



TECHNICAL UPDATE

Volume 27 Number 26 | June 27, 2023

Protecting Opportunities and Workers' Rights Act

A multi-year effort to strengthen Colorado workplace harassment law was signed by Gov. Jared Polis on June 6, 2023. The Protecting Opportunities and Workers' Rights Act, [SB23-172](#), makes it easier for people to file workplace harassment claims by loosening the legal standard.

The POWR Act states that all Coloradans should have an equal opportunity to succeed in the workplace and are free from discrimination and harassment based on their protected status. Under the POWR Act, harassment would no longer need to be severe or pervasive to merit a claim. Protected status includes a person's disability, race, creed, color, sexual orientation, gender identity, gender expression, marital status, religion, age, national origin, or ancestry.

HIGHLIGHTS INCLUDE:

- Directs the Colorado civil rights division to include harassment as a basis or description of discrimination on any charge form or charge intake.
- Expands harassment to include "unwelcome physical or verbal conduct or any written or visual communication directed at an individual or group because of said membership in or perceived membership in a protected class."
- Conduct constitutes harassment if:
 - Submission to the conduct or communication is explicitly or implicitly made a term or condition of the individual's employment.
 - Submission, objection to, or rejection of the conduct or communication is used as a basis for employment decisions affecting the individual.
 - The conduct or communication has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.
- Clarifies employment practices for persons with disabilities persons with disabilities, that it is not discriminatory or unfair for an employer to refuse to hire, discharge, or promote if no reasonable accommodation can be made regarding the disability that would allow the individual to satisfy the essential functions of the job.
- Adds protection against discrimination based on marital status.
- Places limitations on agreements between employers and employees that contain nondisclosure agreements or confidentiality provisions. Specifically, if any agreement that limits an individual's ability to disclose an alleged discriminatory or unfair employment practice.
- Limitation on Affirmative Defenses of the employer if an employee can prove harassment by a supervisor. Unless the employer can establish that it has a "program that is reasonably designed to prevent harassment, deter future harassers and protect employees from harassment."

SAVE THE DATE: CTSI will host a lunch and learn webinar on July 24, 2023, regarding the POWR Act and how to update your trainings and policies.

WHAT THIS MEANS FOR COUNTIES

The measure's passage defines more explicitly the factors that should be considered in determining harassment, and it protects businesses from liability if they have harassment prevention programs and take reasonable actions to respond and address harassment complaints. CTSI suggestions include:

- Update anti-discrimination / anti-harassment policy and employee handbook to meet the new definitions, reporting, and investigation process as well as recordkeeping procedures.
- Develop harassment training for staff to include Colorado laws, county policy and procedures for reporting, investigating, and recordkeeping with signed acknowledgment from staff.
- Post job descriptions with clearly identified essential functions, including specific physical and mental requirements of work to be performed.
- Create a designated repository for written and oral discrimination complaints, including incident date, identities of those involved, complaint summary, and investigation outcome.