

# **HARASSMENT**

City of Northglenn

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Corey Y. Hoffmann, City Attorney  
Hoffmann, Parker, Wilson & Carberry, P.C

# AGENDA

FEDERAL LAW

COLORADO LAW/POWR ACT

# FEDERAL LAW - DEFINITIONS

## HARASSMENT

"Harassment is unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (40+), disability, or general information (including family medical history)"

# FEDERAL LAW

## HARASSMENT BECOMES UNLAWFUL WHERE:

Enduring the offensive conduct becomes a condition of continued employment, or

The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive

# FEDERAL LAW

## HARASSMENT EXAMPLES

- Offensive jokes
- Slurs
- Epithets
- Name calling
- Physical assaults
- Threats
- Intimidation
- Ridicule and mockery
- Insults and put-downs
- Offensive objects or pictures
- Interference with work performance

# FEDERAL LAW

## WHO IS SUBJECT TO HARASSMENT PROHIBITIONS?

The harasser can be:

- The victim's supervisor
- A supervisor in another department or area
- An agent of the employer (an elected official?)
- A coworker
- A non-employee

# FEDERAL LAW

## HARASSMENT EXAMPLES

- The victim does not have to be the person to whom the harassment is directed
- The victim can be anyone affected by the offensive conduct

# FEDERAL LAW

## HARASSMENT DOES NOT INCLUDE:

- Petty slights
- Annoyances
- Isolated incidents (unless serious)
- Proper discipline



# FEDERAL LAW

## HARASSMENT MAY ALSO BE ALLEGED TO INCLUDE RETALIATION FOR:

- Filing a discrimination charge
- Testifying in an investigation, proceeding, or lawsuit under various federal laws (Title VII, ADEA, or ADA)
- Participating in an investigation, proceeding, or lawsuit brought under various federal laws (Title VII, ADEA, or ADA)

# COLORADO LAW

- Senate Bill 23-172 (“POWER” Act)
- Colorado Anti-Discrimination Act (“CADA”)

# COLORADO LAW

## POWR Act

- Protecting Opportunities and Workers' Rights Act
- Effective August 7, 2023
- Applies to employment practices occurring on or after effective date

# COLORADO LAW

## POWR ACT – LEGISLATURE DECLARATION

- It is critical that employers engage in preventive and corrective actions to eliminate workplace discrimination and harassment and ensure a safe workplace environment for all their employees.
- Finds that the “severe or pervasive” standard created by courts to determine if harassment at work is a discriminatory or an unfair employment practice does not take into account the realities of the workplace or the harm that workplace harassment causes; and rejects the “severe or pervasive” standard for proof of workplace harassment in favor of a standard that prohibits unwelcome harassment.

# COLORADO LAW

## POWR ACT - CHANGES

- Repealed previous definition of “harass”
- Removed “severe or pervasive” requirement for conduct to constitute discriminatory and/or unfair employment practices
- Recognition of marital status
- Removed ability for employer to assert disability as defense to discriminatory employment practice

# COLORADO LAW

## POWR ACT – NEW DEFINITION OF HARASS/HARASSMENT

Engaging in:

- any unwelcome physical or verbal conduct OR
- any written, pictorial, or visual communication:
  1. directed at an individual or group of individuals
  2. because of that individual's or group's membership in, or perceived membership in, a protected class
  3. which conduct or communication is subjectively offensive to the individual alleging harassment and is objectively offensive to a reasonable individual who is a member of the same protected class.

# COLORADO LAW

## POWR ACT – NEW DEFINITION OF HARASS/HARASSMENT

- Perceived membership in, a protected class
- Conduct or communication is:
  1. Subjectively offensive to the individual alleging harassment; and
  2. Objectively offensive to a reasonable individual who is a member of the same protected class.

# COLORADO LAW

## POWR ACT – REMOVAL “SEVERE OR PERVASIVE”

Conduct no longer needs to be severe or pervasive and is a prohibited harassment if:

1. Submission to conduct or communication is explicitly or implicitly made a term or condition of the individual's employment OR
2. Submission to, objection to, or rejection of the conduct or communication is used as a basis for employe decisions affecting the individual OR



# COLORADO LAW

## POWR ACT – REMOVAL “SEVERE OR PERVASIVE”

Conduct no longer needs to be severe or pervasive and is a prohibited harassment if:

3. Conduct or communication has the purpose or effect of unreasonably interfering with the individual’s work performance or creating an intimidating, hostile, or offensive working environment.

# COLORADO LAW

## POWR ACT – REMOVAL “SEVERE OR PERVASIVE”

The nature of work or the frequency with which harassment in the workplace occurred in the past is not relevant to whether the conduct or communication is discriminatory.

# COLORADO LAW

## POWR ACT – TOTALITY OF CIRCUMSTANCES

Petty slights, minor annoyances, and lack of good manners are NOT harassment UNLESS individually or in combination and under the totality of circumstances, meets the standards for harassment

# COLORADO LAW

## POWR ACT – TOTALITY OF CIRCUMSTANCES

- Frequency of the conduct or communication, recognizing that a single incident may rise to the level of harassment
- Number of individuals engaged in the conduct or communication
- Type or nature of the conduct or communication, recognizing that conduct or communication that, at one time, was or is welcome between two or more individuals may become unwelcome to one or more of those individuals
- Duration of the conduct or communication

# COLORADO LAW

## POWR ACT – TOTALITY OF CIRCUMSTANCES

- Location where the conduct or communication occurred
- Whether the conduct or communication is threatening
- Whether any power differential exists
- Use of epithets, slurs, or other conduct or communication that is humiliating or degrading
- Whether the conduct or communication reflects stereotypes about an individual or group of individuals in a protected class

# COLORADO LAW

## POWR ACT – MARITAL STATUS

Martial status is now expressly protected under Colorado law

# COLORADO LAW

## POWR ACT – DISABILITY

An employer cannot assert that an employee's disability has a significant impact on the job as a rationale for allegedly discriminatory employment practices. The law specifies that this exception is now limited to situations in which there is *no* reasonable accommodation that would allow the individual to satisfy the essential functions of the job.

# COLORADO LAW

## POWR ACT – LIMITS ON EMPLOYER DEFENSES

In cases of harassment by a supervisor, the employer may only assert a defense to the harassment if:

1. Employer has established program designed to prevent harassment
2. Communicates the existence of the program to employees
3. Employee unreasonably failed to take advantage of program



# COLORADO LAW

## POWR ACT – LIMITS ON EMPLOYER DEFENSES

Employer program:

- Prompt, reasonable actions to investigate allegations (not just the current allegation)
- Takes prompt, reasonable action to remediate, when warranted