

Anti-Discrimination Laws: Utah

by Christina M. Jepson, Parsons Behle & Latimer, with Practical Law Labor & Employment

Status: Law stated as of 13 Dec 2022 | Jurisdiction: United States, Utah

This document is published by Practical Law and can be found at: us.practicallaw.tr.com/4-518-8113

Request a free trial and demonstration at: us.practicallaw.tr.com/practical-law

A Q&A guide to state anti-discrimination law for private employers in Utah. This Q&A addresses Utah laws prohibiting discrimination, harassment, and retaliation. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Anti-Discrimination Laws: State Q&A Tool).

A growing number of states have released employment discrimination guidance in response to concerns about the COVID-19 pandemic. For more information and ongoing updates, see [COVID-19: Employment Law and Development Tracker: State Laws and Directives: Utah](#).

Overview of State Anti-Discrimination Law

1. What employment-related anti-discrimination laws exist in your state (include harassment and anti-retaliation laws as anti-discrimination laws)? For each anti-discrimination law, please state its citation and title (if applicable) and include information on:

- Which protected classes are covered.
- Which employers are affected (for example, size, type, or any exceptions).
- Prohibited employment-related discriminatory conduct.
- Whether managers or supervisors can be held individually liable for discriminatory acts against employees.
- What entity administers and enforces the law.
- What is the statute of limitations for filing a claim.

Utah Antidiscrimination Act: Utah Code §§ 34A-5-101 to 34A-5-112

Protected Classes Covered

The Utah Antidiscrimination Act prohibits employment-related discrimination based on the following protected classes:

- Race.
- Color.
- Sex.
- Pregnancy.
- Childbirth.
- Pregnancy-related conditions.
- Age (40 or older).
- Religion.
- National origin.
- Disability.
- Sexual orientation.
- Gender identity.

(Utah Code § 34A-5-106(1)(a)(i).)

Employers should also note that on June 15, 2020, the US Supreme Court held that failing or refusing to hire, discharging, or otherwise discriminating against persons because they are homosexual or transgender is illegal discrimination based on sex under Title VII of the federal Civil Rights Act of 1964 (*Bostock v. Clayton Cty., Ga.*, 140 S. Ct. 1731, 1737 (2020)).

Federal interpretations of Title VII may guide Utah courts considering similar provisions under the Utah Antidiscrimination Act (*Viktron/Luka v. Labor Comm'n*, 38 P.3d 993, 995 (Utah Ct. App. 2001) (considering federal court interpretations of Title VII retaliation provisions with same elements as the Utah statute)).

For more information, see [Practice Note, Sexual Orientation and Gender Identity Discrimination Under Title VII](#).

Affected Employers

The Act applies to any person employing 15 or more employees within the state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year (Utah Code § 34A-5-102(1)(i)(i)).

The Act does not include:

- Religious:
 - organizations;
 - corporations;
 - associations;
 - societies;
 - educational institutions; or
 - religious leaders, when acting in the capacity of religious leaders.
- Affiliates, wholly owned subsidiaries, or agencies of religious organizations, associations, corporations, or societies.
- The Boy Scouts of America or its councils, chapters, or subsidiaries.

(Utah Code § 34A-5-102(1)(i)(ii).)

The Act generally applies to:

- Employment agencies.
- Labor organizations.
- Joint apprenticeship committees.
- Vocational schools.

(Utah Code § 34A-5-106(1)(b), (c), and (f).)

Prohibited Conduct

Covered Utah employers may not do any of the following to any “otherwise qualified” persons because of their status in one of the protected classes:

- Refuse to hire or promote.
- Discharge.
- Demote.
- Terminate.
- Retaliate against.
- Harass.
- Discriminate against regarding compensation or terms, privileges, and conditions of employment (see [State Q&A, Wage and Hour Laws: Utah](#)).

(Utah Code § 34A-5-106(1)(a).)

Persons may not be considered “otherwise qualified” if they do not have the following required qualifications for the job or position:

- Education and training.
- Ability, with or without reasonable accommodation.
- Moral character.
- Integrity.
- Disposition to work.
- Adherence to reasonable rules and regulations.
- Other job-related qualifications that the employer requires.

(Utah Code § 34A-5-106(1)(a)(ii).)

Unless based on a bona fide occupational qualification (BFOQ), an employer is also prohibited from printing or circulating any statement, advertisement, or publication that expresses any limitation, specification, or discrimination toward the protected classes (Utah Code § 34A-5-106(1)(d)).

An employer may not express a limitation or discrimination based on a protected characteristic in:

- An employment application or advertisement.
- An inquiry of a prospective employee.

(Utah Code § 34A-5-106(1)(d).)

For more information on hiring practices, see [State Q&A, Hiring Requirements: Utah](#).

The Act does not apply when a requirement based on a protected class is a BFOQ. It is also not discriminatory for an employer to give preference in employment to:

- The employer's:
 - spouse;
 - child; or
 - son- or daughter-in-law.
- Anyone for whom the employer is financially responsible, if that person is unemployed.
- Certain persons who receive financial support from the employer.
- Any person whose education or training was substantially financed by the employer for two years or more.

(Utah Code § 34A-5-106(3)(a)(iii).)

The Act prohibits employers from:

- Refusing to provide reasonable accommodations for an employee based on pregnancy, childbirth, breastfeeding, or related conditions if the employee has requested a reasonable accommodation.
- Requiring an employee to terminate employment if another reasonable accommodation related to pregnancy, childbirth, breastfeeding, or related conditions can be provided.
- Denying employment opportunities to an employee based on that employee's need for reasonable accommodations related to pregnancy, childbirth, breastfeeding, or related conditions.

(Utah Code § 34A-5-106(1)(g).)

The employer is, however, exempt from the prohibitions of Section 34-A-5-106(1)(g) if it demonstrates that an accommodation would create an undue hardship on its operations. Undue hardship is defined as an action that requires significant difficulty or expense when considered in relation to factors including:

- The size of the employer.
- The employer's financial resources.
- The nature of the employer's operation.
- The structure of the employer's operation.

(Utah Code § 34A-5-102(1)(aa).)

If an employee requests a reasonable accommodation based on pregnancy, childbirth, breastfeeding, or related conditions, the employer can:

- Require the employee to provide certification from a health care provider concerning the medical advisability of a reasonable accommodation, which must include:
 - the date that the reasonable accommodation becomes medically advisable;
 - the probable duration of the reasonable accommodation; and
 - a statement explaining the medical advisability of the reasonable accommodation.
- Refuse permission for an employee to have the employee's child at the workplace for the purposes of accommodating pregnancy, childbirth, breastfeeding, or related conditions.

(Utah Code § 34A-5-106(7)(a), (b), and (d).)

An employer may not require an employee to provide certification for more frequent restroom, food, or water breaks (Utah Code § 34A-5-106(7)(c)).

Additionally, an employer may not retaliate against an employee or applicant who:

- Opposes an employment practice prohibited by the Act.
- Files charges, testifies, assists, or participates in any way in any proceeding, investigation, or hearing under the Act.

(Utah Code § 34A-5-102(1)(y).)

Individual Supervisor Liability

The Act does not address individual supervisor liability and Utah case law does not establish any liability.

However, any person generally is prohibited from:

- Aiding, inciting, compelling, or coercing a discriminatory or prohibited employment practice.
- Preventing anyone from complying with the Act.
- Attempting to violate the Act either directly or indirectly.

(Utah Code § 34A-5-106(1)(e).)

Administration and Enforcement

The Utah Labor Commission's [Utah Antidiscrimination and Labor Division](#) (UALD) administers and enforces this law (Utah Code § 34A-5-104).

A person claiming to be aggrieved by a discriminatory or prohibited employment practice may file a request for agency action (charge) with the UALD (Utah

Code § 34A-5-107(1)). Under a work-share agreement, the UALD also acts on behalf of the Equal Employment Opportunity Commission (EEOC), unless the EEOC decides to investigate the charge (Utah Code § 34A-5-107(1)(d)).

Statute of Limitations

The employee must file a charge with the UALD within 180 days after the alleged discriminatory employment practice occurs (Utah Code § 34A-5-107(1)(c)). Under the work-share agreement with the EEOC, any claims outside the 180-day statute of limitations but within the EEOC filing period are referred to the EEOC.

Breastfeeding in the Workplace: Utah Code §§ 34-49-201 to 34-49-204

Protected Classes Covered

The Breastfeeding in the Workplace statute prohibits public employers from discriminating against an otherwise qualified employee who breastfeeds or expresses milk in the workplace (Utah Code §§ 34-49-201 to 34-49-204).

Affected Employers

The Breastfeeding in the Workplace statute applies to all public employers (Utah Code §§ 34-49-201 to 34-49-204).

Prohibited Conduct

A public employer **may not**, because an otherwise qualified employee breastfeeds or expresses milk in the workplace:

- Refuse to hire or promote.
- Discharge.
- Demote.
- Terminate.
- Retaliate.
- Harass.
- Discriminate in matters of compensation or in terms, privileges, and conditions of employment (see State Q&A, Wage and Hour Laws: Utah).

(Utah Code 34-49-204.)

Individual Supervisor Liability

The Breastfeeding in the Workplace statute does not address individual supervisor liability and Utah case law does not establish any liability.

Administration and Enforcement

The statute is silent on who administers or enforces this law.

Statute of Limitations

The Breastfeeding in the Workplace statute does not provide a specific statute of limitations.

Utah Genetic Testing Privacy Act: Utah Code §§ 26-45-102 to 26-45-106

Protected Classes Covered

The Genetic Testing Privacy Act prohibits employers from using genetic information for employment purposes (Utah Code §§ 26-45-102 to 26-45-106).

This act applies to information about inherited genes or a specific DNA marker that is obtained from a genetic test or DNA analysis of:

- The employee.
- The employee's blood relative.

(Utah Code § 26-45-102(8)(a).)

This act does not apply to information derived from:

- Routine physical exams.
- Routine chemical, blood, or urine analysis.
- Tests for drugs or HIV infection.
- Tests performed because of signs, symptoms, or other manifestations of disease, illness, impairments, or other disorders.

(Utah Code § 26-45-102(8)(b).)

Affected Employers

The Genetic Testing Privacy Act applies to all employers who employ one or more workers or operatives (Utah Code §§ 26-45-103(1) and 34A-2-103(2)). This act exempts domestic employers under certain circumstances (Utah Code § 34A-2-103(4)).

Prohibited Conduct

Regarding an employment-related decision, an employer **may not**:

- Access or consider private genetic information.
- Request or require:
 - an individual to release private genetic information; or
 - an individual or his blood relative to submit to a genetic test.

- Inquire into or consider the fact that an individual or his blood relative has taken or refused to take a genetic test.

(Utah Code § 26-45-103(1).)

An employer may seek an order compelling disclosure of private genetic information regarding an employment-related:

- Judicial or administrative hearing where the employee placed the employee's health at issue.
- Decision where the employer reasonably believes that the employee's health condition poses a real and unjustifiable safety risk requiring change or denial of an assignment.

(Utah Code § 26-45-103(2).)

Individual Supervisor Liability

The Genetic Testing Privacy Act does not address individual supervisor liability.

Administration and Enforcement

The Utah attorney general has authority to enforce this law. The attorney general may:

- Bring an action to restrain or enjoin any violations.
- Seek a civil fine of up to \$25,000 for each separate, intentional violation.
- Seek costs of investigation, litigation, and reasonable attorneys' fees.

(Utah Code § 26-45-106.)

There is a private right of action for employees whose legal rights have been violated. Aggrieved employees may:

- Recover damages.
- Receive equitable relief in a civil action.

(Utah Code § 26-45-105(1).)

Any employer who violates the Genetic Testing Privacy Act is liable to the employee for each separate violation for:

- Actual damages.
- \$100,000, if the violation is an intentional and willful act.
- Punitive damages, if the violation results from a malicious act.
- Reasonable attorneys' fees.

(Utah Code § 26-45-105(2).)

Statute of Limitations

The Genetic Testing Privacy Act does not provide a specific statute of limitations.

Overview of State Disability Discrimination Law

2. If there is a state law prohibiting disability discrimination, please provide the following information:

- Who is considered disabled under the law?
- Does the law recognize temporary disabilities?
- Does the law recognize "regarded as" discrimination?
- Does the law protect alcohol and controlled substance users, and if so, to what extent?
- Does the law require reasonable accommodation of persons with disabilities?
- How does a person request reasonable accommodation and how must an employer respond?
- Please provide a brief overview of accommodations that courts in your jurisdiction have found to be reasonable versus not reasonable.

Disability discrimination is prohibited by the Utah Antidiscrimination Act (Utah Code §§ 34A-5-101 to 34A-5-112).

On April 17, 2020, Utah Governor Gary Herbert announced the [Utah Leads Together](#) plan as the state began preparing a phased reopening of businesses during the COVID-19 pandemic. State guidance on [Returning to the Workplace](#) called for, among other things:

- Daily employee symptom screening.
- Workplace contact tracing.
- Otherwise comply with [OSHA COVID-19 Standards and CDC Guidance](#).

Employee health information collected while complying with reopening guidance must be maintained as a confidential record and stored separately from the employee's personnel file under the federal Americans with Disabilities Act (42 U.S.C. §12112; [How to Screen and Test Employees](#)).

For more information and ongoing updates, see [COVID-19: Employment Law and Development Tracker: State Laws and Directives: Utah](#).

Disability Definition

Under the Act, disability is a physical or mental disability as defined and covered by the Americans with Disabilities Act of 1990 (ADA) (Utah Code § 34A-5-102(1)(f)).

Temporary Disabilities

The Act does not specifically address temporary disabilities.

“Regarded As” Discrimination

The Act does not include a provision for “regarded as” discrimination.

Alcohol and Controlled Substance Users

The Act does not specifically address alcohol and illegal use of controlled substances. However, the Act defines disability by referring to the ADA, which covers drug and alcohol use (see [Practice Note, Disability Accommodation Under the ADA](#)).

Duty to Provide Reasonable Accommodation

An employer may terminate the employment of individuals who cannot perform the duties required of them without a reasonable accommodation (Utah Code § 34A-5-106(2)).

For an employer’s obligation to accommodate an employee for pregnancy, childbirth, breastfeeding, or other related conditions, see Question 1: Utah Antidiscrimination Act: Prohibited Conduct.

Requesting Reasonable Accommodation

The Act does not address the process for requesting a reasonable accommodation based on a disability.

Reasonableness of Accommodation

The Act does not address the issue of reasonableness of the accommodation based on a disability.

Overview of State Sexual Harassment Law

3. If there is a state law prohibiting workplace harassment, please provide the following information:

- Which protected classes are protected from harassment?
- Is sexual harassment prohibited and if so, how is sexual harassment defined?
- If sexual harassment is prohibited, are both quid pro quo and hostile work environment harassment prohibited?
- Is same-sex sexual harassment prohibited?
- Is an employer subject to vicarious liability for sexual harassment by its managers, supervisors, or other employees?
- Is an employer subject to vicarious liability for sexual harassment by non-employees?

Workplace harassment is prohibited by the Utah Antidiscrimination Act (Utah Code §§ 34A-5-101 to 34A-5-112).

Protected Classes

The following classes are protected from harassment:

- Race.
- Color.
- Sex.
- Pregnancy.
- Childbirth.
- Pregnancy-related conditions.
- Age (40 or older).
- Religion.
- National origin.
- Disability.
- Sexual orientation.
- Gender identity.

(Utah Code § 34A-5-106(1)(a)(i).)

Sexual Harassment

The Act does not specifically define sexual harassment, but it prohibits discrimination or harassment based on sex.

Prohibited Sexual Harassment Types

The Act does not address sexual harassment types.

Same-Sex Sexual Harassment

The Act does not address same-sex sexual harassment.

Vicarious Liability for Employee Sexual Harassment

The Act does not address vicarious liability for employee sexual harassment.

Vicarious Liability for Non-Employee Sexual Harassment

The Act does not address vicarious liability for non-employee sexual harassment.

Overview of State Anti-Retaliation Law

4. Is there an anti-retaliation law in your state? If so, please include information on:

- What specific acts are protected, if any.
- How is retaliation defined?
- Whether an employer can be subject to vicarious liability for retaliatory conduct by an employee.
- Are there any other major state or local laws that prohibit retaliation?

The Utah Antidiscrimination Act prohibits retaliation (Utah Code §§ 34A-5-102, 34A-5-106(1)(a); *Viktron/Luka*, 38 P.3d at 995).

Defining Retaliation

Retaliation under the Utah Antidiscrimination Act is defined as an employer's adverse action against an employee or applicant because that person:

- Opposes an employment practice prohibited under the act.
- Files, charges, testifies, assists, or participates in any way in a proceeding, investigation, or hearing under the act.

(Utah Code § 34A-5-102(1)(y).)

Vicarious Liability

Utah courts have not ruled on the question of vicarious liability under the Utah Antidiscrimination Act.

Major State and Local Laws with Retaliation Provisions

In Utah, retaliation is also prohibited under:

- The law prohibiting discrimination for breastfeeding in the workplace (Utah Code § 34-49-204).
- The Utah Workers' Compensation Act (Utah Code § 34A-2-114(1), (2); *Touchard v. La-Z-Boy Inc.*, 148 P.3d 945 (Utah 2006)). For more information, see [State Q&A, Workers' Compensation Laws: Utah: Question 10](#).
- The Utah Jury and Witness Act (Utah Code § 78B-1-116). For more information, see [State Q&A, Leave Laws: Utah](#).
- Utah's military leave law (Utah Code § 39-1-36). For more information, see [State Q&A, Leave Laws: Utah](#).
- Utah's Internet Employment Privacy Act (Utah Code §§ 34-48-102(1) and 34-48-201(2)). For more information, see [State Q&A, Employee Privacy Laws: Utah](#).
- Utah's child labor laws (Utah Code § 34-23-402(2)(g)). For more information, see [Wage and Hour Laws: Utah: Question 6](#).
- The Utah Occupation Safety and Health Act (Utah Code § 34A-6-203).
- The Securities Fraud Reporting Program Act (Utah Code §§ 61-1-102 and 61-1-104).
- The Employment Relations and Collective Bargaining law (Utah Code § 34-20-8).
- The Utah Protection of Public Employees Act (Utah Code §§ 67-21-2(2) and 67-21-3).

State Protected Classes Paragraph

5. Please provide a list of all state-specific protected classes in paragraph form that could be inserted into an employment-related agreement or policy in your jurisdiction.

Race, color, sex, pregnancy, childbirth, pregnancy-related conditions, age (40 years or older), religion, national origin, or disability.

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.