



Bill Ritter, Jr.  
Governor

D. Rico Munn  
Executive  
Director

**NOTICE OF RULEMAKING**

To: Colorado Secretary of State, All Departments, Agencies,  
Institutions, & Other Interested Parties

From: Eva Muñoz Valdez, Chair, Colorado Civil Rights Commission

Date: June 26, 2009

Subject: Notice of public hearing to consider adoption of permanent rules

The Colorado Civil Rights Commission will hold a public hearing on Friday, July 31, 2009, to consider the adoption of permanent rules. The public hearing will commence at 10:00 a.m. at 1560 Broadway, Suite 1250 (12<sup>th</sup> Floor, Civic Center Plaza Building), Denver, Colorado 80202.

The Commission will consider amendments to Rules 81.1, 81.2, 81.3, 81.5, 81.7, 81.10, and 81.12, and adoption of new rules 81.4, 81.6, 81.8, and 81.11.

All interested persons are encouraged to attend the public hearing and/or to submit written comments to the Commission for its consideration concerning the proposed rules. Written comments should be addressed as follows: Colorado Civil Rights Commission, 1560 Broadway, Suite 1050, Denver, CO 80202. Comments may also be faxed to (303)894-7830.

The hearing facility is accessible in compliance with the Americans with Disabilities Act (ADA) guidelines. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify Erin Hayes at (303)894-7805 or [erin.hayes@dora.state.co.us](mailto:erin.hayes@dora.state.co.us), by July 27, 2009, of any request for an accommodation.

The proposed rules and the statement of basis, specific statutory authority and purpose will be available for review by interested persons on or before the close of business on July 10, 2009, at the offices of the Colorado Civil Rights Division, 1560 Broadway, Suite 1050, Denver, CO 80202, or on the website of the Department of Regulatory Agencies at: <http://www.dora.state.co.u/civil-rights/>.

C.R.S. §24-34-305(1)(a) and the Colorado Administrative Procedure Act, C.R.S. §24-4-103, *et seq.*, authorize the Colorado Civil Rights Commission to promulgate these rules.

Eva Muñoz Valdez, Chair  
Colorado Civil Rights Commission



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

The current rules of the Colorado Civil Rights Commission are published at 3 CCR §708-1. The proposed 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 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 proposes adoption of the following amendments and new rules:

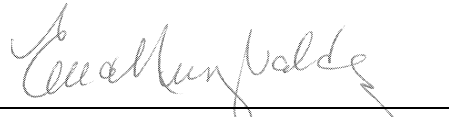
<b>Rule #</b>	<b>Action</b>	<b>Purpose</b>
81.1	Amendment	Revises the statement of purpose for the Sexual Orientation Rules to clarify that the rules include provisions for housing, public accommodations, and advertising in addition to employment; and simplifies the language of the statement of purpose.
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; and provides that individuals should be allowed the use of gender-segregated facilities that are consistent with their gender identity.

**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 Scheduled:** The Commission will hold a public hearing on Friday, July 31, 2009, to consider the adoption of the aforementioned rules. The public hearing will commence at 10:00 a.m. at 1560 Broadway, Suite 1250 (12<sup>th</sup> Floor, Civic Center Plaza Building), Denver, CO 80202. The facility for the hearing complies with ADA standards for accessibility. Please notify Erin Hayes, at 303-894-7805 or [erin.hayes@dora.state.co.us](mailto:erin.hayes@dora.state.co.us) of any requests for accommodations for persons with disabilities at the hearing by July 27, 2009.

All interested persons are encouraged to attend the public hearing and/or to submit written comments to the Commission for its consideration concerning the proposed rules. Written comments concerning the rules should be addressed as follows: Colorado Civil Rights Commission, 1560 Broadway, Suite 1050, Denver, CO 80202. Comments may also be faxed to (303)869-7830.

Dated this 26th day of June, 2009.



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Eva Muñiz Valdez, Chair  
Colorado Civil Rights Commission

## **DEPARTMENT OF REGULATORY AGENCIES**

### **Civil Rights Commission**

## **STATE OF COLORADO CIVIL RIGHTS COMMISSION RULES AND REGULATIONS**

### **3 CCR 708-1**

## **SEXUAL ORIENTATION DISCRIMINATION RULES**

### **Rule 81.1 — Statement of Purpose**

The rules in this section have been adopted to contribute to the elimination of discrimination on the basis of sexual orientation, inclusive of transgender status, in employment, housing, public accommodations, and advertising, as required by Parts 3 to 7 of Article 34, Title 24, Colorado Revised Statutes, as amended, hereinafter referred to as the “Law.” C.R.S. §24-34-305(1)(a), entitled “Powers and Duties of Commission,” authorizes the Commission to “adopt, publish, amend and rescind” regulations consistent with and for the enforcement of the Law.

### **Rule 81.2 — Sexual Orientation Definitions**

- (A) The term “sexual orientation,” as defined in the Law, means a person’s orientation toward heterosexuality, homosexuality, bisexuality, transgender status or another person’s perception thereof.
- (B) The term “transgender” means having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.
- (C) The term “gender identity” means an innate sense of one’s own gender.
- (D) The term “gender expression” means external appearance, characteristics or behaviors typically associated with a specific gender.
- (E) The term “covered entity” means any person, business, or institution required to comply with the antidiscrimination provisions of the Law.

### **Rule 81.3 — Separate Lines of Progression and Seniority Systems**

It is an unlawful employment practice to classify any job according to sexual orientation or to maintain separate lines of progression or separate seniority lists based on sexual orientation where this would adversely affect any person.

### **Rule 81.4 — Medical Leave**

If an employer grants leave or time off from work to employees for medical reasons, the employer shall treat requests for leave to address health care needs related to an individual’s sexual orientation in the same manner as requests for other medical conditions.

### **Rule 81.5 — Pre-Employment & Other Inquiries**

Any inquiry in connection with prospective employment, housing, public accommodations, or advertising, that expresses directly or indirectly any limitation, specification or discrimination as to sexual orientation shall be unlawful.

**Rule 81.6 — Background Checks**

If a covered entity learns through a background check or other means of a person's sexual orientation, the entity shall not take an adverse action against the individual on the basis of the information.

**Rule 81.7 — Discriminatory Wages**

Wages and wage schedules shall not be related to or based on the sexual orientation of the employees.

**Rule 81.8 — Sexual Orientation Harassment**

(A) Unlawful harassment is severe or pervasive conduct that creates an environment that is subjectively and objectively hostile, intimidating, or offensive on the basis of sexual orientation. Prohibited conduct includes, but is not limited to, the following:

- (1) Asking unwelcome personal questions about an individual's sexual orientation;
- (2) Intentionally causing distress to an individual by disclosing to others the individual's sexual orientation;
- (3) Using offensive names or terminology regarding an individual's sexual orientation; or
- (4) Deliberately misusing an individual's preferred name, form of address, or gender-related pronoun;

(B) An individual alleging harassment based upon sexual orientation must take advantage of any corrective or remedial measures made available by a covered entity, unless pursuing such a complaint would be futile or impractical. A covered entity shall initiate a reasonable investigation and take prompt and effective remedial action, if appropriate.

**Rule 81.9 — Advertising**

It is a violation of the Law for an advertisement to indicate a preference, limitation, specification, or discrimination based upon sexual orientation in employment, housing or public accommodations.

**Rule 81.10 — Dress & Grooming Standards**

Covered entities may prescribe standards of dress or grooming that serve a reasonable business or institutional purpose, provided that they shall not require an individual to dress or groom in a manner inconsistent with the individual's gender identity.

**Rule 81.11 — Facilities**

(A) Nothing in the Law prohibits segregation of facilities on the basis of gender.

(B) All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity.

## DEPARTMENT OF REGULATORY AGENCIES

### Civil Rights Commission

## STATE OF COLORADO CIVIL RIGHTS COMMISSION RULES AND REGULATIONS

### 3 CCR 708-1

## SEXUAL ORIENTATION DISCRIMINATION RULES

### Rule 81.1 – Statement of Purpose

The guidelines in this section have been adopted to contribute to the elimination of discrimination on the basis of sexual orientation, inclusive of transgender status, in employment, housing, public accommodations, and advertising, as required by Parts 3 to 7 of Article 34, Title 24, Colorado Revised Statutes, as amended, hereinafter referred to as the "Law." C.R.S. §24-34-305(1)(a), entitled "Powers and Duties of Commission," authorizes the Commission to "adopt, publish, amend and rescind" regulations consistent with and for the enforcement of the Law.

**Deleted:** (A)

**Deleted:** implementation of nondiscriminatory personnel policies of employers, unions, and employment agencies with respect to the sexual orientation of their employees, members, and job applicants as required by Parts 3 and 4 of Article 34 of Title 24, C.R.S.

### Rule 81.2 – Sexual Orientation Definitions

(A) The term "sexual orientation," as defined in the Law, means a person's orientation toward heterosexuality, homosexuality, bisexuality, transgender status or another person's perception thereof.

(B) The term "transgender" means having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.

(C) The term "gender identity" means an innate sense of one's own gender.

(D) The term "gender expression" means external appearance, characteristics or behaviors typically associated with a specific gender.

(E) The term "covered entity" means any person, business, or institution required to comply with the antidiscrimination provisions of the Law.

**Deleted:** (B) The guidelines in this part are designed to serve as a workable set of standards for employers, unions, and employment agencies in determining whether their policies concerning the sexual orientation of their employees, members and job applicants conform with the basic purpose of the elimination of discrimination in employment as defined by the Colorado Employment Practices Act. Section 24-34-305(1)(a), C.R.S., entitled "Powers and Duties of Commission," authorizes the commission to "adopt, publish, amend and rescind" regulations consistent with and for the enforcement of the Colorado Anti-Discrimination Act, Parts 3 to 7 of Article 34 of Title 24, C.R.S., hereinafter referred to as "the Act" not to discriminate because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry.

**Deleted:** §24-34-401(7.5), C.R.S.

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**Deleted:** The term "transgender status" is an umbrella term that describes an individual whose gender identity or gender expression is different from that traditionally associated with that individual's assigned sex at birth.

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### Rule 81.3 - Separate Lines of Progression and Seniority Systems

It is an unlawful employment practice to classify any job according to sexual orientation or to maintain separate lines of progression or separate seniority lists based on sexual orientation where this would adversely affect any person.

### Rule 81.4 — Medical Leave

If an employer grants leave or time off from work to employees for medical reasons, the employer shall treat requests for leave to address needs related to an individual's sexual orientation in the same manner as requests for other medical conditions.

### Rule 81.5 - Pre-Employment & Other Inquiries

Any inquiry in connection with prospective employment, housing, public accommodations, or advertising, that expresses directly or indirectly any limitation, specification or discrimination as to sexual orientation shall be unlawful.

**Deleted:** pre-employment

### Rule 81.6 — Background Checks

If a covered entity learns through a background check or other means of a person's sexual orientation, the entity shall not take an adverse action against the individual on the basis of the information.

### **Rule 81.7 - Discriminatory Wages**

Wages and wage schedules shall not be related to or based on the sexual orientation of the employees.

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### Rule 81.8 — Sexual Orientation Harassment

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(2) Intentionally causing distress to an individual by disclosing to others the individual's sexual orientation

(3) Using offensive names or terminology regarding an individual's sexual orientation; or

(4) Deliberately misusing an individual's preferred name, form of address, or gender-related pronoun.

(B) An individual alleging harassment based upon sexual orientation must take advantage of any corrective or remedial measures made available by a covered entity, unless pursuing such a complaint would be futile or impractical. A covered entity shall initiate a reasonable investigation and take prompt and effective remedial action, if appropriate.

### **Rule 81.9 - Advertising**

It is a violation of the Law for an advertisement to indicate a preference, limitation, specification, or discrimination based upon sexual orientation in employment, housing or public accommodations.

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**Deleted:** Job Opportunities

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### **Rule 81.10 - Dress & Grooming Standards.**

Covered entities may prescribe standards of dress or grooming that serve a reasonable business or institutional purpose, provided that they shall not require an individual to dress or groom in a manner inconsistent with the individual's gender identity.

**Deleted:** unless sexual orientation is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sexual orientation, will be considered as an expression of preference, limitation, specification, or discrimination based on sexual orientation

### Rule 81.11 — Facilities

(A) Nothing in the Law prohibits segregation of facilities on the basis of gender.

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(B) All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity.

**Deleted:** If an employer has a reasonable gender-specific dress code, employers should permit employees to comply with the dress code provisions in an appropriate manner that is consistent with their gender identity. If a dress code is enforced it must be applied consistently to all employees.