

STATUTE OF LIMITATIONS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Clare Collard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the statute of limitations for certain claims of discrimination.

Highlighted Provisions:

This bill:

▶ modifies the statute of limitations for a claim of wage discrimination on the basis of sex, gender identity, sexual orientation, or pregnancy, childbirth, or pregnancy-related conditions; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-5-107, as last amended by Laws of Utah 2018, Chapter 317

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-5-107** is amended to read:

34A-5-107. Procedure for aggrieved person to file claim -- Investigations -- Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.



28 (1) (a) A person claiming to be aggrieved by a discriminatory or prohibited
29 employment practice may, or that person's attorney or agent may, make, sign, and file with the
30 division a request for agency action.

31 (b) A request for agency action shall be verified under oath or affirmation.

32 (c) ~~[A]~~ (i) Except as provided in Subsection (1)(c)(ii), a request for agency action
33 made under this section shall be filed within 180 days after the alleged discriminatory or
34 prohibited employment practice occurs.

35 (ii) If a person is bringing a claim of wage discrimination on the basis of sex, gender
36 identity, sexual orientation, or pregnancy, childbirth, or pregnancy-related conditions, a request
37 for agency action made under this section shall be filed within two years after the alleged
38 discriminatory or prohibited employment practice occurs.

39 (d) The division may transfer a request for agency action filed with the division
40 pursuant to this section to the federal Equal Employment Opportunity Commission in
41 accordance with a work-share agreement that is:

- 42 (i) between the division and the Equal Employment Opportunity Commission; and
- 43 (ii) in effect on the day on which the request for agency action is transferred.

44 (2) An employer, labor organization, joint apprenticeship committee, or vocational
45 school who has an employee or member who refuses or threatens to refuse to comply with this
46 chapter may file with the division a request for agency action asking the division for assistance
47 to obtain the employee's or member's compliance by conciliation or other remedial action.

48 (3) (a) Before an investigation begins into allegations of discriminatory or prohibited
49 employment practice, the division shall promptly assign a mediator to offer mediation services
50 between the parties by conference.

51 (b) (i) If mediation services are refused or no settlement is reached, the division shall
52 promptly assign an investigator.

53 (ii) The investigator shall make a prompt impartial investigation of all allegations made
54 in the request for agency action.

55 (c) The division and the division's staff, agents, and employees shall conduct every
56 investigation in fairness to all parties and agencies involved.

57 (d) An aggrieved party may withdraw the request for agency action prior to the
58 issuance of a final order.

59 (4) (a) If the initial attempts at settlement are unsuccessful, and the investigator
60 uncovers insufficient evidence during the investigation to support the allegations of a
61 discriminatory or prohibited employment practice set out in the request for agency action, the
62 investigator shall formally report these findings to the director or the director's designee.

63 (b) (i) Upon receipt of the investigator's report described in Subsection (4)(a), the
64 director or the director's designee may issue a determination and order for dismissal of the
65 adjudicative proceeding.

66 (ii) A determination and order issued under this Subsection (4)(b) shall include a
67 notice:

68 (A) of the right to request an evidentiary hearing under Subsection (4)(c); and

69 (B) that failure to request an evidentiary hearing under Subsection (4)(c) will result in
70 the determination and order becoming final, in accordance with Subsection (4)(d).

71 (c) A party may make a written request to the Division of Adjudication for an
72 evidentiary hearing to review de novo the director's or the director's designee's determination
73 and order within 30 days from the day on which the determination and order for dismissal is
74 issued.

75 (d) If the director or the director's designee receives no timely request for a hearing, the
76 determination and order issued by the director or the director's designee becomes the final order
77 of the commission.

78 (5) (a) If the initial attempts at settlement are unsuccessful and the investigator
79 uncovers sufficient evidence during the investigation to support the allegations of a
80 discriminatory or prohibited employment practice set out in the request for agency action, the
81 investigator shall formally report these findings to the director or the director's designee.

82 (b) (i) Upon receipt of the investigator's report described in Subsection (5)(a), the
83 director or the director's designee may issue a determination and order based on the
84 investigator's report.

85 (ii) A determination and order issued under this Subsection (5)(b) shall:

86 (A) direct the respondent to cease any discriminatory or prohibited employment
87 practice;

88 (B) provide relief to the aggrieved party as the director or the director's designee
89 determines is appropriate;

90 (C) include a notice of the right to request an evidentiary hearing under Subsection
91 (5)(c); and

92 (D) include a notice that failure to request an evidentiary hearing under Subsection
93 (5)(c) will result in the determination and order becoming final, in accordance with Subsection
94 (5)(d).

95 (c) A party may file a written request to the Division of Adjudication for an evidentiary
96 hearing to review de novo the director's or the director's designee's determination and order
97 within 30 days after the day on which the determination and order is issued.

98 (d) If the director or the director's designee receives no timely request for a hearing, the
99 determination and order issued by the director or the director's designee in accordance with
100 Subsection (5)(b) becomes the final order of the commission.

101 (6) In an adjudicative proceeding to review the director's or the director's designee's
102 determination that a prohibited employment practice has occurred, the division shall present the
103 factual and legal basis of the determination and order issued under Subsection (5).

104 (7) (a) If, upon reviewing all the evidence at a hearing, the presiding officer finds that a
105 respondent has not engaged in a discriminatory or prohibited employment practice, the
106 presiding officer shall issue an order dismissing the request for agency action containing the
107 allegation of a discriminatory or prohibited employment practice.

108 (b) The presiding officer may order that the respondent be reimbursed by the
109 complaining party for the respondent's attorney fees and costs.

110 (8) If, upon reviewing all the evidence at the hearing, the presiding officer finds that a
111 respondent has engaged in a discriminatory or prohibited employment practice, the presiding
112 officer shall issue an order requiring the respondent to:

113 (a) cease any discriminatory or prohibited employment practice;

114 (b) provide relief to the complaining party, including:

115 (i) reinstatement;

116 (ii) back pay and benefits;

117 (iii) attorney fees; and

118 (iv) costs.

119 (9) If a discriminatory practice described in Subsection (8) includes discrimination in
120 matters of compensation, the presiding officer may provide, to the complaining party, in

121 addition to the amount available to the complaining party under Subsection (8)(b), an
122 additional amount equal to the amount of back pay available to the complaining party under
123 Subsection (8)(b)(ii) unless a respondent shows that:

- 124 (a) the act or omission that gave rise to the order was in good faith; and
- 125 (b) the respondent had reasonable grounds to believe that the act or omission was not
126 discrimination in matters of compensation under this chapter.

127 (10) Conciliation between the parties is to be urged and facilitated at all stages of the
128 adjudicative process.

129 (11) (a) Either party may file with the Division of Adjudication a written request for
130 review before the commissioner or Appeals Board of the order issued by the presiding officer
131 in accordance with:

- 132 (i) Section [63G-4-301](#); and
- 133 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

134 (b) If there is no timely request for review, the order issued by the presiding officer
135 becomes the final order of the commission.

136 (12) An order of the commission under Subsection (11)(a) is subject to judicial review
137 as provided in:

- 138 (a) Section [63G-4-403](#); and
- 139 (b) Chapter 1, Part 3, Adjudicative Proceedings.

140 (13) The commission may make rules concerning procedures under this chapter in
141 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

142 (14) The commission and its staff may not divulge or make public information gained
143 from an investigation, settlement negotiation, or proceeding before the commission except as
144 provided in Subsections (14)(a) through (d).

145 (a) Information used by the director or the director's designee in making a
146 determination may be provided to all interested parties for the purpose of preparation for and
147 participation in proceedings before the commission.

148 (b) General statistical information may be disclosed provided the identities of the
149 individuals or parties are not disclosed.

150 (c) Information may be disclosed for inspection by the attorney general or other legal
151 representatives of the state or the commission.

152 (d) Information may be disclosed for information and reporting requirements of the
153 federal government.

154 (15) The procedures contained in this section are the exclusive remedy under state law
155 for employment discrimination based upon:

- 156 (a) race;
- 157 (b) color;
- 158 (c) sex;
- 159 (d) retaliation;
- 160 (e) pregnancy, childbirth, or pregnancy-related conditions;
- 161 (f) age;
- 162 (g) religion;
- 163 (h) national origin;
- 164 (i) disability;
- 165 (j) sexual orientation; or
- 166 (k) gender identity.

167 (16) (a) The commencement of an action under federal law for relief based upon an act
168 prohibited by this chapter bars the commencement or continuation of an adjudicative
169 proceeding before the commission in connection with the same claim under this chapter.

170 (b) The transfer of a request for agency action to the Equal Employment Opportunity
171 Commission in accordance with Subsection (1)(d) is considered the commencement of an
172 action under federal law for purposes of Subsection (16)(a).

173 (c) Nothing in this Subsection (16) is intended to alter, amend, modify, or impair the
174 exclusive remedy provision set forth in Subsection (15).