

# Anti-Discrimination Laws: Utah

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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* (<http://us.practicallaw.com/0-505-9580>)).

## 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-5-108

#### 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).)

#### 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 also 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" person 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.

(Utah Code § 34A-5-106(1)(a).)

A person may not be considered otherwise qualified if she does not possess required qualifications for the job (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.
- 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 (<http://us.practicallaw.com/6-518-1766>).

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.

(Utah Code § 34A-5-106(3)(a)(iii).)

### 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 & 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.

### UTAH GENETIC TESTING PRIVACY ACT: UTAH CODE §§ 26-45-101 TO 26-45-106

#### Protected Classes Covered

The Genetic Testing Privacy Act prohibits employers from using genetic information for employment purposes (Utah Code §§ 26-45-101 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(7)(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 symptoms or other manifestations of disease, illness, impairments, or other disorders.

(Utah Code § 26-45-102(7)(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)). The 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
  - 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 his health at issue.
- Decision where the employer reasonably believes that the employee's health condition poses a real and justifiable 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 violation.
- Seek costs of investigation, litigation, and 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 wilful 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 illegal drug 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-5-108).

### 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 ILLEGAL DRUG USERS

The Act does not specifically address alcohol and illegal drug users. However, the Act defines disability by referring to the ADA, which covers drug and alcohol use (see Practice Note, Disability Accommodation under the ADA (<http://us.practicallaw.com/9-503-9007>)).

### DUTY TO PROVIDE REASONABLE ACCOMMODATION

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

**REQUESTING REASONABLE ACCOMMODATION**

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

**REASONABLENESS OF ACCOMMODATION**

The Act does not address the issue of reasonableness of the accommodation.

**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-5-108).

**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 a state law prohibiting retaliation in your jurisdiction? 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.
- Whether filing a workers' compensation claim in your jurisdiction is protected from retaliation.

Retaliation is prohibited by the Utah Antidiscrimination Act (Utah Code §§ 34A-5-101 to 34A-5-108).

**PROTECTED ACTS**

The Utah Antidiscrimination Act protects employees or applicants who:

- Oppose an employment practice prohibited by the Act.
- File charges, testify, assist, or participate in any way in any proceeding, investigation, or hearing under the Act.

(Utah Code § 34A-5-102(1)(t).)

**DEFINING RETALIATION**

The Act defines retaliation as an adverse action by an employer against an employee or applicant because the person has participated in protected activity (see Protected Acts) (Utah Code § 34A-5-102(1)(t)).

The Act prohibits an employer from retaliating against an otherwise qualified person because the person is in a protected class. However, the definition of "retaliate" appears to broaden this protection to persons not in a protected class but who engage in protected acts.

**VICARIOUS LIABILITY**

The Act does not address vicarious liability.

**WORKERS' COMPENSATION CLAIMS**

The Utah Workers' Compensation Act does not include a retaliation provision. However, the Utah Supreme Court has held that an employer who fires or constructively discharges an employee for filing a workers' compensation claim:

- Violates "a clear and substantial public policy" of the state of Utah.
- May be sued by the employee for wrongful discharge.

(*Touchard v. La-Z-Boy Inc.*, 148 P.3d 945 (Utah 2006).)

**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.

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