

ARTICLE IV. PROHIBITION OF DISCRIMINATION IN EMPLOYMENT, HOUSING AND COMMERCIAL SPACE, PUBLIC ACCOMMODATIONS, EDUCATIONAL INSTITUTIONS AND HEALTH AND WELFARE SERVICES*

Sec. 28-91. Intent of council.

(a) It is the intent of the council that every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the city and to have an equal opportunity to participate in all aspects of life, including but not limited to employment, housing and commercial space, public accommodations, education and health and welfare services.

(b) It is the intent of the council in enacting this article to eliminate within the city **discrimination** by reason of race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability. Discriminatory practices as defined in this article may be subject to investigation, conciliation, administrative hearings and orders or other enforcement procedures.

(c) Except where specifically provided, the provisions of section 1-13 do not apply to this article.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 893-91, § 1, 12-2-91; Ord. No. 934-01, § 1, 11-5-01)

Sec. 28-92. Definitions.

The following words and terms when used in this article shall have the following meanings:

Age: A chronological age of at least forty (40) years.

Agency: The agency for human rights and community relations.

Director: The duly appointed executive director of the agency for human rights and community relations.

Educational institution: Any private educational institution, including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university and a business, nursing, professional, secretarial, technical or vocational school and includes an agent of an educational institution.

Employee: Any individual employed by or applying for employment with an employer.

Employer: Any person, excluding governmental entities and political subdivisions but including any agent of such entity or subdivision where the agency relationship is created by a written contract, engaged in an industry affecting commerce who has twenty (20) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year; the term shall also mean any agent of such a person.

Employment agency: Any person regularly undertaking or attempting with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

Gender identity: A person's various individual attributes, actual or perceived, that may be in accord with, or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.

Gender variance: A persistent sense that a person's gender identity is incongruent with the person's biological sex, excluding the element of persistence for persons under age twenty-one and including, without limitation, transitioned transsexuals.

Genital reassignment surgery: Surgery to alter a person's genitals, in order to complete a program of sex reassignment treatment.

Labor organization: Any organization, agency, employee representation committee, group, association or plan in which employees participate directly or indirectly and which exists for the purpose, in whole or in part, of dealing with employers or any agent thereof concerning grievances, labor disputes, wages, rates of pay, hours or other terms, conditions or privileges of employment and any conference, general committee, joint or system board or joint council which is subordinate to a national or international labor organization.

Marital status: The state of being married, single, divorced, separated or widowed and the usual conditions associated therewith, including parenthood.

Military status: Being or having been in the service of the military.

Physical or mental disability: A physical or mental impairment of an individual which substantially limits one (1) or more major life activities and includes a record of such impairment or being regarded as having such impairment; however, such term does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of a job or whose current alcohol abuse would constitute a direct threat to property or the safety of others; and in the areas of public accommodations or real estate transactions, such term does not include any individual who is an alcoholic and whose unreasonable conduct as a result of use of alcohol is the basis on which a covered entity acts; and such term does not include an individual who is currently engaged in the illegal use of drugs when a covered entity acts on the basis of such use.

Place of public accommodation:

(1) As defined by section 59-2 of this Code: All hostels; hotels; motels; rental rooms; rooming and/or boardinghouses; eating places; shops and stores dealing with goods or services of any kind; hospitals; recreational facilities, public parks; theaters of all kinds and any establishments licensed under chapter 7 (Amusements) of this Code.

(2) Any establishment licensed under the Colorado Liquor Code or the Colorado Beer Code; all banks, credit information services and all other financial institutions; insurance companies and establishments of insurance brokers; clinics, dental or medical; clubs and lodges; bathhouses and swimming pools; commercial or public garages, public transportation as well as the stations or terminals thereof; any establishment offering travel or tour services; and public areas and public elevators of buildings and structures.

Real estate broker or salesperson: Any person licensed as such in accordance with the provisions of the Colorado Real Estate Commission.

Religious organizations or associations: Any organization affiliated with a church, synagogue, congregation, parish, brotherhood, religious corporation or any religious society engaging in the works of education, benevolence, charity or missions.

Sex: Biological sex, the sum of a person's physical characteristics.

Sex reassignment treatment: Treatment to change a person's sex, based on medically recognized treatment protocols such as that published by the Harry Benjamin International Gender Dysphoria Association.

Transaction in real property: Exhibiting, listing, advertising, negotiating, agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, any interest in real property or improvements thereon.

Transitioning transsexual: A person experiencing gender variance who is undergoing sex reassignment treatment.

Transitioned transsexual: A person who has completed genital reassignment surgery.
(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 934-01, § 2, 11-5-01)

Sec. 28-93. Discriminatory practices in employment.

(a) *Generally*. It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual who is otherwise qualified:

(1) *By an employer*: To fail or refuse to hire an applicant or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect status as an employee; but with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job and the disability has a significant impact on the job;

(2) *By an employment agency*: To fail or refuse to refer for employment or to classify or refer for employment any individual or otherwise to discriminate against any individual; but with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the applicant from the job and the disability has a significant impact on the job;

(3) *By a labor organization*: To exclude or to expel from its membership or otherwise to discriminate against any individual or to limit, segregate or classify its membership or fail or refuse to refer any individual to employment or to classify any individual in any way which would deprive such individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment; or

(4) *By an employer, employment agency, apprenticeship program, labor organization or joint labor/management council*:

a. To discriminate against any individual in admission to or employment in any program established to provide apprenticeship or other training or retraining, including an on-the-job training program; but with regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program and the disability has a significant impact on participation in the program; and

b. To communicate, print or publish or cause to be communicated, printed or published any notice or advertisement or use any publication form relating to employment by such employer or to membership in or any classification or referral for employment by such a labor organization or to any classification or referral for employment by such an employment agency indicating any preference, limitation, specification or distinction based on the race, color, religion, national

origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual.

(b) *Women affected by pregnancy.*

(1) **Discrimination** on the basis of gender shall include but not be limited to **discrimination** on the basis of pregnancy, childbirth or related medical conditions.

(2) Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work; and this requirement shall include but not be limited to a requirement that an employer must treat an employee temporarily unable to perform the functions of her job because of pregnancy-related condition in the same manner as it treats other temporarily disabled employees.

(c) *Exceptions.*

(1) *Seniority system.* It shall not be considered a discriminatory practice for an employer to observe the conditions of a bona fide hiring or seniority system or a bona fide employee benefit system, such as retirement, pension or insurance plan which is not a subterfuge to evade the purposes of this act, except that no such employee seniority system or benefit plan shall excuse the failure to hire any individual because of the age of such individual.

(2) *Elderly or physically or mentally disabled.* It shall not be discriminatory for employment to be limited to the elderly or physically or mentally disabled provided that such employment shall not discriminate among the elderly or physically or mentally disabled on the basis of other discriminatory criteria set forth in subsection (a) hereof.

(3) *Bona fide occupational classifications.* Any bona fide occupational qualifications or differentiation based on factors reasonably necessary to the normal operation of the particular employer shall not be deemed discriminatory.

(4) *Religious organizations.* This article shall not apply to employment by religious organizations or associations.

(5) *Individualized agreements.* Nothing in this section shall prohibit any employer from making individualized agreements with respect to compensation or the terms, conditions or privileges of employment for persons suffering a disability if such individualized agreement is part of a therapeutic or job-training program of no more than twenty (20) hours per week and lasting no more than eighteen (18) months.

(6) *Age; position.* It shall not be discriminatory to compel the retirement of any employee who is sixty-five (65) years of age or older who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan or any combination of such plans of the employer of such employee and if such plan equals in the aggregate at least forty-four thousand dollars (\$44,000.00).

(7) *Sexual orientation; marital status.* With respect to sexual orientation or marital status, it shall not be discriminatory for fringe benefits, insurance coverage or any other term, condition or privilege of employment to be denied where the employee seeks coverage for an individual on the basis that the individual is their spousal equivalent.

(8) *Gender variance:* Notwithstanding any other provision of this chapter, a workplace supervisor may require that a worker have reasonably consistent gender presentation in the workplace.