



Protecting Opportunities and Workers' Rights Act

Some of you may not be aware of a proposed Senate Bill in the state of Colorado that may drastically affect Colorado employers if it passes. Please click [here](#) to read the proposed Bill.

The Colorado SHRM State Council voted to oppose SB 21-176, stating "...if enacted, would make it much easier for employees to sue employers for discrimination, harassment and retaliation, and much more difficult for employers to defend themselves."

The Grand Junction Chamber of Commerce (GJCC) sums it up when they state "*SB 176 comes at a time when employers have yet to recover from the COVID-19 pandemic and are still struggling to follow new State employment laws, regulations & ballot initiatives, many of which have conflicting provisions making them extremely difficult & expensive to administer.*"

In addition, the GJCC compiled some concerns with the proposed Bill:

- **Application to independent contractors:** The bill makes employers liable for the actions of an independent contractor (IC), however, employers cannot exercise direct control or supervision over an IC. Employers currently have a duty to protect workers that are classified as employees, and should not be liable the actions of those with an arms-length relationship such as IC's;
- **Broad definition of hostile work environment:** SB 176 includes a definition of hostile work environment that is anything that "undermines a person's sense of well-being." This is incredibly broad and allows an employee to easily create a circumstance that fits within this definition;
- **Confidentiality:** SB 176 prohibits confidentiality provisions in a settlement agreement. This is counterintuitive because confidentiality provisions actually increase the likelihood for a resolution or settlement. Prohibiting this encourages the likelihood of a long, drawn-out lawsuit;
- **Forcing Employers to Create a Program with Undefined Parameters:** SB 176 requires an employer to create a program with "documented success" however the bill fails to define the term which will be impossible for employers to interpret, and fails to acknowledge current policies enacted by employers;
- **CGIA Waiver:** Waivers of governmental immunity are narrow, as a matter of public policy, to balance redressing public entities' tort liability with the fiscal impacts and provision of essential governmental services. The inclusion of the entire Part 4 of Article 34, Title 24, is so broad as to negate the purposes of the CGIA. Further, it sets a bad precedent for future waivers, which may be necessary, but should be narrowly tailored;
- **Caregiver status:** Many laws including Title VII already protect marital status, family status, or due to a relationship to someone with a disability. This language is duplicative of the current disability discrimination prohibition against someone due to their relationship to someone with a disability.

SB 176 changes long-established State civil rights laws, circumvents the CCRD process & creates different legal remedies for workers, thereby contradicting the implied intent of protecting workers equally from discrimination!