Document: C.R.S. 24-34-402

C.R.S. 24-34-402

Copy Citation

Current through all laws passed during the 2019 Legislative Session.

CO - Colorado Revised Statutes Annotated TITLE 24. GOVERNMENT - STATE PRINCIPAL DEPARTMENTS ARTICLE 34. DEPARTMENT OF REGULATORY AGENCIES PART 4. EMPLOYMENT PRACTICES

24-34-402. Discriminatory or unfair employment practices

(1) It shall be a discriminatory or unfair employment practice:

(a) For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; 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. For purposes of this paragraph (a), "harass" means to create a hostile work environment based upon an individual's race, national origin, sex, sexual orientation, disability, age, or religion. Notwithstanding the provisions of this paragraph (a), harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate.

(b) For an employment agency to refuse to list and properly classify for employment or to refer an individual for employment in a known available job for which such individual is otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or for an employment agency to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; 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;

(c) For a labor organization to exclude any individual otherwise qualified from full membership rights in such labor organization, or to expel any such individual from membership in such labor organization, or to otherwise discriminate against any of its members in the full enjoyment of work opportunity because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry;

(d) For any employer, employment agency, or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification or required by and given to an agency of government for security reasons;

(e) For any person, whether or not an employer, an employment agency, a labor organization, or the employees or members thereof:

(I) To aid, abet, incite, compel, or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice;

(II) To obstruct or prevent any person from complying with the provisions of this part 4 or any order issued with respect thereto;

(III) To attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice;

(IV) To discriminate against any person because such person has opposed any practice made a discriminatory or an unfair employment practice by this part 4, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 4 of this article;

(f) For any employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling apprenticeship programs or providing, coordinating, or controlling on-the-job training programs or other instruction, training, or retraining programs:

(I) To deny to or withhold from any qualified person because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry the right to be admitted to or participate in an apprenticeship training program, an on-the-job training program, or any other

occupational instruction, training, or retraining 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;

(II) To discriminate against any qualified person in pursuit of such programs or to discriminate against such a person in the terms, conditions, or privileges of such programs because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry;

(III) To print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for such programs, or to make any inquiry in connection with such programs that expresses, directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or any intent to make any such limitation, specification, or discrimination, unless based on a bona fide occupational qualification;

(g) For any private employer to refuse to hire, or to discriminate against, any person, whether directly or indirectly, who is otherwise qualified for employment solely because the person did not apply for employment through a private employment agency; but an employer shall not be deemed to have violated the provisions of this section if such employer retains one or more employment agencies as exclusive suppliers of personnel and no employment fees are charged to an employee who is hired as a result of having to utilize the services of any such employment agency;

(h)

(I) For any employer to discharge an employee or to refuse to hire a person solely on the basis that such employee or person is married to or plans to marry another employee of the employer; but this subparagraph (I) shall not apply to employers with twenty-five or fewer employees.

(II) It shall not be unfair or discriminatory for an employer to discharge an employee or to refuse to hire a person for the reasons stated in subparagraph (I) of this paragraph (h) under circumstances where:

(A) One spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse;

(B) One spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or

(C) One spouse has access to the employer's confidential information, including payroll and personnel records.

(i) Unless otherwise permitted by federal law, for an employer to discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with any employee or other person because the employee inquired about, disclosed, compared, or otherwise discussed the employee's wages; to require as a condition of employment nondisclosure by an employee of his or her wages; or to require an employee to sign a waiver or other document that purports to deny an employee the right to disclose his or her wage information.

(2) Notwithstanding any provisions of this section to the contrary, it is not a discriminatory or an unfair employment practice for the division of unemployment insurance in the department of labor and employment to ascertain and record the disability, sex, age, race, creed, color, or national origin of any individual for the purpose of making reports as may be required by law to agencies of the federal or state government only. The division may make and keep the records in the manner required by the federal or state law, but neither the division nor the department of labor and employment shall divulge the information to prospective employers as a basis for employment, except as provided in this subsection (2).

(3) 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 hours per week and lasting no more than eighteen months.

(4) Notwithstanding any other provision of this section to the contrary, it shall not be a discriminatory or an unfair employment practice with respect to age:

(a) To take any action otherwise prohibited by this section if age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular employer or where the differentiation is based on reasonable factors other than age; or

(b) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section; except that, unless authorized in paragraph (a) of this subsection (4), no such employee benefit plan shall require or permit the involuntary retirement of any individual because of the age of such individual; or

(c) To compel the retirement of any employee who is sixty-five years of age or older and under seventy years of age and 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; or

(d) To discharge or otherwise discipline an individual for reasons other than age.

(5) Nothing in this section shall preclude an employer from requiring compliance with a reasonable dress code as long as the dress code is applied consistently.

(6) Notwithstanding any other provision of law, this section shall not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(7) For purposes of this section, "employer" shall not include any religious organization or association, except for any religious organization or association that is supported in whole or in part by money raised by taxation or public borrowing.

History

Source:

L. 79: Entire part R&RE, p. 929, Section 3, effective July 1. L. 86: (1)(a) to (1)(d), (1)(f)(I), (1)(f)(II), (1)(f)(III), and (2) amended and (4) added, p. 931, Section 4, effective May 8. L. 89: (1)(h) added, p. 1163, Section 1, effective April 17; (1)(e) amended, p. 1041, Section 6, effective July 1. L. 93: (1)(a) to (1)(d), (1)(f), (2), and (3) amended, p. 1657, Section 61, effective July 1. L. 99: (1)(a) amended, p. 354, Section 1, effective July 1. L. 2007: (1)(a), (1)(b), (1)(c), (1)(d), and (1)(f) amended and (5), (6), and (7) added, p. 1254, Section 2, effective August 3. L. 2008: (1)(i) added, p. 524, Section 1, effective August 5. L. 2009: (1)(a) amended, (SB 09-110), ch. 238, p. 1085, Section 7, effective July 1. L. 2012: (2) amended, (HB 12-1120), ch. 27, p. 108, Section 23, effective June 1. L. 2017: (1)(i) amended, (HB 17-1269), ch. 290, p. 1608, Section 1, effective August 9.

Annotations

Notes

Editor's note: The effective date for amendments to this section by House Bill 12-1120 (chapter 27, Session Laws of Colorado 2012) was changed from August 8, 2012, to June 1, 2012, by House Bill 12S-1002 (First Extraordinary Session, chapter 2, p. 2432, Session Laws of Colorado 2012.)

Case Notes

ANNOTATION

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "Civil Rights in Colorado", see 46 Den. L. J. 181 (1969). For article, "Sex-based Wage Discrimination: A Management View", see 62 Den. U. L. Rev. 393 (1985). For

note, "Comparable Worth: The Next Step Toward Pay Equity Under Title VII", see 62 Den. U. L. Rev. 417 (1985). For article, "The Public Policies Against Public Policy Wrongful Discharge Claims Premised on State and Federal Fair Employment Statutes", see 62 Den. U. L. Rev. 447 (1985). For article, "Remedies Under the Federal Age Discrimination in Employment Act", see 62 Den. U. L. Rev. 469 (1985). For article, "Hishon v. King Spaulding: Discrimination In Professional Partnerships", see 62 Den. U. L. Rev. 485 (1985). For note, "Firefighters Local Union No. 1984 v. Stotts: Are Seniority Systems Approaching Inviolability In Title VII Actions?", see 62 Den. U. L. Rev. 503 (1985). For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986). For article, "Hostile Environment Sexual Harassment", see 15 Colo. Law. 1651 (1986). For article, "Practicing Before the Colorado Civil Rights Commission", see 17 Colo. Law. 259 (1988). For article, "Civil Rights", which discusses Tenth Circuit decisions dealing with employment discrimination, see 65 Den. U. L. Rev. 389 (1988). For article, "Recent Developments in the Law of Sexual Harassment", see 18 Colo. Law. 263 (1989). For article, "Watson v. Ft. Worth Bank and Trust: The Changing Face of Disparate Impact", see 66 Den. U. L. Rev. 179 (1989). For a discussion of Tenth Circuit decisions dealing with employment discrimination, see 66 Den. U. L. Rev. 759 (1989). For note, "In the Wake of Pullerson v. McLean Credit Union: The Treacherous and Shifting Shoals of Employment Discrimination Law", see 67 Den. U. L. Rev. 557 (1990). For comment, "Employer Liability and Sexual Harassment Under Section 1983: A Comment on Starrett v. Wadley", see 67 Den. U. L. Rev. 571 (1990). For article, "Civil Rights", which discusses Tenth Circuit decisions dealing with employment discrimination, see 67 Den. U. L. Rev. 639 (1990). For a discussion of Tenth Circuit decisions dealing with employment discrimination, see 67 Den. U. L. Rev. 733 (1990). For article, "Employees, Privacy Rights and AIDS", see 19 Colo. Law. 1839 (1990). For article, "Colorado Law of Retaliatory Discharge and Handicap Discrimination", see 21 Colo. Law. 2227 (1992). For article, "Sexual Harassment: Issues of Compensability and Exclusivity", see 24 Colo. Law 825 (1995). For comment, "Colorado's Lifestyle Discrimination Statute: A Vast and Muddled Expansion of Traditional Employment Law", see 67 U. Colo. L. Rev. 143 (1996). For a discussion of Tenth Circuit decisions dealing with employment discrimination involving sexual harassment, see 73 Den. U. L. Rev. 731 (1996). For article, "Advising Colorado Employers in Response to Threats of Workplace Violence", see 42 Colo. Law. 47 (April 2013). For article, "Religious Minorities Need Not Apply: Legal Implications of Faith-Based Employment Advertising", see 43 Colo. Law. 27 (April 2014). For article "Peace at Work: Balancing Religious Exercise Rights of Employers and Employees", see 44 Colo. Law. 51 (June 2015). For article, "Remedies for Workplace Sexual Violence", see 45 Colo. Law. 47 (Nov. 2016). For article, "Circuit Courts Split on Title VII Coverage for Sexual Orientation Discrimination", see 46 Colo. Law. 40 (Nov. 2017).

Annotator's note. Prior to the 1986 amendment to this section, provisions relating to age of an employee as a ground for discharge were found in Sections 8-2-116 and 8-2-117. Whether a private right of action was created pursuant to Section 8-2-116 was discussed in Rawson v. Sears, Roebuck Co., 530 F. Supp. 776 (D. Colo. 1982); Rawson v. Sears, Roebuck Co., 554 F. Supp. 327 (D. Colo. 1982); Brenimer v. Great W. Sugar Co., 567 F. Supp. 218 (D. Colo. 1983); Rawson v. Sears, Roebuck Co., 585 F. Supp. 1393 (D. Colo. 1984); Borumka v. Rocky Mtn. Hosp., 599 F. Supp. 857 (D. Colo. 1984); Rawson v. Sears, Roebuck Co., 615 F. Supp. 1546 (D. Colo. 1985); Dirito v. Ideal Basic Indus., Inc., 617 F. Supp. 79 (D. Colo. 1985); Spulak v. K Mart, 664 F. Supp. 1395 (D. Colo. 1985); Brezinski v. F.W. Woolworth, 626 F. Supp. 240 (D. Colo. 1986); and Rawson v. Sears, Roebuck Co., 822 F.2d 908 (10th Cir. 1987), cert. denied, 484 U.S. 1006, 108 S. Ct. 699, 98 L. Ed. 2d 651 (1988).

Section does not impose a constitutionally prohibited burden upon interstate commerce. Colo. Anti-Discrimination Comm'n v. Cont'l Air Lines, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed. 2d 84 (1963).

Primary purpose of commission is to determine whether a discriminatory practice has occurred and, if so, to take such action as will assure that such practice is satisfactorily eliminated and prevented in the future. While the commission may grant specific relief to a claimant, it is not required to do so. Agnello v. Adolph Coors Co., 689 P.2d 1162 (Colo. App. 1984).

The legislature did not intend to preclude common law harassment claims by enacting this section. This section does not provide an exclusive remedy for sex discrimination claims. Brooke v. Restaurant Servs., Inc., 906 P.2d 66 (Colo. 1995).

In amending this section in 1999, the general assembly did not intend the Colorado anti-discrimination act to be the exclusive remedy against an employer who negligently supervises an employee engaging in sexual harassment against a fellow employee. Alarid v. MacLean Power, LLC, 132 F. Supp. 3d 1299 (D. Colo. 2015).

The object of this section and Section 24-34-301 (4) is to eliminate discrimination in employment on account of physical handicap. Gamble v. Levitz Furniture Co., 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

The Colorado anti-discrimination act may form the basis for a claim of wrongful discharge in violation of public policy. Kennedy v. Colo. RS, LLC, 872 F. Supp. 2d 1146 (D. Colo. 2012).

An action for negligent infliction of emotional distress cannot be premised solely on a violation of this statute. The purpose of the statute is to protect disabled workers' jobs, not to protect them from emotional distress. Bigby v. Big 3 Supply Co., 937 P.2d 794 (Colo. App. 1996).

Action for reinstatement and back pay under the anti-discrimination provisions of the Colorado civil rights act is not an action seeking compensatory damages for personal injuries and therefore neither lies in tort nor could lie in tort for purposes of the Governmental Immunity Act. City of Colo. Springs v. Conners, 993 P.2d 1167 (Colo. 2000).

State regulation of interstate racial discrimination is allowed. The field of racial discrimination by an interstate carrier does not have to be free from diverse state regulation and governed uniformly, if at all, by congress. Colo. Anti-Discrimination Comm'n v. Cont'l Air Lines, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed. 2d 84 (1963).

Federal legislation prevents enforcement of Colorado's physical handicap discrimination law against airlines. Federal law prohibits any state law that effects services provided by an air carrier. Any restriction on an airline's selection of employees affects the services provided by the airline. Belgard v. United Airlines, 857 P.2d 467 (Colo. App. 1992), cert. denied, 510 U.S. 117, 114 S. Ct. 1066, 127 L. Ed. 2d 386 (1994).

Neither federal aviation nor federal railway labor provisions bar this section. Colo. Anti-Discrimination Comm'n v. Cont'l Air Lines, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed. 2d 84 (1963).

Consequently, government agencies may be required to include anti-discrimination clauses in contracts. Executive orders may require government contracting agencies to include in their contracts clauses by which the contractors agree not to discriminate against employees or applicants because of their race, religion, color, or national origin. Colo. Anti-Discrimination Comm'n v. Cont'l Air Lines, 372 U.S. 714, 83 S. Ct. 1022, 10 L. Ed. 2d 84 (1963).

Intentional discrimination may be presumed by the establishment of a prima facie case which shows that: (1) The complainant belongs to a protected class; (2) the complainant was qualified for the job at issue; (3) despite the complainant's other qualifications, the complainant suffered an adverse employment decision; and (4) the circumstances give rise to an inference of unlawful discrimination. George v. Ute Water Conservancy Dist., 950 P.2d 1195 (Colo. App. 1997).

Once plaintiff establishes at trial that he has a handicap within the statutory definition of Section 24-34-301 (4), he must additionally establish that his employer violated the provisions of subsection (1)(a) and (1)(f)(I) in discharging the plaintiff from employment. Gamble v. Levitz Furniture Co., 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

Public policy exception to general rule that an indefinite general hiring is terminable at will by either party does not exist when subsection (1)(f)(I) provides the employee with a wrongful discharge remedy. Gamble v. Levitz Furniture Co., 759 P.2d 761 (Colo. App. 1988), cert. denied, 782 P.2d 1197 (Colo. 1989).

A handicapped person is "otherwise qualified" if, with reasonable accommodations, he can perform the reasonable, legitimate, and necessary functions of his job. AT&T Technologies, Inc. v. Royston, 772 P.2d 1182 (Colo. App. 1989).

Finding by commission that defendant suffered a physical handicap within meaning of subsection (1)(a) when assigned job which aggravated defendant's symptoms from previous injury to the point that he could not perform said assignment full-time was supported by substantial evidence and is binding on review. AT&T Technologies, Inc. v. Royston, 772 P.2d 1182 (Colo. App. 1989).

Once employee makes facial showing that his handicap can be accommodated, the burden shifts to employer to prove that handicap could not be reasonably accommodated, that the handicap actually disqualified the individual from the job, and that the handicap had a significant impact on the job. AT&T Technologies, Inc. v. Royston, 772 P.2d 1182 (Colo. App. 1989).

Insurance policy provision excluding disability coverage for normal pregnancies is discrimination on the basis of sex and violates Section 29 of art. II, Colo. Const., and this section. Civil Rights Comm'n v. Travelers Ins., 759 P.2d 1358 (Colo. 1988) (decided prior to enactment of Sections 10-8-122.2, 10-16-114.6, and 10-17-131.6).

Provision of group health insurance in conjunction with employment constitutes a matter of compensation. Civil Rights Comm'n v. Travelers Ins., 759 P.2d 1358 (Colo. 1988).

The following procedure applies in claims of employment discrimination: First, the complainant must initially establish a prima facie case of discrimination. If the complainant establishes a prima facie case of discrimination, the burden of production shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employment decision. Once the employer meets its burden, the complainant must then be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for the employment decision were in fact a pretext for discrimination. Colo. Civil Rights Comm'n v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997); Bodaghi v. Dept. of Natural Res., 995 P.2d 288 (Colo. 2000).

Where a prima facie case of discrimination is proven and the reasons given for discharge are found to be a pretext for discrimination, no additional evidence is required to infer intentional discrimination. Colo. Civil Rights Comm'n v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997); Bodaghi v. Dept. of Natural Res., 995 P.2d 288 (Colo. 2000).

If the plaintiff establishes a prima facie case of discrimination, a presumption arises that the employer unlawfully discriminated against the plaintiff. The presumption places upon the defendant the burden of producing an explanation to rebut the prima facie case. Bodaghi v. Dept. of Natural Res., 943 P.2d 1 (Colo. App. 1996).

However, the presumption created shifts only the burden of production. The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains on the plaintiff. Bodaghi v. Dept. of Natural Res., 943 P.2d 1 (Colo. App. 1996).

Intentional discrimination under this section may be proven either directly or indirectly. George v. Ute Water Conservancy Dist., 950 P.2d 1195 (Colo. App. 1997).

Direct evidence of overt discrimination is not a prerequisite to finding of discrimination. Colo. Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

Racial discrimination may not be inferred where surrounding facts supporting inference are absent. While the commission may contend that the discharge of a complainant was not based upon her inadequacies as a teacher and, in the absence of any other legitimate explanation for such a discharge, the commission is entitled to infer that the motivation for the discharge was racial discrimination, racial discrimination may not be inferred as a basis for a discharge where the surrounding facts supporting such an inference are absent. Even though the commission chooses to disbelieve or disregard material evidence indicating that a proper basis for discharge does exist, the necessary inference of discrimination must be in evidence in the record. Colo. Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

No intent necessary for liability as an aider and abetter. The conduct prescribed is simply conduct that assists others in their performance of prohibited acts and when conduct being assisted is patently discriminatory, one need not have an intent to be considered an aider and abetter. Civil Rights Comm'n v. Travelers Ins., 759 P.2d 1358 (Colo. 1988).

When an insurance company offers and underwrites a discriminatory policy, it aids and abets an employer in a discriminatory act. Civil Rights Comm'n v. Travelers Ins., 759 P.2d 1358 (Colo. 1988).

To prove a claim under this section that plaintiff was discharged for having AIDS, plaintiff must show that the employer knew or should have known of the physical condition and need for accommodation. Phelps v. Field Real Estate Co., 793 F. Supp. 1535 (D. Colo. 1991); Phelps v. Field Real Estate Co., 991 F.2d 645 (10th Cir. 1993).

Even if plaintiff is unable to prove that she has an impairment which substantially limits a major life function, she can succeed on her claim if she can demonstrate that defendant regarded her as having such an impairment. Healion v. Great-West Life Assur., 830 F. Supp. 1372 (D. Colo. 1993).

The imposition of a "bona fide occupational qualification" is not a valid defense to an employment discrimination suit brought under this section. Civil Rights Comm'n v. Conagra Flour Mill Co., 736 P.2d 842 (Colo. App. 1987).

Defense of "business necessity", in case involving alleged employment discrimination due to handicap, is available to employers. Civil Rights Comm'n v. Fire Prot. Dist., 772 P.2d 70 (Colo. 1989).

Where the complainant is demoted because of a handicap, the employer, to avoid liability in a suit brought pursuant to this section, must show that the complainant is actually unable to perform the job. Civil Rights Comm'n v. Conagra Flour Mill Co., 736 P.2d 842 (Colo. App. 1987).

A two year and nine month age difference between plaintiff and his replacement worker, without more than just plaintiff's subjective view that age was a relevant factor, was insufficient to establish a prima facie case of age discrimination. George v. Ute Water Conservancy Dist., 950 P.2d 1195 (Colo. App. 1997).

"Constructive discharge" concept applicable. The concept of "constructive discharge" developed in unfair labor practice cases is applicable to discrimination cases. Colo. Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

Therefore, formal words of firing unnecessary. The fact of a discharge does not depend upon the use of formal words of firing. The test is whether sufficient words or actions by the employer would logically lead a prudent person to believe his tenure has been terminated. Colo. Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

Mere signed statement that resignation is voluntary does not relieve employer of consequences of an act amounting to constructive discharge. Colo. Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

The fact that a teacher submits her resignation subsequent to a conference with a principal, at which time he had told her that he would not recommend her for rehiring, does not make her separation from employment by the school district a "voluntary" resignation. Colo. Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83 (1971).

The federal district court presumed the McDonnell Douglas v. Green, 411 U.S. 792 (1973) analysis would apply to a wage claim under this section, even though no Colorado court has directly endorsed it. Noel v. Medtronic Electromedics, Inc., 973 F. Supp. 1206 (D. Colo. 1997).

Nexus between discriminatory acts and discharge must be shown. To establish a claim that a discharge is a result of racial discrimination, a nexus must be shown between the allegedly discriminatory acts and the subsequent discharge. Adolph Coors Co. v. Colo. Civil Rights Comm'n, 31 Colo. App. 417, 502 P.2d 1113 (1972).

Evidence held insufficient to establish discrimination in discharge of black employee. Adolph Coors Co. v. Colo. Civil Rights Comm'n, 31 Colo. App. 417, 502 P.2d 1113 (1972).

Evidence of appointing authority's intent to hand-pick the person for the position may be improper under some personnel rules, but such evidence alone is not sufficient to imply national origin discrimination. Bodaghi v. Dept. of Natural Res., 943 P.2d 1 (Colo. App. 1996).

Applied in City County of Denver v. Colo. Civil Rights Comm'n, 638 P.2d 837 (Colo. App. 1981).

COLORADO REVISED STATUTES

Content Type:

Terms:

Narrow By: -None-

Date and Time: Feb 27, 2020 11:39:02 a.m. EST