if the parties fail or refuse to make a good faith effort to resolve the dispute. The Division will inform the parties of the failure of conciliation in writing.
- (5) If the Charging Party fails or refuses to accept conciliation terms that the Director believes are reasonable, the Director may nevertheless resolve the charge in the public interest by entering into a conciliation agreement with the Respondent and dismiss the charge. The Charging Party may appeal the Director's action to the Commission in the same manner as provided in these Rules for appeals of determinations of no probable cause. A written notice of the conciliation agreement shall be mailed to all parties.
- (6) The terms of any conciliation or settlement agreement, regardless of confidentiality provision, shall be made available to the Division by the parties.
- (E) Disclosure.
- Without the written consent of all the parties, the Commission and the Division shall not disclose the filing of a charge, the information gathered during the investigation, or the efforts to eliminate such discrimination or unfair practice by mediation or conciliation unless the disclosure is made in connection with the conduct of the investigation, the filing of a petition seeking injunctive relief or at a public hearing. In disclosing information gathered during the investigation to the parties, or for any other reason, the Division may exercise reasonable discretion to redact personally identifying information of individuals, proprietary information, or trade secrets otherwise protected by other provisions of state law.
- (F) Evidence Examination.

Any of the parties or their counsel may examine any evidence contained in the investigative file of the charge, excluding documents or information made confidential by law. Evidence does not include Commission or Division work product or documents protected by attorney-client privilege.

(G) Notice of Right to Sue.

(1) Request for Issuance after 180 days.

If the Charging Party makes a written request for issuance of a notice of right to sue after the expiration of 180 days following the filing of the charge, the request shall be granted provided that the Commission has been given the opportunity to determine if the charge shall be noticed for hearing, if a probable cause determination has been issued, and has not caused to be served a written Notice and Complaint pursuant to § 24-34-306(4), C.R.S.

(2) Effect of Issuance of a Right to Sue Notice.

Issuance of a notice of right to sue at any time shall cause jurisdiction of the Division and Commission to cease, shall constitute final agency action and exhaustion of administrative remedies and proceedings pursuant to the Law and these Rules, and shall terminate further processing of the charge by the Division.

(3) Contents of Request.

All requests for issuance of a notice of a right to sue shall be in writing and signed by the Charging Party or their attorney.

(4) Contents of Notice.

The notice of right to sue shall authorize the Charging Party to bring a civil action in district court, advise as to the appropriate time period in which to sue as provided by the Law, and include the determination, decision, or dismissal, as appropriate.

Rule 10.6 – Appeal of the Director's Determination.

(A) Appeal Filing.

(1) An appeal of the Director's determination that probable cause does not exist shall be in writing on the Commission's designated appeal form and shall clearly state the grounds for appeal.

(a) Grounds for appeal are limited to the following:

1. Disregard or misapplication of applicable law; and/or
2. Disregard or misinterpretation of the available evidence.

(b) No new evidence will be considered on appeal unless there is an affirmative showing that such evidence was not reasonably available prior to or during the investigation.

(2) A Charging Party shall file an appeal with the Division within ten (10) days after the date of mailing of the Director's determination. In computing the ten-day period, the date of mailing of the determination shall not be counted. The last day of the ten-day period shall

be included, unless it is a weekend or State of Colorado legal holiday, in which event the ten-day period runs until the end of the next business day.

- (3) If the determination, appeal form, and related documentation was mailed by the Division to the Charging Party's last known mailing address, and has not been returned by the U.S. Postal Service, it shall be presumed that such mailing was received by the Charging Party.
- (4) The Commission, or an authorized designee, may grant an extension for good cause for submittal of an appeal. Only one extension may be granted.
- (5) If no appeal of the Director's determination is filed, such determination shall constitute final agency action.
- (6) Upon receipt of an appeal form, the Division shall mail a copy to the Respondent's last known address. A copy shall also be mailed to the Respondent's attorney of record. The Respondent may, within ten (10) calendar days after the date the Division mails the appeal to the Respondent, file a written statement in opposition to such appeal. The Commission or its authorized designee may grant the Respondent an extension for good cause if such application for extension is filed within the 10 days allowed for filing a statement in opposition to the appeal. Only one such extension may be granted.

(B) Commission's Action on Appeal.

- (1) The Commission shall consider an appeal at a Commission meeting following the timely filing of the appeal with the Division. The Commission's review shall be limited to the issues raised by the Charging Party on the designated appeal form and for which the Respondent had an opportunity to respond.
- (2) In reviewing an appeal, the Commission may allow the parties to appear at the designated Commission meeting. The appearance of one party does not compel the appearance of the other, however if the presence of one party is allowed, the opposing party shall be offered the opportunity to simultaneously appear and respond. The Commission, in its discretion, may grant or deny requests by the parties to appear and present oral argument on appeal.
- (3) The Commission may take the following action on appeal: it may reverse the Director's determination of no probable cause; it may remand the charge to the Division for further investigation; or it may uphold the Director's determination of no probable cause. If the Commission remands to the Division for further investigation of a charge, it shall provide specific direction for any required further investigation.
- (4) The Commission's decision on appeal shall be mailed to the parties at their last known addresses.

Rule 10.7 – Extensions of Time During the 270-Day Investigative Period.

(A) Procedure.

- (1) Whenever a party to a charge filed with the Colorado Civil Rights Division wishes to request an extension of time pursuant to § 24-34-306(11), C.R.S., such request shall be made to the Commission, a Commissioner or the Administrative Law Judge by notifying the Division.

- (2) Extensions of time shall not exceed a total of ninety (90) days to all Charging Parties and ninety (90) days to all Respondents or a total period of one hundred and eighty (180) days.
 - (3) Written notice of the approval or disapproval of an extension request shall be provided to all parties by the Division.
- (B) Standard for Granting Extensions.

In determining whether good cause has been shown for approving a request for extension of time, the Commission, a Commissioner, or Administrative Law Judge shall consider all relevant factors including, but not limited to, whether the failure to grant an extension would jeopardize the rights of any party, whether there have been administrative delays that would adversely affect the rights of any party, whether there are other factors outside the control of any party that caused delays in the administrative process and whether the rights of any party would be unduly prejudiced by the granting of an extension.

Rule 10.8 – General Rules Governing Hearing Procedures.

- (A) When a case is set for formal hearing pursuant to § 24-34-306(4), C.R.S., the hearing procedures shall be governed by the Office of Administrative Courts Procedural Rules, 1 Code Colo. Reg. 104-1, as amended, relevant Office of Administrative Court Policies and subject to the following specific requirements:
 - (1) The hearing shall commence within one hundred and twenty (120) days of service of the notice of hearing and complaint, unless the Administrative Law Judge has granted an extension. If the 120th day falls upon a Saturday, Sunday, or State of Colorado legal holiday, the hearing shall commence on the next regular business day.
 - (2) If any of the express provisions of the Rules of Procedure or Policies of the Office of Administrative Courts conflicts with the express provisions of the Law or these Rules, the Law or these Rules shall control and take precedence over the procedure or policy determined to be in conflict.
 - (3) The case in support of the complaint shall be presented at the hearing by the attorney general's office as counsel in support of the complaint, pursuant to § 24-34-306(8), C.R.S.
 - (4) Discovery procedure shall be those specified by the General Rules of Procedure of the Office of Administrative Courts of the Colorado Department of Personnel and Administration.
 - (5) At the discretion of the administrative law judge, the complainant shall be permitted to intervene through counsel to present oral testimony or other evidence and to examine and cross examine witnesses.
 - (6) If a party presents a motion for summary judgment, the presentation of the motion with supporting evidence may constitute the commencement of the hearing.
- (B) The case in support of the complaint shall be presented at the hearing by the attorney general's office as counsel in support of the complaint. At the discretion of the ALJ, the complainant shall be permitted to intervene through counsel to present oral testimony or other evidence and to examine and cross examine witnesses.

Rule 10.9 – Declaratory Orders.

- (A) These rules are adopted pursuant to § 24-4-105(11), C.R.S., in order to provide for a procedure for entertaining requests for declaratory orders to terminate controversies or to remove uncertainties with regard to the applicability of statutory provisions or rules or orders of the Commission to persons defined in the rules.
- (B) Any person may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the commission.
- (C) The Commission will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Commission determines that it will not rule upon such a petition, the Commission shall promptly notify the petitioner of its action and state the reasons for such action.
- (D) In determining whether to rule upon a petition filed pursuant to this rule, the Commission will consider the following matters, among others:
 - (1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Commission.
 - (2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners.
 - (3) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court but not involving any petitioner.
 - (4) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - (5) Whether the petitioner has some other adequate legal remedy which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.
- (E) Any petition filed pursuant to this rule shall set forth the following:
 - (1) The name and address of the petitioner.
 - (2) The statute, rule or order to which the petition relates.
 - (3) A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.
- (F) If the Commission determines that it will rule on the petition, the following procedures shall apply:
 - (1) The Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - (a) Any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - (b) The Commission may order the petitioner to file a written brief, memorandum or statement of position.

- (c) The Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - (d) The Commission may dispose of the petition on the sole basis of the matters set forth in the petition.
 - (e) The Commission may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - (f) The Commission may take administrative notice of facts pursuant to the State Administrative Procedure Act [§ 24-4-105(8), C.R.S.], and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
 - (g) If the Commission rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.
- (2) The Commission may, in its discretion, set the petition for hearing under § 24-4-105, C.R.S., upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Commission to consider.
- (G) The parties to any proceeding pursuant to this rule shall be the Commission and the petitioner. Any other person may seek leave of the commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene shall set forth the same matters as required by Rule 10.9(E) of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Commission.
- (H) Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute final agency action subject to judicial review pursuant to § 24-4-106, C.R.S.

Rule 10.10 – Administrative Law Judge's Initial Decision.

The Administrative Law Judge shall issue an initial decision within thirty (30) days after the conclusion of the hearing, unless an application for extension of time is granted by the Commission or a Commissioner. Such initial decisions shall be rendered in accordance with § 24-4-105, C.R.S., except that the decision shall include a statement of the reasons why the findings of fact lead to the conclusions. In the absence of an appeal of the initial decision within (30) days of service, the initial decision shall become the final order of the Commission.

Rule 10.11 – Appeals of (Exceptions to) the Administrative Law Judge's Decision.

- (A) Filing Exceptions.

Any party who seeks to appeal the initial decision of the Administrative Law Judge shall file exceptions with the commission at the Division's Denver office within thirty (30) days after service of the initial decision upon the parties, in accordance with §24-4-105, C.R.S.

(B) Designation of Record.

An appealing party shall designate relevant parts of the record on appeal to the Commission within twenty (20) days of service of the initial decision, in the manner required by § 24-4-105, C.R.S. A copy of this designation shall be served on all parties. Within ten (10) days thereafter, any other party or the agency may also file a designation of additional parts of the transcript of the proceedings which is to be included. Failure to designate a transcript is deemed a waiver of a request to prepare a transcript.

(C) Transcript.

Any party who designates a transcript as part of the record is responsible for obtaining and paying a certified court reporter who shall contact the Division's Denver office to obtain a copy of the hearing recording, prepare a transcript, and file it with the Division's Denver office no more than 60 days after the designation of record. If no transcript has been filed within the time limit, the record will be certified and the transcript will not be included in the record or considered on appeal. In the absence of the transcript, the Commission is bound by the findings of fact of the ALJ.

(D) Final Order on Appeal.

The Commission shall issue a final order on any appeal/exception. The Commission may adopt the initial decision of the Administrative Law Judge, reverse the initial decision, or modify the initial decision in part.

(E) Record.

The Commission's final order on the appeal shall be included in the certified record of the proceedings. The entire record shall be filed at the Division's Denver office and shall be available for examination during regular business hours.

10.12 – Charges Initiated by the Commission, a Commissioner, or the Attorney General.

(A) General.

The procedures set forth in this Rule govern the practice and procedure for charges initiated by the Commission, a Commissioner or the Attorney General pursuant to § 24-34-306(1) (b), C.R.S. All procedures not specified in this Rule shall be governed by the general rules of practice and procedure provided by Rules 10.3 through 10.8 and rules 10.10 through 10.12. The Commission, Commissioner, or Attorney General is subject to a duty to follow all applicable administrative rules.

(B) Who May File.

The Commission, a Commissioner, or the Attorney General may make, sign, and file a charge alleging a discriminatory or unfair practice in cases where the Commission, a Commissioner, or the Attorney General determines that the alleged discriminatory or unfair practice imposes a significant societal or community impact.

(C) Charges.

(1) Basis for Charge.

A charge may be initiated when the Commission, Commissioner, or Attorney General has cause to believe that any person or entity has been engaged in a discriminatory or an

unfair practice that imposes a significant societal or community impact as described under Parts 4 through 7 of the Law. The basis of belief for initiating a charge is information from any source sufficient to suggest that a discriminatory or unfair practice has been or is being committed.

(2) Initiating a Charge.

(a) Commission-Initiated Charges.

Initiation of a charge alleging a discriminatory or unfair practice by the Commission shall be by motion at a Commission meeting. The Commission Chair shall then file the charge on behalf of the Commission with the Division.

(b) Commissioner-Initiated Charges.

A Commissioner initiating a charge, as an individual, shall file a charge directly with the Division.

(c) Attorney General-Initiated Charges.

The Attorney General, through its representative, shall file a charge directly with the Division.

(3) Filing a Charge.

A charge filed by the Commission, a Commissioner, or the Attorney General shall be filed with the Division in the same manner and shall contain the same information as required for a charge filed by an individual pursuant to the provisions of Rule 10.4.

(4) Withdrawal of a Charge.

The Commission may submit a request to the Division for withdrawal of any charge or part thereof at any time prior to filing a civil action. The withdrawal must be in writing and state the reasons for the withdrawal request. A Commissioner and Attorney General may submit a request to the Division for withdrawal of any charge or part thereof at any time prior to filing a civil action, without prior approval from the Commission. Upon approval of withdrawal of the charge by the Director, the investigation shall cease.

(5) New Charges.

The Commission, a Commissioner, or the Attorney General may file new charges alleging discriminatory or unfair practices that have occurred since the date of the original charges, consistent with the procedures set forth in this Rule. Nothing herein shall preclude the Commission from filing a new charge against the original Respondent or a new Respondent, whenever new facts deem it in the public interest, provided that all time limits and other jurisdictional requirements are met.

(D) No Probable Cause Determinations.

(1) If the Commission, a Commissioner, or the Attorney General disagrees with the Director's Determination of No Probable Cause and dismissal of the charge, the Commission, Commissioner, or the Attorney General shall proceed to district court to file a civil action pursuant to § 24-34-306(2)(b)(I)(B).

(2) Time Limits.

If the Commission, Commissioner, or Attorney General wishes to proceed to district court, the action must be filed within ninety (90) days after the date the notice of dismissal is mailed.

- (E) Whenever a party to a charge initiated by the Commission, a Commissioner, or the Attorney General requests an extension of time to complete the investigative process pursuant to § 24-34-306(11), such request shall automatically be granted.

Rule 10.13 – Investigations of Discrimination Charges Referred by the Colorado State Personnel Board.

- (A) General.

Whenever a certified state employee or an applicant for classified state employment files a consolidated appeal/dispute form alleging discriminatory employment practices with the Colorado State Personnel Board (hereinafter, the “Board”), the Board refers the employee or applicant to the Division for an investigation of the allegations of discrimination, unless the employee or applicant waives the investigation by the Division, pursuant to C.R.S. §24-50-125.3. The procedures set forth in this Rule govern the practice and procedure for conducting such investigations.

- (B) Time Limit for Filing Charges in Investigations Referred by the Board.

A Charging Party referred by the Board shall file a charge with the Division within the time limit specified by the Board. If the Charging Party fails to file a charge within said time limit, the Charging Party shall be deemed to have waived an investigation by the Division and the Division shall not conduct an investigation, unless the Charging Party shows good cause to the Board for failing to comply with the time limit.

- (C) Advisory Opinion Only.

The Division shall conduct an investigation of allegations of discrimination referred by the Board within the time limits specified by the Law and these Rules. Upon conclusion of the investigation, the Director shall render an advisory opinion (“Letter of Opinion”) to the parties and for information of the Board. The Division shall notify the parties that the Letter of Opinion is advisory only and that the final administrative disposition of the matter is within the discretion of the Board.

- (D) Charge Limited to Allegations Contained in the Notice of Appeal.

The claims alleged in a charge of discrimination filed pursuant to an investigation referred to the Division by the Board shall be limited solely to those allegations of discriminatory employment practices contained in the consolidated appeal/dispute form filed with the Board. If the Board permits the Charging Party to consolidate multiple appeals alleging additional allegations of discriminatory or unfair practices, the Division shall permit the Charging Party to amend the charge accordingly.

- (E) No Right to Sue Issuance.

Because the Division’s processing of a charge referred by the Board does not exhaust administrative remedies, the Division may not grant a request for issuance of a right to sue notice to a Charging Party referred by the Board. At any time during the course of an investigation, however, the Charging Party may waive further investigation and request administrative closure by the Division, whereupon the Division shall return the matter to the Board for final disposition. Such request shall be in writing, signed by the Charging Party or the Charging Party’s attorney.

- (F) No Right of Appeal to the Commission.

A Charging Party referred by the Board for an investigation by the Division does not have a right of appeal to the Commission from a Letter of Opinion finding no probable cause. Upon issuance of the Letter of Opinion by the Director, the Division shall cease all processing of the charge and return a complete copy of the investigatory file and Letter of Opinion to the Board for final disposition.

Rule 10.14 – Interpretation.

- (A) Construction of rules. These rules shall be liberally construed to expedite the action of the Commission and the Division and to effectuate the purposes of the Law.
- (B) Application to the law. These rules are not intended to set forth a complete procedure, but rather to supplement and clarify the Law. These rules are not designed to be jurisdictional and where not otherwise inconsistent with law, any of these rules may be modified in exceptional cases to meet emergencies or avoid substantial injustice or great hardship.
- (C) Whenever possible, the interpretation of the Law shall follow the interpretations and guidance established in State and Federal law, regulations, and guidelines; and such interpretations shall be given weight and found to be persuasive in any administrative proceedings.

GENERAL PROVISIONS

Rule 20.1 – Anti-Discrimination Notices in Employment and Places of Public Accommodation.

Every employer, employment agency, labor organization, and place of public accommodation shall post and maintain at its establishment a notice that summarizes the discriminatory or unfair practices prohibited by the Law in employment and places of public accommodation. The Division shall make a notice available for printing on its website or provide a copy upon request.

- (A) With respect to employers and employment agencies, such notices must be posted conspicuously in easily accessible and well-lit places customarily frequented by employees and applicants for employment, and at or near each location where services of employees are performed.
- (B) With respect to labor organizations, such notices must be posted conspicuously in easily accessible and well-lit places customarily frequented by members and applicants for membership.
- (C) With respect to places of public accommodation, such notices must be posted conspicuously in easily accessible and well-lit places customarily frequented by people seeking services, purchases, facilities, privileges, advantages, or accommodations offered to the general public.

Rule 20.2 – Anti-Discrimination Notices in Housing.

Every real estate broker or agent, home builder, home mortgage lender, and all other persons who transfer, rent, or finance real estate, shall post and maintain in all places where real estate transfers, rentals and loans are executed, a notice that summarizes the discriminatory or unfair practices prohibited by the Law in housing. The Division shall make a notice available for printing on its website or provide a copy upon request. The notices shall be posted and maintained in conspicuous, well-lit, and easily accessible places ordinarily frequented by prospective buyers, renters, borrowers, and the general public.

Rule 20.3 – Photographs of Applicants for Employment.

No employer, employment agency, or labor organization shall suggest or require that applicants submit their photographs prior to their employment or placement, unless the requirement is based upon a Bona Fide Occupational Qualification (BFOQ).

Rule 20.4 – Discriminatory Signage in Places of Public Accommodation.

No person shall post or permit to be posted in any place of public accommodation any sign that states or implies the following:

“WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE.”

Such signage implies that management may rely upon unlawful discriminatory factors in determining access to a place of public accommodation and thus is prohibited.

Rule 20.5 – Preservation of Records.

(A) **Retention of Records During Processing of Charge.**

Whenever a charge of discrimination is filed with the Division, all parties shall maintain all relevant records in their custody, control, or possession until final disposition. Relevant records include, but are not limited to, the following: personnel or employment records of a Charging Party and of all employees holding similar positions; applications or test papers and assessments of all candidates for the positions sought by the Charging Party; payroll records; handbooks; registration records; offers; leases; contracts; tenant files; rental applications; loan and purchase files; advertisements; data regarding protected classes; disability-related and medical records; policies and procedures; notices; phone records; bank and accounting records; photographs; videos; correspondence; emails; electronic records; and other business or institutional records relevant to the allegations of the charge. Final disposition of the charge or complaint occurs when the statutory time periods for all appeals have expired.

(B) **Rebuttable Presumption.**

The failure to comply with this regulation shall create a rebuttable presumption that the records contained information adverse to the interests of the non-compliant party.

Rule 20.6 – Preventative Action.

Covered entities are encouraged to take all steps necessary to prevent discrimination, including harassment, from occurring, such as: affirmatively raising the subject, expressing strong disapproval, promulgating and distributing an anti-discrimination policy, training, developing appropriate sanctions, informing affected individuals of their right to raise and how to raise the issue of discrimination, and developing methods to sensitize all concerned.

HOUSING

Rule 30.1 – Housing Provisions of the Law Consistent with the Federal Fair Housing Act.

Part 5 of Article 34 of Title 24, C.R.S. of the Law concerning housing practices are substantially equivalent to Federal law concerning fair housing as set forth in the federal Fair Housing Act.

AGE

Rule 40.1 – Employment violations.

- (A) It is an unlawful employment practice to utilize employment and help wanted notices, advertisements, or employment applications containing terms and phrases that use the age of the applicant as a qualifying factor, including but not limited to, "age 25 to 35," "young," "recent college student," "recent college graduate," "age 40 to 50," and "retired person."
- (B) It is an unlawful employment practice to discriminate by giving preference because of age between individuals within the protected age group. Employment decisions affecting individuals within the protected age group must be based upon factors other than age.

Rule 40.2 – Exceptions.

- (A) Differential treatment based on age is lawful when age is a Bona Fide Occupational Qualification (BFOQ) that is reasonably necessary for the operation of the particular business. To justify an age-based disqualification, the employer must show that: (1) the requirement is reasonably necessary to the essence of its business, and (2) a tailored attempt to accomplish the same thing by assessment of individual capabilities would either be futile or impractical.
- (B) The exception for "bona fide seniority systems" or "bona fide employee benefit plans" of § 24-34-402(4)(b), C.R.S. shall be narrowly construed. A bona fide seniority system must use length of service as the primary criterion, must not give those with longer service lesser rights, and must have been communicated to the affected employee(s). It is unlawful for a seniority system or employee benefit plan to require or permit the involuntary retirement of an employee within the protected age group on account of age except as provided in § 24-34-402(4)(c), C.R.S. Nothing in § 24-34-402(4)(b), C.R.S., prohibits use of a bona fide seniority system or bona fide benefit plan that permits individuals to elect, at their own option, early retirement at a specified age. It is lawful for a plan to require early retirement for reasons other than age.
- (C) It is a lawful employment practice to compel the retirement of an employee who is between the ages of 65 and 70 years of age who, for the two-year period immediately before retirement, is employed as a bona fide executive or in a high policy-making position, provided that the following requirements are met:
 - (1) The "annual retirement benefit" to which covered employees must be entitled is the sum of amounts payable during each one-year period from the date on which such benefits first became receivable. The retirement benefit must equal, in the aggregate, at least \$44,000 annually.
 - (2) For purposes of determining compliance, an "immediate non-forfeitable annual retirement benefit" means that the payment of plan benefits must occur not later than 60 days after the effective date of the retirement unless the employee elects to receive those benefits outside of the 60-day period.
 - (3) An annual retirement is deemed to be forfeitable if it is subject to provisions which could cause the cessation of payments or reduction of benefits to less than \$44,000 in any one-year period such as engaging in litigation against the former employer or obtaining employment with a competitor. As of the effective date of retirement there must be a reasonable expectation that the annual retirement plan will meet its obligations. However, an annual retirement benefit will not be deemed forfeitable merely because it is not guaranteed against the possibility of bankruptcy.

CREED AND RELIGION

Rule 50.1 – Accommodation of Creed and Religious Practices.

- (A) Duty to Accommodate.

It is unlawful for a covered entity to fail or refuse to reasonably accommodate the creed or religious practice of an individual, unless the requested accommodation would result in undue hardship. After an individual requests an accommodation of a creed or religious practice, the covered entity has a duty to engage in a good-faith interactive dialogue to determine an appropriate accommodation.

(B) Undue Hardship.

A refusal to accommodate an individual's creed or religious practice is justified only when a covered entity can demonstrate that an undue hardship would result from each available alternative method of accommodation. A mere assumption that more people with the same creed or religious practices as the person being accommodated may also need accommodation is not evidence of undue hardship.

DISABILITY

Rule 60.1 – General Provisions.

- (A) The Law concerning handicap and/or disability is substantially equivalent to Federal law, as set forth in the Americans with Disabilities Act, as amended, and the Fair Housing Act concerning disability.
- (B) The term "disability" can be substituted for the term "handicap." No change in definition or substance is intended nor should be attributed to this change in phraseology.

Rule 60.2 – Determination of Additional Expense.

An employer or place of public accommodation is not required to incur expense beyond that necessary to allow persons with disabilities to participate equally as persons without disabilities.

Rule 60.3 – Employment.

- (A) Employment Criteria.
 - (1) An employer may not make use of any employment test or other selection criterion that screens out or tends to screen out persons with disabilities unless one or more of the following is established:
 - (a) the test score of other selection criterion is shown to be job-related for the position in question; or
 - (b) alternative job-related tests or criteria that screen out or tend to screen out fewer persons with disabilities are unavailable.
 - (2) An employer shall select and administer tests concerning employment to ensure that, when administered to an applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure).
- (B) Employment Inquiries.
 - (1) Except as provided in paragraphs (2) and (3) of this section, an employer may not conduct a pre-employment medical examination, may not make pre-employment inquiries

as to whether the applicant is an individual with a disability, and may not inquire about the nature or severity of a disability. An employer may, however, make pre-employment inquiries into an applicant's ability to perform job-related functions.

- (2) When an employer has taken remedial action to correct the effects of past discrimination or when an employer is taking affirmative action, the employer may invite applicants for employment to indicate whether and to what extent they are disabled provided that:
 - (a) the employer states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action, obligations or its voluntary or affirmative action efforts; and
 - (b) the employer states clearly that the information is being requested on a voluntary basis, that it will be confidential as provided in paragraph (4) of this section, that the refusal to provide it will not subject the applicant or employee to any adverse treatment, and that such information will be used only in accordance with remedial and affirmative action.
- (3) Nothing in this section shall prohibit an employer from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:
 - (a) all entering employees are subjected to such an examination regardless of disability; and
 - (b) the results of such an examination are used only in accordance with the requirements of these rules and regulations.
- (4) Information obtained in accordance with this section shall be collected and maintained on separate forms that shall be accorded the same confidentiality as medical records, except that:
 - (a) supervisors and managers may be informed regarding restrictions on the work or duties of persons with disabilities and regarding necessary accommodations;
 - (b) first aid and safety personnel may be informed where appropriate, if the condition might require emergency treatment; and
 - (c) The information shall be provided upon request to Staff of the Division conducting investigations.

Rule 60.4 – Housing.

- (A) A refusal or denial of equal terms, conditions, or privileges of housing, or sale, assignment, transfer, rental, sublease, or financing of housing because of the use by the person with the disability of any auxiliary aid and/or assistance animal shall constitute a refusal or denial because of disability and constitute a violation.
- (B) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a disability or to make inquiry as to the nature or severity of a disability of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have disabilities:

- (1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
 - (2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;
 - (3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;
 - (4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance; and
 - (5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance;
- (C) Nothing in this Rule requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Rule 60.5 – Places of Public Accommodation.

- (A) A refusal or denial of a public accommodation or advertisement indicating a limitation, denial, or refusal, expressed or implied of a public accommodation because the person who has the disability uses an auxiliary aid shall constitute a refusal, denial or limitation because of disability and be considered a violation of the Law.
- (B) A covered entity shall operate their public accommodation so that it, when viewed in its entirety, is readily accessible to individuals with disabilities. This paragraph does not require such person to make each of its existing facilities or every part of a facility accessible to persons with disabilities.

Rule 60.6 – Reasonable Accommodation.

- (A) Employment.
 - (1) A person subject to Part 4 of the Law shall make reasonable accommodation to the known disabilities of an otherwise qualified applicant or employee with a disability unless the person can demonstrate the accommodation would impose an undue hardship or that it would require any additional expense that would not otherwise be incurred.
 - (2) Reasonable accommodation may include:
 - (a) making facilities used by employees readily accessible to and useable by individuals with disabilities; and
 - (b) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.
 - (3) In determining whether an accommodation would impose an undue hardship on an employer's operation, pursuant to paragraph (1) of this section, factors to be considered include:
 - (a) the overall size of the employer's operation with respect to number of employees, number and type of facilities, and size of budget;

- (b) the type of the employer's operation, including the composition and structure of the employer's work force; and
 - (c) the nature, cost, and funding for the accommodation needed, including, but not limited to, such sources as the Colorado State Division of Vocational Rehabilitation, the personal resources of the person with the disability, and private organizations that provide financial support and auxiliary aids.
- (B) Housing.
- (1) Reasonable Modifications of Existing Premises.
 - (a) It shall be unlawful for any person to refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises, occupied or to be occupied by a person with a disability, if the proposed modifications may be necessary to afford the person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for persons with disabilities any customarily required security deposit. However, where it is necessary to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord and tenant with a disability may negotiate as part of such a restoration agreement.
 - (b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.
 - (2) Reasonable Accommodation
 - It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas, unless it can be demonstrated that it places an undue financial or administrative burden or fundamentally changes the nature of the subject housing.
- (C) Places of Public Accommodation.
- (1) Persons with disabilities may need a reasonable accommodation to enter or use a place of public accommodation. The Law requires reasonable efforts to grant access and services to all customers. Reasonable accommodation may require structural change, such as constructing a ramp or providing accessible parking spaces, or it may require a change in policy to allow the individual with a disability to fully use and enjoy the premises.
 - (2) It shall be unlawful for a place of public accommodation to refuse to make reasonable accommodation for an individual with a disability, unless the place of public accommodation can demonstrate that it would cause an undue burden or that it would require any additional expense that would not otherwise be incurred.
 - (a) In determining whether an accommodation is reasonable, factors to be considered may include:

1. The frequency and predictability with which members of the public will be served by the accommodation at that location;
 2. The size of the business or organization at that location with respect to physical size, annual gross revenues, and the number of employees;
 3. The extent to which individuals with a disability will be further served from the accommodation;
 4. The type of operation;
 5. The nature and amount of both direct costs and legitimate indirect costs of making the accommodation and the reasonableness for that location to finance the accommodation; and
 6. The extent to which any persons may be adversely affected by the accommodation.
- (b) Violations of state or local building codes are not violations of the Law and must be enforced under normal building code procedures.

NATIONAL ORIGIN AND ANCESTRY

Rule 70.1 – General.

- (A) Discrimination because of an individual's ancestry, place of origin, or because the individual possesses the physical, cultural, or linguistic characteristics of a national origin group is prohibited. Discrimination based on a person's perception or belief that someone is a member of a particular national origin group, even if such perception is inaccurate, is also prohibited.
- (B) A Bona Fide Occupational Qualification as it pertains to national origin cases shall be strictly construed. An employer must be able to demonstrate that a hiring policy based on national origin is essential to the operation of the business and to performance of the job.

Rule 70.2 – Accents, Language Fluency, and English-Only Requirements.

(A) Accents.

An adverse employment decision based on foreign accent is permissible only if an individual's accent materially interferes with the ability to perform job duties. This assessment depends upon the specific duties of the position in question and the extent to which the individual's accent affects his or her ability to perform job duties. Employers should distinguish between a merely discernible foreign accent and one that interferes with communication skills necessary to perform job duties.

(B) Language Fluency.

- (1) An English fluency requirement is permissible only if required for the effective performance of the position for which it is imposed. An employer shall not require a greater degree of fluency than is necessary for the relevant position.
- (2) A foreign language fluency requirement, as with English fluency requirements, must actually be necessary for the positions for which they are imposed.

(C) English-Only Requirements.

- (1) Because an individual's primary language is often an essential national origin characteristic, workplace policies requiring employees to speak only English on the job are discouraged and are presumed to create a discriminatory environment based on national origin.
- (2) An English-Only policy that is in effect only at certain times in the workplace is permissible when the employer can demonstrate a business necessity for such a policy. An English-Only policy is justified by business necessity if it is needed for an employer to operate safely or efficiently. Before adopting an English-Only policy, an employer should consider whether there are any alternatives that would be equally effective in promoting safety or efficiency. The following are examples in which business necessity may justify an English-Only rule:
 - (a) For communications with customers, coworkers, or supervisors who only speak English;
 - (b) In emergencies or other situations in which workers must speak a common language to promote safety; or
 - (c) For cooperative work assignments in which the English-Only rule is needed to promote efficiency.

Rule 70.3 – Non-Citizens.

The Law protects all persons, including non-citizens, against discrimination. Citizenship shall not be used as a pretext to unlawful discrimination.

INDEPENDENT CONTRACTORS

Rule 75.1 – Jurisdiction.

For purposes of C.R.S. §24-34-401(2), if it is determined that a worker was not an employee but rather an independent contractor, there is no jurisdiction over the services performed by that worker under the Law, and any charge of employment discrimination filed on behalf such worker shall be dismissed for lack of jurisdiction.

Rule 75.2 – Rebuttable Presumption of Covered Employment.

It shall be presumed that a worker who performs services for remuneration is an employee, unless the alleged employer demonstrates that the worker is an independent contractor. The burden of proof is on the alleged employer to demonstrate that a worker is an independent contractor and not an employee.

Rule 75.3 – Independent Contractor Status.

To demonstrate that a worker is an independent contractor, both of the following factors must be established:

- (A) That the worker is free from control or direction in the performance of services, both under a contract of service and in fact; and
- (B) That the worker is engaged in an independently established trade, occupation, profession, or business.

Rule 75.4 – Direction and Control.

To prove that a worker is free from control or direction in the performance of services, it must be determined whether the alleged employer has control over the following:

- (A) Details of the work;
- (B) Manner, method or mode of performing the work; and
- (C) Means by which the work is to be accomplished, but without reference to having control over the results of the work.

Rule 75.5 – Independently Established.

To prove that a worker is engaged in an independently established trade, occupation, profession, or business, the following factors may be considered:

- (A) Skills, qualifications, and training required for the job;
- (B) Method of payment, benefits, and tax withholding;
- (C) Right to negotiate agreements with other workers;
- (D) Right to choose sales techniques or other business techniques;
- (E) Right to determine hours;
- (F) Existence of outside businesses or occupations, whether incorporated or unincorporated;
- (G) Special licensing or regulatory requirements for performance of work;
- (H) Whether the work is part of the alleged employer's general business;
- (I) Nature and extent of the work;
- (J) Term and duration of the business relationship;
- (K) Control of the business premises;
- (L) Authority to hire subordinates;
- (M) Ownership or lease of major items of equipment;
- (N) Liability for substantial unreimbursed expenses;
- (O) Liability to the other party upon peremptory or unilateral termination of the business relationship; and
- (P) Other factors that, viewed fairly in light of all the circumstances in a given case, may indicate the existence or lack of an independently established trade, occupation, profession or business.

Rule 75.6 – Independent Contractor Agreements.

The existence of an independent contractor agreement is relevant to but not dispositive of the determination whether a worker is an independent contractor. If the evidence shows either that the worker is not free from direction and control in the performance of services or not engaged in an independently

established trade, occupation, profession, or business, then it may be determined that a worker is an employee regardless of an independent contractor agreement.

SEX

Rule 80.1 – Sex as a Bona Fide Occupational Qualification (BFOQ).

Bona Fide Occupational Qualifications as to sex shall be interpreted narrowly. An employer must be able to demonstrate that a hiring policy based on sex is essential to the operation of the business and to performance of the job. For example, a designer of women's clothes may be allowed to hire only female employees to model the clothing, or a business employing caregivers may employ a staff member of the same sex as the sex of the client.

Rule 80.2 – Separate Lines of Progression and Seniority Systems.

- (A) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee, unless sex is a Bona Fide Occupational Qualification for that job.
- (B) A seniority system or line of progression that distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a covert form of classification by sex, or creates unreasonable obstacles to the advancement by members of any sex into jobs that members of that sex could reasonably be expected to perform.

Rule 80.3 – Pre-Employment Inquiries as to Sex.

A pre-employment inquiry may ask whether the applicant is "Male, Female, Mr., Mrs., Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry that expresses, directly or indirectly, any limitation, specification or discrimination as to sex shall be unlawful, unless based upon a Bona Fide Occupational Qualification (BFOQ).

Rule 80.4 – Pension and Retirement Plans.

- (A) It is an unlawful employment practice for an employer to have a pension or retirement plan that establishes different optional or compulsory retirement ages on the basis of sex.
- (B) Other differences in benefits based on sex, such as differences in benefits for survivors, are prohibited.

Rule 80.5 – Discriminatory Compensation, Conditions of Employment, and Job Classifications.

- (A) Wages, wage schedules, benefits, and other terms and conditions of employment shall not be related to or based on the sex of employees, including where employers pay employees of different sexes different wages for jobs that require substantially similar skill, effort, and responsibility under similar working conditions, regardless of job title or classification.
- (B) In insurance, pensions, welfare programs, profit-sharing, bonus plans, leave, and other similar "fringe benefits," an employer's contributions shall be the same regardless of sex.
- (C) An employer shall not condition benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit if it adversely affects employees because of sex.

Rule 80.6 – Pregnancy, Childbirth, and Child Rearing.

- (A) It is a violation of the Law for a written or unwritten employment policy or practice to exclude employees or applicants from employment because of pregnancy, unless the employee's or applicant's pregnancy renders her physically unable to perform the duties of the position in question. It is also a violation of the Law for an employer to discharge or demote an employee because she becomes pregnant, may become pregnant, or for any pregnancy-related conditions, including miscarriage, abortion, childbirth, and recovery therefrom.
- (B) Temporary impairment resulting from pregnancy, miscarriage, abortion, childbirth, and recovery therefrom must be considered by an employer offering leave for other temporary impairments to be a justification for a leave of absence for a female employee. The terms and conditions of pregnancy-related impairment leaves of absence may not be more restrictive, and need not be more generous, than those applied to impairment leaves for other purposes.
- (C) Non-impairment leaves of absence for the purpose of childrearing shall be granted on the same terms and conditions applied to other non-impairment leaves of absence. An employer's policy or practice regarding leaves for childrearing must be applied equally regardless of sex. Childrearing as used in this subpart includes children by birth or adoption.
- (D) Illness, impairment or disability caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom must be treated as any other temporary illness, impairment or disability under a disability or medical benefit plan available in connection with employment. Policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, and payment under any wage loss or insurance plan, must be applied to impairment due to or related to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary impairments.

Rule 80.7 – Job Opportunities Advertising.

It is a violation of the Law for a job advertisement to indicate a preference, limitation, specification, or discriminate based on sex unless sex is a Bona Fide Occupational Qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," constitute an expression of a preference, limitation, specification, or discrimination based on sex.

Rule 80.8 – Sexual Harassment.

- (A) Sexual harassment which results in discrimination in employment, housing, public accommodations or advertising is a violation of the Law. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment is a violation of the Law when either, submission to such conduct is made explicitly or implicitly a requirement of employment, housing, public accommodations or advertising, or an individual's response to such conduct is the basis for decisions which deny the individual rights protected by the Law.
- (B) Sexual harassment shall be determined from the totality of the circumstances, which may include, but are not limited to, the nature of the sexual advances and the context in which the alleged incidents occurred.

SEXUAL ORIENTATION

Rule 81.1 – Separate Lines of Progression and Seniority Systems.

It is an unlawful employment practice to classify any job according to sexual orientation or to maintain separate lines of progression or separate seniority lists based on sexual orientation where this would adversely affect any person.

Rule 81.2 – Medical Leave.

If an employer grants leave or time off from work to employees for medical reasons, the employer shall treat requests for leave to address health care needs related to an individual's sexual orientation in the same manner as requests for other medical conditions.

Rule 81.3 – Pre-Employment & Other Inquiries.

Any inquiry in connection with prospective employment, housing, public accommodations, or advertising, that expresses directly or indirectly any limitation, specification or discrimination as to sexual orientation shall be unlawful.

Rule 81.4 – Background Checks.

If a covered entity learns through a background check or other means of a person's sexual orientation, the entity shall not take an adverse action against the individual on the basis of the information.

Rule 81.5 – Discriminatory Wages.

Wages and wage schedules shall not be related to or based on the sexual orientation of the employees.

Rule 81.6 – Sexual Orientation Harassment.

- (A) Unlawful harassment is severe or pervasive conduct that creates an environment that is subjectively and objectively hostile, intimidating, or offensive on the basis of sexual orientation. Prohibited conduct includes, but is not limited to, the following:
- (1) Asking unwelcome personal questions about an individual's sexual orientation;
 - (2) Intentionally causing distress to an individual by disclosing to others the individual's sexual orientation;
 - (3) Using offensive names or terminology regarding an individual's sexual orientation; or
 - (4) Deliberately misusing an individual's preferred name, form of address, or gender-related pronoun;
- (B) An individual alleging harassment based upon sexual orientation must take advantage of any corrective or remedial measures made available by a covered entity, unless pursuing such a complaint would be futile or impractical. A covered entity shall initiate a reasonable investigation and take prompt and effective remedial action, if appropriate.

Rule 81.7 – Advertising.

It is a violation of the Law for an advertisement to indicate a preference, limitation, specification, or discriminate based upon sexual orientation in employment, housing or public accommodations.

Rule 81.8 – Dress & Grooming Standards.

Covered entities may prescribe standards of dress or grooming that serve a reasonable business or institutional purpose, provided that they shall not require an individual to dress or groom in a manner inconsistent with the individual's gender identity.

Rule 81.9 – Gender-Segregated Facilities.

- (A) Nothing in the Act prohibits segregation of facilities on the basis of gender.
- (B) All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity. Gender-segregated facilities include, but are not limited to, restrooms, locker rooms, dressing rooms, and dormitories.
- (C) In gender-segregated facilities where undressing in the presence of others occurs, covered entities shall make reasonable accommodations to allow access consistent with an individual's gender identity.

WORK PLACE HARASSMENT

Rule 85.1 – Harassment Based Upon Protected Classes in the Workplace Prohibited.

- (A) It shall be a discriminatory or unfair employment practice for an employer, employment agency, labor organization, or its agents or supervisory employees, to harass, with or without loss of income or other tangible employment action, a person during the course of employment, based upon an individual's protected class status. Harassment occurs if the discriminatory treatment is severe or pervasive, and has the effect of creating a work environment that is objectively and subjectively hostile, intimidating, or offensive.
- (B) With respect to discriminatory harassment in the scope of employment, an employer is responsible for acts of harassment in the workplace where an employer knows or should have known of the conduct.
- (C) With respect to discriminatory harassment by a coworker, an employee is required to make a complaint of discriminatory harassment to an individual with supervisory authority and must take advantage of any remedial action offered by an employer.
- (D) With respect to discriminatory harassment by a person with actual or apparent supervisory authority, an employer is strictly liable for the discriminatory harassment and the employee is not required to complain to the employer.
- (E) An employer may also be responsible for the acts of non-employees with respect to workplace harassment of its employees where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate remedial action.
- (F) This Rule 85 also applies to harassment based on retaliation for engaging in a protected activity, pursuant to § 24-34-402(1)(e), C.R.S.
- (G) In the event of alleged workplace harassment, a defending employer may raise an affirmative defense to liability to a victimized employee. Such defense is that: (1) the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and (2) the victimized employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. This affirmative defense may be established by: a demonstration that the employer had promulgated an anti-harassment policy providing for a complaint procedure which was disseminated in the workplace prior to the occurrence of the offensive conduct, and that the employee failed to report the offensive conduct

to the appropriate authority in compliance with that complaint procedure. If the alleged harasser is the employer's ultimate authority, then the affirmative defense may not be raised.

Editor's Notes

History

Rules 50.1; 50.2; 81.1; 81.2; 81.3; 81.5; 81.7; 81.10; 81.12, 85.0 eff. 10/30/2007.

Rule 81.1 emer. rule eff. 05/29/2008; expired 08/29/2008.

Rule 81 eff. 11/30/2009.

Entire rule eff. 12/15/2014.