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The Valuable Administrative Process:

Advantages and Idiosyncrasies of Filing a Charge of Discrimination with the Colorado Civil Rights Division

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The experienced employment litigator and lawyers handling their first discrimination cases share a common piece of knowledge; in order to preserve a potential claim under the Colorado Anti-Discrimination Act and the majority of federal civil rights laws, a plaintiff must exhaust administrative remedies. Although it is common knowledge that this is a requirement prior to filing a lawsuit, strategies and approaches to this process vary.

For attorneys representing plaintiffs in employment discrimination claims, the early gathering of information is invaluable in determining how to proceed with a case, how to proceed with filing a civil action on behalf of a client if warranted and how to encourage early settlement. One way to obtain information prior to litigation is through the administrative process of filing a Charge of Discrimination. When used effectively, the administrative process can serve to provide counsel with information regarding both the strength of a client's claims and the strategy of an employer's defenses. This information can be vital to deciding whether to move forward in filing a lawsuit in federal court and can save counsel from unanticipated surprises down the road.

This article offers assistance in how to utilize the Colorado Civil Rights Division's ("CCRD") administrative process effectively and why filing a Charge of Discrimination with the CCRD may be advantageous over filing with the Equal Employment Opportunity Commission ("EEOC").

Introduction to the Administrative Agencies

As do many states, Colorado has a state agency, known as the CCRD, which enforces the state law prohibiting employment discrimination.[1] The federal agency, the EEOC, refers to state agencies such as the CCRD as Fair Employment Practices Agencies ("FEPA"). The CCRD and EEOC have a "worksharing agreement" in place to provide individuals with an efficient procedure for processing charges of discrimination. Under the worksharing agreement, either agency may act as the agent of the other for the purpose of receiving and drafting charges of discrimination. Thus, when a charge is timely filed with one agency it is automatically filed with the other agency. Although charges may be transferred between agencies, generally the agency with whom the charge is initially filed is the agency that completes the investigation. This process, known as dual filing, serves to protect a charging party's rights under both the state and federal laws.

Both the CCRD's and the EEOC's purpose is to investigate, make a determination, attempt conciliation, and possibly, although rarely, litigate claims of discrimination. It is important to remember that the CCRD and the EEOC do not represent either the employee (charging party) or the employer (respondent). Filing a Charge of Discrimination with one of these agencies is, however, a prerequisite to going forward with a lawsuit alleging employment discrimination. In addition, there are added benefits to charging parties and their lawyers that can come from taking the proper approach to the administrative process that go beyond meeting the administrative exhaustion requirement. So, if you must file a charge, you might as well get the most out of it.

The Coverage of the Charge of Discrimination

First, it is important to identify and pursue all possible claims that a client may have, no matter how tenuous the claim may be at the time of filing the charge. Second, watch jurisdictional deadlines closely and file the Charge of Discrimination as early as possible in order to preserve the client's rights and include past events. Finally, make judicious amendments to the charge as information becomes available or circumstances change.

The Unusual Suspects – Claims that Can Only Be Made at the CCRD

Unlike federal civil rights laws where there are several different statutes protecting individuals from discrimination, in Colorado there is one civil rights statute, the Colorado Anti-Discrimination Act ("CADA").[2] CADA replicates federal law in its prohibition of discrimination in employment

on the basis of race, color, national origin, ancestry, sex or gender (which includes pregnancy), creed, religion, disability and age.[3] CADA also protects employees whose employers have discriminated against them based upon sexual orientation.[4] In addition to the expanded categories of protection under CADA as compared to federal law, CADA also has a broader breadth of coverage than the federal civil rights laws because it applies to employers with one or more employees, individuals and state employees.

Sexual Orientation

Although federal law does not currently prohibit it, CADA prohibits discrimination based upon sexual orientation. CADA defines "sexual orientation" as "a person's orientation toward heterosexuality, homosexuality, bisexuality or transgender status or another person's perception thereof."[5] Sexual orientation discrimination also includes discrimination based upon gender identity and gender expression.[6] The regulations implementing CADA specify that conduct that will be considered sexual orientation harassment includes "asking unwelcome personal questions about a person' sexual orientation" and "deliberately misusing an individual's preferred name, form of address, or gender-related pronoun."[7]

In addition, although employers may create dress and grooming standards, employers "shall not require an individual to dress or groom in a manner inconsistent with the individual's gender identity."[8] Currently, the federal

anti-discrimination laws do not protect employees from discrimination based upon sexual orientation; therefore, employees must file any claim based upon such discrimination with the CCRD in order to pursue it under state law.

Domestic Violence

Under CADA, employers are required to permit an employee who is the victim of domestic abuse, stalking or sexual assault to take up to three working days of leave from work in any 12-month period if the employee is using the leave to seek protection.[9] The protection sought may include seeking a restraining order, medical care or counseling, securing a home or seeking new housing, seeking legal assistance and time needed preparing for or attending court proceedings.[10] The statute also requires that the employer keep confidential all information related to leave pursuant to this section of the statute.[11]

There are, however, limitations regarding the protections provided in this section of the statute. First, this section only applies to employers with fifty or more employees and to employees who have been employed by the employer for 12 months or more.[12] In addition, employees seeking leave pursuant to this statutory provision are to provide notice to the employer regarding the need for leave except in cases of imminent danger.[13] Finally, employees are required first to exhaust any sick leave or vacation leave prior to receiving leave under this section.[14]

Marriage to a Co-Worker

CADA also prohibits employers from discharging or refusing to hire an employee based upon that person's marriage or engagement to another employee.[15] Unlike the general anti-discrimination provisions in CADA, which apply to employers with one employee or more, the co-worker marriage provision only applies to employers with over 25 employees.[16]

Individuals often confuse the protection regarding **marriage to a co-worker** under the discriminatory employment practices section of CADA with the "**marital status**" provision under the housing practices and public accommodations sections in CADA.[17] The marital status provisions protect individuals from discrimination in housing and public accommodations situations based on whether they are single or married. There is no direct prohibition against discrimination in employment based upon someone's marital status under CADA. Indirectly, however, if the employer treats employees of one gender differently from employees of another gender due to their marital status, counsel could argue that it is a violation based on sex.

Off Duty Legal Activity

CADA makes it unlawful for an employer to terminate any employee based upon the employee engaging in a lawful off duty activity.[18] There are exceptions to the off-duty activity protections for certain types of situation, such as conduct that creates a conflict of interest.[19]

Although there is a clear statement requiring administrative exhaustion under CADA,[20] case law supports that the filing of a Charge of Discrimination is not required prior to filing a civil action in district court for off duty legal activity claims.[21] In *Galieti v. State Farm Mutual Auto Insurance*, the court found that there are no administrative procedures or remedies to exhaust prior to filing claims of "unlawful prohibition" against engaging in off duty legal activities.[22]

Small Employers

The federal civil rights statutes require a requisite minimum number of employees in order for an employer to be subject to the anti-discrimination protections under the Americans with Disabilities Act ("ADA"), The Civil Rights Act ("Title VII"), or the Age Discrimination in Employment Act ("ADEA"). For disability, race, color, religion, sex or national origin discrimination the minimum number of employees is fifteen.[23] Under the ADEA, the minimum number of employees is twenty.[24] Therefore, small employers cannot be held liable for their discriminatory acts under the federal laws. Conversely, CADA applies to anyone employing one or more employees.[25]

Due to the minimum employee requirement, it is necessary for counsel to make an initial threshold determination early on regarding the approximate size of the employer. When dealing with a small business and relying on the client for information regarding the number of employees, it is important to consider whether the individuals the client is considering are in fact employees or possibly classified as independent contractors. The best practice in a situation where the number of employees is close to the minimums under federal law is to file the Charge of Discrimination with the CCRD. This practice will ensure protection of the client's rights to pursue his or her claims and counsel can use the administrative investigation at the CCRD as an avenue to determine the actual number of employees employed by the employer.

Claims against Individuals and Third Parties

Another underutilized section of CADA is the provision prohibiting "any person, whether or not an employer…" from aiding, abetting, inciting, compelling or coercing a discriminatory or unfair employment practice or from retaliating against a person for opposing a discriminatory act.[26] This section of CADA allows employees to bring charges against individuals, such as managers, supervisors and co-workers,

who commit or are otherwise complicit in discriminatory or unfair employment practices of an employer. Employees can use this provision to bring a Charge of Discrimination against a non-employer third party such as the third-party plan administrator who handles benefits for an employer or a third-party harasser from whom the employer did not appropriately safeguard an employee.

If the facts of a matter are such that individual or third party charges are appropriate, it is important to remember to file a separate charge for each respondent; the CCRD will not accept one charge form that lists multiple respondents. In addition, counsel should cite the appropriate section of CADA related to aiding and abetting discrimination when filing such a charge and state in the "Personal Harm" section that the respondent aided and abetted the discrimination of the employer. Other than those changes, the remaining content of the charge can be identical to the primary charge against the employer.

Filing additional charges of discrimination against individuals and third parties puts extra pressure on the employer and may affect its approach to resolving the claims. Generally, during the administrative phase, employers will represent accused employees of the company in conjunction with the representation of the company. Third parties, on the other hand, will most likely have their own representation, which can create leverage for the aggrieved employee.

State Employees

While federal law considers states to be employers subject to Title VII,[27] the U.S. Supreme Court has held that Congress exceeded its Fourteenth Amendment authority by attempting to abrogate states' Eleventh Amendment immunity under the ADEA.[28] The ADA as enacted only applies to private employers with more than 15 employees.[29] Although federal government employers and private employers who receive federal funds are subject to §§ 501 and 504 of the Rehabilitation Act which prohibits disability discrimination, there is no similar protection for Colorado state employees.[30] Therefore, the only avenue for state employees in Colorado to pursue claims for age or disability discrimination is CADA.

If It Is a Mixed Bag, Go to the CCRD

Due to the worksharing agreement between the EEOC and the CCRD, filing charges of discrimination with the CCRD means concurrent filing with the EEOC provided that the allegations constitute unlawful activity within the EEOC's jurisdiction. Therefore, if the facts of a particular client's case give rise to claims under both the federal statutes as well as CADA, counsel should file a Charge of Discrimination at the CCRD in order to preserve all possible claims. For example, if a manager sexually harassed an employee, counsel may consider filing two charges of discrimination at the CCRD, one against the company alleging gender discrimination and harassment and a second charge for those same claims against the individual manager under the aiding and abetting provisions of CADA.

Remedies for State Claims - Change on the Horizon

Despite the vast coverage of CADA as compared to the federal civil rights statutes, there are few, if any, lawsuits brought under CADA each year. The most recognizable reason for this is the lack of remedies that have been available under CADA. As of January 2015, that will change. Currently, the remedies generally available under CADA are limited to a cease and desist order, reinstatement and back pay.[31] It is worth mentioning, however, that the court shall award a prevailing plaintiff of an unlawful prohibition of legal activities claim court costs and reasonable attorney fees, provided the employer has more than 15 employees.[32] Currently, neither the Colorado Civil Rights Commission, nor the courts have the authority to award compensatory or punitive damages under CADA. Furthermore, under CADA plaintiffs do not have the right to a jury trial, or to an award of attorney fees and costs. The lack of remedies has made it unrealistic for employees to pursue legal action against employers under the state law.

On April 26, 2013, the Job Protection and Civil Rights Enforcement Act of 2013 (the "Act") passed the Colorado legislature and was signed into law by Governor John Hickenlooper on May 6, 2013.[33] The Act adds remedies to CADA that allow for compensatory and punitive damages and enable plaintiffs to recover attorney fees and costs associated with having to litigate a discrimination case. The Act also gives either party to the civil action the right to demand a jury trial. In addition, the Act removes the cap on age discrimination cases, which was set at age 70. The changes to CADA, which will be enacted through the Job Protection and Civil Rights Enforcement Act, will expand the ability of Colorado employees to seek justice for discriminatory acts that fall into the categories above where federal law does not cover them. However, practitioners need to remember that the changes to CADA apply to discriminatory acts occurring after January 1, 2015.

Statutory Requirements - Better to Be Safe Than Sorry

A charging party has six months from the date that the discriminatory employment practice occurred to file a Charge of Discrimination with the CCRD.[34] Because Colorado has a state agency that handles charges of discrimination, a

charging party in Colorado has 300 days to file a charge with the EEOC.[35] During the early assessment of a client's potential claims, it is important to keep these filing deadlines in mind and to consider the earliest possible event that should be included in the Charge of Discrimination. This event is not necessarily an obvious event such as termination but may be a much earlier event if claims allege harassment or retaliation. The agency will limit its investigation to acts occurring within the jurisdictional time and will not make findings on events that it determines are not jurisdictional. However, even if some acts are outside of the jurisdictional period (i.e. occurring more than six months before the claimant filed the charge), the charging party should still include those facts in the Charge of Discrimination for the purpose of influencing the investigator's opinion of the jurisdictional claims. In addition, in such cases, using language alleging "continuous" discrimination or harassment, or a "pattern and practice" of discriminatory conduct can be influential in convincing the investigator that consideration of the acts that are outside of the jurisdictional timeframe is appropriate.[36]

Content of the Charge

There are two physical aspects of filing a Charge of Discrimination with the CCRD, the intake packet and the charge itself. Although the CCRD requires the claimant to submit both, submission of an intake packet does not constitute the filing of a charge.[37] The CCRD's Rules and Regulations outline the required form and contents of a charge.[38] Although the Supreme Court has held that a letter submitted to the EEOC, which the charging party later verified, was adequate to constitute a timely filed charge, this is not an argument on which a charging party should rely.[39] Instead, if anything other than the official Charge of Discrimination form was submitted as the initial "charge" a properly completed form should be submitted as soon as possible, and preferably prior to the jurisdictional deadline for filing the charge, to cure any potential argument regarding deficits in the initial submission. A sample of the Charge of Discrimination form is included at the end of this article.

The charge should always include the notarized signature of the charging party, not an attorney signing as the client's agent.[40] If a party files a charge without the party's notarized signature, he or she can cure this error while the charge is under investigation by filing an amended charge.[41] Amendments to the charge relate back to the date the party filed the charge.[42]

It is also important to note that the party must file the charge by mail or in person; the CCRD may not accept it by email or fax.[43] It is always best practice to file the charge in person to ensure its receipt and timely filing. If filing the charge in person, take an extra copy to the CCRD and have it stamped "filed." In addition, if counsel is filing the charge, include a cover letter with the initial filing of the charge to serve as an "entry of appearance" for counsel in the matter.

New Information and Amending the Charge

If counsel wishes to add additional facts related to the subject matter of the original charge, counsel can amend the charge to include such facts or raise those facts in the rebuttal. However, one must either amend the charge or file a new charge if there are new facts that give rise to new categories of discrimination that the original charge did not previously allege or if the acts occurred after the filing of the charge.[44] Amendments to a charge will relate back to the original date that the party filed the charge.[45] Failure to indicate all categories of discrimination or failure to include all discriminatory acts in the charge can bar a plaintiff from bringing claims based upon that discriminatory conduct.[46]

How to Use the Administrative Process

The CCRD publishes an annual report that provides information concerning the number and categories of charges filed, the outcomes of investigations, statistics related to settlements and information related to outreach and education.[47] The CCRD enforces anti-discrimination laws in the areas of employment, housing and public accommodations. However, the large majority of charges filed with the CCRD, 79%, are employment discrimination charges.[48] The most current data available from the CCRD is for fiscal year 2010-2011. This data shows that

575 charges were filed with the CCRD related to employment discrimination in fiscal year 2010-2011.[49] Of those charges, the CCRD issued determinations on 339 charges, 26 probable cause determinations and 313 no probable cause determinations.[50] This means 4.5% of the charges filed in 2010-2011 resulted in probable cause findings. Based on the low rate of probable cause findings, many practitioners believe the administrative process is not of value. This practitioner disagrees.

What Happens at the CCRD

After a Charge of Discrimination is filed with the CCRD, The agency determines that it has jurisdiction and assigns the charge to an investigator. Under the statute, the CCRD has 270 days to complete its investigation.[51] However, both the charging party as well as the respondent can request a 90-day extension of time for "good cause."[52] Recently, the CCRD has become less willing to grant extensions to charging parties, despite the fact that it continues to grant extensions to respondents routinely. One excuse the CCRD provides is that respondents are "required" to respond to the CCRD whereas charging parties have the "option" to submit a rebuttal statement. However, under the CADA statute as well as the CCRD implementing regulations there is no such indication related to the "good cause" standard for granting extensions.[53] If counsel needs an extension to submit a rebuttal, request it in writing and include information consistent with the standards set forth in the regulations.[54]

The Position Statement – Early Discovery

The CCRD investigator first sends a copy of the charge and a request for information ("ROI") to the respondent. The charging party will receive a copy of this correspondence as well. The respondent has 30 days to provide its "position statement" in response to the charge. Inevitably, the respondent will request an extension of time to file its position statement and the CCRD will grant the extension.[55]

It is helpful to make contact with the investigator as soon as the CCRD identifies such person. If the charging party establishes e-mail communication immediately, the party and investigator will exchange all future correspondence via e-mail. This is useful for tracking and organizing communication as well as receiving and responding to communication more efficiently. When the investigator receives the position statement, he or she will provide it to the charging party and counsel. The charging party has the right to review all documentation that the respondent has submitted to the CCRD.[56] If counsel has established email communication, the position statement will be sent via email with all attachments and exhibits to the position statement sent in a PDF format. The cover letter from the CCRD that is received with a position statement states that attachments that are "too voluminous" are not sent, but may be personally inspected by appointment or copied for "$0.25 per page." However, this practitioner has never had an investigator refuse to provide all attachments, for free, in PDF format, via email.

The ability to receive all of the respondent's attachments in support of its position is one difference between the process at the CCRD and the EEOC. When the EEOC provides a position statement, the EEOC does not include any exhibits or attachments that the respondent may have sent. The only way to see such documents is to complete a Freedom of Information Act ("FOIA") request after the investigation is complete. This puts the charging party at a disadvantage during the administrative process and makes it difficult for counsel to analyze the case. As one can imagine, it is nearly impossible, and nonsensical to respond to an employer's position statement when the employee cannot review the most significant portions.

Furthermore, employers are aware of this flaw in the EEOC's process and take advantage of it. The majority of position statements are vague regarding the details of the evidence employers submit in support of their positions, and they rely on attachments. The ability to receive all evidence provided by the respondent in support of its position as well as in response to the ROI allows counsel to complete an early assessment of the strengths and weaknesses of a case. If a the EEOC investigates a charge, the first opportunity counsel may have to see a particularly harmful piece of evidence that would affect the assessment of the case may be after the employee files a lawsuit. This weakness in the EEOC investigative process supports using the CCRD when it is an available avenue for handling the Charge of Discrimination.

The Rebuttal Statement – An Opportunity

The rebuttal statement should not only reply to the respondent's position statement but should also include a clear list of documents or other evidence for the CCRD to request from the respondent. Counsel should also include a list of witnesses that the charging party believes the CCRD should interview as part of the investigation. If possible, counsel should submit witness statements, preferably affidavits, with the rebuttal statement. The CCRD considers hearsay. Witnesses who can corroborate a client's version of events or discredit the respondent are especially useful. Although the CCRD has the authority to interview witnesses, investigators rarely do. Therefore, affidavits are particularly powerful pieces of evidence at the administrative stage.

The rebuttal statement should also include a very simple summary of the elements of the claims and the facts that support each element. The investigators use similar templates of the elements to make their recommendation for determinations, so there is no reason to make them search through documentation to determine whether the information supports the claim.

Additional Documentation

In addition to the documentation that the respondent provides in its position statement, the CCRD will sometimes request additional documentation from the respondent after consideration of a rebuttal statement from the charging party. Unfortunately, the CCRD routinely fails to provide this additional information to the charging party. Therefore, it is up to counsel to request proactively any additional information that the CCRD has received from the respondent. Information the CCRD receive at this phase often includes statistical data that can be illuminating in supporting claims of pattern and practice of discrimination. Also, if the respondent claims that it no longer has relevant documentation, the CCRD should make an adverse inference against the respondent, regarding what such documentation would have contained.[57]

Determination or Requesting a Right to Sue Letter

It is standard practice for investigators to contact charging party's counsel stating that "most likely" they are going to make a no probable cause determination giving the charging party the option to stop the investigation and request a right to sue letter rather than receiving the unfavorable determination. Prior to requesting the notice of right to sue letter, counsel should ensure that at least 180 days has passed since the filing of the charge in order to preserve the rights of the charging party to file a civil action under the federal laws.[58] In addition, counsel should consider whether he or she is prepared to file a lawsuit within 90 days or whether it would be beneficial to the client to have additional time to attempt resolution of the matter. If counsel needs more time, a determination may be the better option.

First, it usually takes the CCRD somewhat longer to draft a determination than to issue a notice of right to sue. Second, the charging party has 10 days from the date of the determination to appeal the determination. According to one source at the CCRD, the most common basis for successful appeals at the CCRD is new information that the investigator did not previously consider. The appeal process tolls the time for filing a lawsuit to 90 days from the mailing of the final notice of the Commission's decision regarding the appeal. In addition to submitting an appeal to the CCRD, the charging party may request the EEOC for a substantial weight review of any claims over which the EEOC has jurisdiction. This review tolls not only the time for the filing of a lawsuit in state court, but also delays the issuance by the EEOC of its right to sue letter, which the employee needs for filing a lawsuit in federal court. The EEOC will review the entire file from the CCRD and any additional evidence provided and make an independent determination.

Conclusion

It is a misconception that the EEOC is the more effective place to file a Charge of Discrimination. The CCRD offers the advantages of being able to include additional, and unique claims, have an investigation complete within one year, and, most importantly, being able to review the evidence provided by the respondent which can be used as a tool for an early assessment of the strength of a case. Furthermore, with the additional remedies, which the new law will add to CADA as of January 1, 2015, pursuing claims in state court will be a more attractive option and having completed the administrative requirements through CCRD will be necessary. ▲▲▲

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Endnotes:

[1] C.R.S. § 24-34-302.

[2] C.R.S. § 24-34-301 *et seq.*

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.	AGENCY [X] FEPA [X] EEOC	CHARGE NUMBER

Colorado Civil Rights Commission

State or local Agency, if any

NAME *(Indicate Mr., Ms., Mrs.)*	(AREA CODE) HOME TELEPHONE
STREET ADDRESS / CITY, STATE AND ZIP CODE	DATE OF BIRTH

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE *(Include Area Code)*
STREET ADDRESS / CITY, STATE AND ZIP CODE		COUNTY
NAME	TELEPHONE NUMBER *(Include Area Code)*	
STREET ADDRESS / CITY, STATE AND ZIP CODE		COUNTY

CAUSE OF DISCRIMINATION BASED ON *(Check appropriate box(es))*

[ ] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] AGE
[ ] RETALIATION [ ] NATIONAL ORIGIN [ ] DISABILITY [ ] OTHER

DATE DISCRIMINATION TOOK PLACE
EARLIEST *LATEST*

[ ] CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s)):*

I. Jurisdiction: The Colorado Civil Rights Commission has jurisdiction over the subject matter of this charge; that the Respondent is subject to the Jurisdiction of the Colorado Civil Rights Commission and is covered by the provisions of Colorado Revised Statutes (C.R.S. 1973, 24-34-401, e*t. Seq.*), as re-enacted.

II. Personal Harm:

III. Respondent's Reasons

IV. Discrimination Statement:

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - (When necessary for State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct. Date Charging Party *(Signature)*	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

[3] C.R.S. § 24-34- 402(a).

[4] *Id*.

[5] C.R.S. § 24-34-301(7).

[6] Colo. Civil Rights Comm'n Rule 81.2, 3 C.C.R. 708-1 (2009).

[7] 3 C.C.R. 708-1, Rule 81.8.

[8] 3 C.C.R. 708-1, Rule 81.10.

[9] C.R.S. § 24-34-402.7.

[10] C.R.S. § 24-34-402.7(1)(a)(I)-(IV).

[11] C.R.S. § 24-34-402.7(2)(c).

[12] C.R.S. § 24-34-402.7(1)(b).

[13] C.R.S. § 24-34-402.7(2)(a).

[14] C.R.S. § 24-34-402.7(2)(b).

[15] C.R.S. § 24-34-402(1)(h).

[16] C.R.S. § 24-34-402(1)(h)(I).

[17] C.R.S. §§ 24-34-501 *et seq.* and 24-34-601 *et seq*.

[18] C.R.S. § 24-34-402.5.

[19] *See* C.R.S. § 24-34-402.5(1)(a) and (b).

[20] C.R.S. § 24-34-306(14).

[21] *Galieti v. State Farm Mut. Auto. Ins. Co*., 840 F. Supp. 104 (D. Colo. 1993).

[22] *Id.* at 105.

[23] *See* 42 U.S.C. § 12111(5)(A) and 42 U.S.C. § 2000e(b). Note, however, that race and national origin claims may also be made under 42 U.S.C. § 1981 which does not have a minimum number of employees.

[24] 29 U.S.C. §630(b).

[25] C.R.S. § 24-34-401(3) (defining "employer" as "every other person employing persons within the state"). For a definition of "person" under CADA, see C.R.S § 24-34-301).

[26] C.R.S. § 24-34-402(1)(e).

[27] 42 U.S.C. § 2000e-16a.

[28] *Kimel v. Fla. Bd. of Regents,* 528 U.S. 62 (2000).

[29] 42 U.S.C. § 12111(5)(A).

[30] 29 U.S.C. §§ 791 and 794.

[31] C.R.S. §§ 24-34-306(9) and 24-34-405.

[32] C.R.S. § 24.34-402.5(2)(b).

[33] *Concerning the Creation of Remedies in Employment Discrimination Cases Brought Under State Law*, H.B. 1136, 69th Gen. Assem., Reg. Sess. (CO 2013).

[34] C.R.S. § 24-34-403.

[35] 42 U.S.C. § 2000e-5(e)(1).

[36] 3 CCR 708-1, Rule 10.4(C)(4).

[37] See Colo. Civil Rights Div., Employ't Complaint Intake Packet "IMPORTANT NOTICE: Submittal of these forms DOES NOT constitute the filing of a Charge. Several additional steps must be taken after the filing of your Complaint Intake Packet, and thus it is vital that you submit this initial documentation well before the deadline required by the law. Available at www.colorado.gov/cs/ Satellite/DORA-DCR/CBON/DORA/ 1251629365240.

[38] 3 CCR 708-1, Rule10.4(B) and (C).

[39] *Edelman v. Lynchburg Coll.*, 535 U.S. 106 (2002).

[40] C.R.S. § 24-34-306, 3 CCR 708-1, Rule 10.4(A).

[41] 3 CCR 708-1, Rule 10.4(H)(3).

[42] *Id*.

[43] *Id*.

[44] 3 CCR 708-1, Rule 10.4(H) and (J).

[45] 3 CCR 708-1, Rule 10.4(H)(3).

[46] C.R.S. § 24-34-403.

[47] See Colorado Civil Rights Commission, Colorado Civil Rights Division Annual Report 2011 available at www.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251631542607.

[48] *Id*. at p. 6.

[49] *Id*.

[50] *Id*. at p. 9.

[51] C.R.S. § 24-34-306, 3 CCR 708-1, Rule 10.7.

[52] *Id*.

[53] *Id*.

[54] 3-CCR 708-1, Rule 10.7(C).

[55] C.R.S. § 24-34-306(11), 3 CCR 708-1, Rule 10.7.

[56] 3 CCR 708-1, Rule 10.5(G).

[57] 3 CCR 708-1, Rule 20.5.

[58] 3 CCR 708-1, Rule 10.5(H)(2).