

**Please Support SB23-172 (Weissman & Bacon / Winter & Gonzales)**

*Concerning Protections for Colorado Workers Against Discriminatory Employment Practices*

**What the Bill Does**

- Rejects the “severe or pervasive” standard in workplace harassment matters
- Adds new definition of “harassment” – need NOT be “severe or pervasive”
- Adds marital status as a protected status that may not be discriminated against
- Improves protections for workers with disabilities
- Specifies elements of employer’s affirmative defense
- Limits non-disclosure agreements
- Establishes employer record-keeping responsibilities

**Section by Section Summary**

- 1 – Short Title – “Protecting Opportunities and Workers’ Rights Act”
- 2 – CCRD shall explicitly include “harassment” as an option on intake forms
- 3 – Legislative Declaration – reject “severe or pervasive standard for workplace harassment”
- 4 – CORE SECTION OF THE BILL
  - 24-34-402(1)
    - Add marital status as protected class throughout
    - Improved protections for people with disabilities – not a discriminatory practice if no reasonable accommodation “that would allow the individual to satisfy the essential functions of the job”
  - 24-34-402(1.3) – *new definition of harassment*
    - Unwelcome conduct or communication
    - Because of membership in a protected class
    - Subjectively offensive to the complainant AND objectively offensive to a member of that protected class
    - Need NOT be “severe or pervasive”
    - AND
      - Submission is a term of condition of employment or
      - Submission is a basis for employment decisions or
      - Unreasonably interferes with or creates intimidating, hostile, offensive workplace
    - Past frequency of harassment in the workplace is NOT relevant
    - Totality of the circumstances rule applies
  - 24-34-402(1.5) – *employer’s affirmative defense*
    - Employer has established a program to prevent/ deter harassment
    - Employer has communicated about program to employees
    - Employer retains a repository of complaints

- Employee has unreasonably failed to take advantage of employer program
- 5 – New sections – limitations on non-disclosure agreements (407) & record-keeping
  - Non-disclosure agreements (24-34-407) – VOID unless
    - Applies equally to all parties
    - Allows disclosure of underlying facts in certain circumstances
    - Specifies disclosure of underlying facts ≠ disparagement
    - If employer disparages, then employer may not enforce against employee
    - Appropriate liquidated damages provisions
    - Signed addendum attached to agreement
  - Remedy provisions
  - Good faith defense for employer
  - Record-keeping requirements (24-34-408)
    - 5-year retention of
      - Requests for accommodation
      - Employee complaints of discrimination
      - Application forms
      - Other records related to hiring
      - Records of training
- 6 – Appropriations
- 7 – Petition Clause