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**COLORADO CIVIL RIGHTS COMMISSION  
STATEMENT OF BASIS AND PURPOSE  
OF AMENDMENTS TO THE  
SEXUAL ORIENTATION DISCRIMINATION RULES**

The rules of the Colorado Civil Rights Commission are published at 3 CCR §708-1. The promulgated rules described herein amend the "Sexual Orientation Discrimination Rules," Rule 81.1 *et seq.*

Colorado Senate Bill 07-025 (2007 Colorado Session Laws Chapter 295) was enacted on May 25, 2007 and became effective on August 3, 2007. This legislation amended Title 24, Article 34, Part 4, Colorado Revised Statutes, to prohibit discrimination on the basis of sexual orientation in employment. On October 30, 2007, this Commission adopted the Sexual Orientation Discrimination Rules (Rules 81.1, 81.2, 81.3, 81.5, 81.7, 18.10, and 81.12) to implement and interpret Colorado Senate Bill 07-025.

Colorado Senate Bill 08-200 (2008 Colorado Session Laws Chapter 341) was enacted and became effective on May 29, 2008. This legislation amended Title 24, Article 34, Parts 5 through 7, Colorado Revised Statutes, to also prohibit discrimination on the basis of sexual orientation in housing, public accommodations and advertising. After the enactment of Senate Bill 08-200, Colorado law now prohibits discrimination based upon sexual orientation in all areas enforced by this Commission and the Colorado Civil Rights Division.

Colorado Senate Bill 09-110 (2009 Colorado Session Laws Chapter 238) was enacted and became effective on May 11, 2009. This legislation amended C.R.S. §24-34-402(1)(a) to prohibit discrimination based upon "terms, conditions, or privileges of employment."

This Commission finds it reasonable and necessary to amend the Sexual Orientation Discrimination Rules in light of the passage of Senate Bill 08-200 and Senate Bill 09-110. The Commission further finds that the public interest would be served by amending these rules to provide regulatory guidance to covered entities and consumers. Therefore, the Commission promulgates the following amendments and new rules for the purposes stated herein:

<b>Rule #</b>	<b>Action</b>	<b>Purpose</b>
81.1	Amendment	Revises the statement of purpose for the Sexual Orientation Rules to clarify that the rules include provisions for housing, public accommodations, and advertising in addition to employment; and simplifies the language of the statement of purpose.
81.2	Amendment	Substitutes the phrase "another person's perception" for the phrase "an employer's perception" in the definition of "sexual orientation;" provides new definitions for the terms "transgender," "gender identity," "gender expression," and "covered entity;" and eliminates the definition of "transgender status."
81.3	Amendment	Revises the job classification and seniority rule by substituting the term "any person" for the term "any employee."
81.4	New Rule	Provides a new rule to clarify that discriminatory treatment of medical leave requests based upon sexual orientation is a prohibited employment practice.
81.5	Amendment	Expands the rule prohibiting pre-employment inquiries concerning sexual orientation to include prospective inquiries related to housing, public accommodations, and advertising.
81.6	New Rule	Provides a new rule prohibiting discriminatory treatment by a covered entity based upon information about an individual's sexual orientation discovered through background checks.
81.7	Amendment	Revises the rule prohibiting wage discrimination based upon sexual orientation by simplifying language.
81.8	New Rule	Provides regulatory guidance to covered entities and consumers about discriminatory harassment based upon sexual orientation.
81.9	Amendment	Renumbers the rule on discriminatory advertising (previously numbered as 81.10); expands the advertising rule to include housing and public accommodations, in addition to employment; and eliminates unnecessary language.
81.10	New Rule	Renumbers the rule on dress (previously numbered as 81.12); and provides clarifying language on nondiscriminatory treatment of transgender individuals with regard to dress and grooming standards.
81.11	New Rule	Provides that the Law does not prohibit the segregation of facilities on the basis of gender; provides that individuals should be allowed the use of gender-segregated facilities that are consistent with their gender identity; and provides a standard of "reasonable accommodation" for access to gender-segregated facilities where undressing in the presence of others occurs.

**Statutory Authority for Proposed Rules:** C.R.S. §24-34-305(1)(a), and the Colorado Administrative Procedure Act, C.R.S. §24-4-103, *et seq.*, provide the specific authority of the Colorado Civil Rights Commission to promulgate these rules.

**Public Hearing Held & Comments Solicited:** Pursuant to due notice, the Commission held a public hearing on Friday, July 31, 2009, to consider the adoption of the aforementioned rules. The Commission held the public hearing at 10:00 a.m. at 1560 Broadway, Suite 1250 (12<sup>th</sup> Floor, Civic Center Plaza Building), Denver, CO 80202. The Commission also solicited and received written comments concerning the proposed rules.

**Commission Findings:** In promulgating these rules, the Commission specifically finds as follows:

- The proposed rules received broad majority public support, as expressed in both written comments and oral testimony received by the Commission in the rulemaking proceeding.
- The record of the rulemaking proceeding demonstrates the need for the rules.
- The proper statutory authority exists for the rules.
- To the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any party required to comply with the rules.
- The rules do not conflict with other provisions of the law.
- No duplication or overlapping of the rules exists.

Dated this 25th day of September, 2009.

  
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Eva Muñoz Valdez, Chair  
Colorado Civil Rights Commission