

COLORADO LGBTQ FAMILY LAW

**A Resource Guide for LGBTQ-Headed Families
living in Colorado**

November 2017

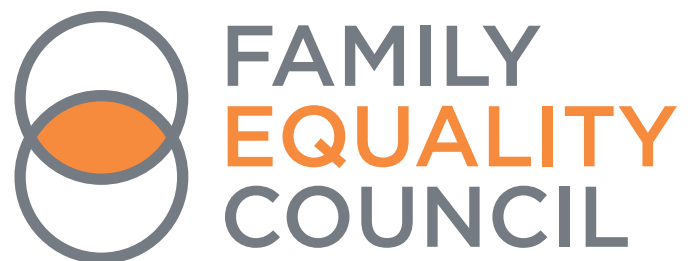


TABLE OF CONTENTS

- INTRODUCTION 2
- RELATIONSHIP RECOGNITION 3
 - Federal Benefits After *United States v. Windsor* and *Obergefell v. Hodges* 4
- CHILDREN AND PARENTAGE 6
 - ADOPTION 8
 - Second-Parent Adoption..... 8
 - Stepparent Adoption..... 8
 - Declaration of Paternity or Maternity 9
 - Parental Presumption..... 9
 - SURROGACY, ASSISTED REPRODUCTION, & ARTIFICIAL INSEMINATION.....10
 - BIRTH CERTIFICATES FOR CHILDREN OF SAME-SEX COUPLES10
 - APPLYING FOR A SOCIAL SECURITY NUMBER AND CARD FOR A CHILD.....11
 - APPLYING FOR A PASSPORT FOR A CHILD.....12
- NON-DISCRIMINATION PROTECTIONS13
 - EMPLOYMENT13
 - State Law.....13
 - Federal Law14
 - Company Policies.....15
 - HOUSING.....15
 - State Law.....15
 - Federal Law16
 - PUBLIC ACCOMMODATIONS17
 - State Law.....17
 - Federal Law18
- SCHOOL POLICIES AND ANTI-BULLYING18
 - State Law18
 - Federal Law.....19
- HEALTHCARE.....21
 - State Law21
 - Federal Law.....21
- FAMILY AND/OR PARENTING LEAVE23
- CHANGES OF NAME AND GENDER.....24
- HATE CRIMES PROTECTIONS.....26
- RECOMMENDED LEGAL DOCUMENTS FOR SAME-SEX COUPLES28
 - Last Will and Testament28
 - Advance Directive for Healthcare.....28
 - Financial Power of Attorney.....29
 - Domestic Partnership Agreement.....29
 - Co-Parenting Agreement.....29

INTRODUCTION

This guide was drafted by Family Equality Council, in collaboration with One Colorado. It addresses many of the legal rights and issues that affect LGBTQ families currently living in Colorado. As LGBTQ equality advances across the nation, there are still significant gaps in the rights of LGBTQ individuals and their families, especially at the state level. While the climate in Colorado is far more accepting of the LGBTQ community than in many states, LGBTQ families still may experience discrimination and be denied equal access to education, employment, housing, healthcare, and public accommodations. In this type of environment, it is important to understand what the law is in each area and how best to protect your family.

DISCLAIMER

This handbook is not intended to be legal advice but an overview of the current state of LGBTQ-family law in Colorado. The law is changing quickly and dynamically, so it is important to consult an attorney or contact the authors to discuss the details of your particular situation and to ensure that information provided herein is still accurate.



RELATIONSHIP RECOGNITION

In 2006, Colorado voters approved an amendment to the Colorado Constitution that defined marriage as a union between a man and a woman only.¹ In 2013, the Colorado Legislature passed the Colorado Civil Union Act (CCUA), which authorizes any two unmarried adults, regardless of gender, to enter into a civil union. The CCUA grants partners who enter into a civil union in Colorado every right, benefit, protection, and responsibility derived from every statute, administrative or court rule, policy, common law, or any other source that is granted to or imposed upon spouses.² The CCUA also stated that marriages of same-sex couples³ that were legally recognized in other states would be considered civil unions in Colorado and that a civil union entered into in another state would be recognized as a civil union in Colorado.

In 2013, after the United States Supreme Court struck down Section 3 of the federal Defense of Marriage Act (DOMA), which barred same-sex couples from being recognized as spouses under federal

law,⁴ two lawsuits on behalf of multiple same-sex couples were filed in state court challenging Colorado's definition of marriage as between a man and a woman.⁵ The cases were joined and a joint ruling was issued in *Brinkman v. Long* on July 9, 2014, in which the state court ruled that Colorado's exclusion of same-sex couples from marriage was unconstitutional. Concurrent with the judgment, the judge issued a stay of his ruling pending "resolution of the issue on appeal."⁶ Just two weeks prior to this state court ruling, the U.S. Court of Appeals for the Tenth Circuit, which is the federal appeals court with jurisdiction over Colorado, struck down a similar ban on marriages between same-sex couples in the Utah Constitution, and the court had also issued a stay of that order pending appeal.⁷ Despite this stay, a Boulder county clerk began issuing marriage licenses to same-sex couples and continued to do so after the state's July 9 *Brinkman* decision.⁸ On July 29, the Colorado Supreme Court ordered the clerk to stop issuing marriage licenses to same-sex couples.⁹ In the interim, the Tenth Circuit issued another

1 Colorado Amendment 43 (2006): [http://www.leg.state.co.us/lcs/0506initrefr.nsf/0/23380a98467c22d48725715b00529593/\\$FILE/Amendment%2043.pdf](http://www.leg.state.co.us/lcs/0506initrefr.nsf/0/23380a98467c22d48725715b00529593/$FILE/Amendment%2043.pdf)

2 Colorado Civil Union Act, S.B. 13-011 (2013): [http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/35CE5FDC5F040FF487257A8C0050715D/\\$FILE/011_enr.pdf](http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/35CE5FDC5F040FF487257A8C0050715D/$FILE/011_enr.pdf)

3 In addition to marriages of same-sex couples, a "domestic partnership, or substantially similar legal relationship between two persons that is legally created in another jurisdiction" is also deemed to be a civil union. C.R.S. 14-15-116(2).

4 *United States v. Windsor*, 133 S.Ct 2675 (2013).

5 *Brinkman v. Long*, No. 13-CV-32572; *McDaniel-Miccio v. Colorado*, No. 14-CV-30731.

6 *Brinkman v. Long*, No. 13-CV-32572 (Den Dist. Ct. 2014); *McDaniel-Miccio v. Colorado*, No. 14-CV-30731 (Den Dist. Ct. 2014).

7 *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014).

8 *Colorado v. Hall*, Case No. 2014CV30833 (Colo. Dist. Ct. July 10, 2014).

9 *Colorado v. Hall*, Case No. 2014SC582 (Colo. S.Ct. July 29, 2014).

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families

decision which found that the Oklahoma ban on marriages between same-sex couples was unconstitutional.¹⁰ Both of these Tenth Circuit federal cases were appealed to the U.S. Supreme Court and, on October 6, 2014, both appeals were denied leaving in place the trial court decisions finding the Utah and Oklahoma bans to be unconstitutional – decisions that created controlling law in Colorado and throughout the Tenth Circuit.¹¹ Accordingly, the next day, the Colorado Supreme Court dismissed the appeal in *Brinkman* and lifted the stay on the underlying court decisions striking Colorado’s ban on marriage between same-sex couples and recognition of marriages of same-sex couples from other states.¹² The state of Colorado began issuing marriage licenses to same-sex couples on October 7, 2014.¹³ For couples who do not wish to marry, civil unions remain available in Colorado.¹⁴

10 *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014).

11 *Herbert v. Kitchen*, 135 S. Ct. 265 (2014); *Smith v. Bishop*, 135 S.Ct. 271 (2014)

12 *Brinkman v. Long*, Case No. 2014SA212 (Colo. S.Ct. Oct 7, 2014).

13 Colorado Department of Law Press Release October 7, 2014: <https://localtvkdvr.files.wordpress.com/2014/10/attorney-general-ruling.pdf>.

14 Deciding whether to enter into a civil union or marriage is a deeply personal decision that each couple must decide for themselves. It is important to note, however, that there are some significant differences in the rights and benefits afforded to civil unions versus marriage. For instance, in Colorado when a couple obtains a dissolution of a civil union, they cannot transfer assets tax free as they could if they had been married. Further, as stated in the section immediately below, some federal benefits apply only to married couples. Thus, couples who are considering entering into a civil union or marriage may want to consult with a

Nationwide recognition of marriages of same-sex couples came in June 2015 with the United States Supreme Court’s ruling in *Obergefell v. Hodges*.¹⁵ *Obergefell* not only requires all U.S. states to issue marriage licenses to same-sex couples, but also requires them to recognize marriages¹⁶ and marriage licenses issued in another state.¹⁷

For more information on how to access federal marriage benefits please see the post-*Obergefell* fact sheets at:

<https://marriageequalityfacts.org>

FEDERAL BENEFITS AFTER *UNITED STATES V. WINDSOR* AND *OBERGEFELL V. HODGES*

As discussed above, in 2013, the United States Supreme Court, in *United States v. Windsor*, found Section 3 of DOMA unconstitutional, overturning the law that denied federal marriage benefits to married same-sex couples. Thereafter, the marriages of same-sex couples in Colorado were recognized by the federal government for federal benefits purposes. Such benefits include, but are not limited to, Social Security and Veterans Administration benefits, all federal tax purposes, health insurance

Colorado family law attorney to ensure that they fully understand the difference between the two.

15 *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

16 Not all married people have a marriage license. Some states recognize common law marriage, including Colorado.

17 *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).



LIBERTY AND JUSTICE FOR ALL

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families

and retirement benefits for same-sex spouses of all federal employees, and spousal benefits for same-sex spouses of military service members. In addition, *Windsor* laid the foundation for marriage equality nationwide, which was won two years later.

In 2015, the Supreme Court found in *Obergefell v. Hodges* that same-sex couples have a fundamental right to marry under the Constitution, mandating that same-sex couples be permitted to marry and have their marriages recognized throughout the U.S.¹⁸ Following *Obergefell*, all federal marriage benefits have been extended to married same-sex couples nationwide.

IMPORTANT

It should be noted that some federal benefits are available to married couples **ONLY**. Thus, unmarried couples – even those who have a civil union - are unable to access spousal benefits from these programs nor do they have the same benefits when the relationship ends. However, because marriages of same-sex couples are now recognized nationwide, married couples living in Colorado should be able to access all federal benefits that are attendant to marriage. Please alert the authors if you find such benefits have been denied to you as a result of the agency failing to recognize your marriage.

¹⁸ *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

CHILDREN AND PARENTAGE

LGBTQ people and same-sex couples form families in various ways. Some have children from prior different-sex or same-sex relationships. Some LGBTQ people are single parents by choice. Some same-sex couples adopt or use assisted reproductive technologies to build their families together. Regardless of how LGBTQ people form their families, it is imperative to ensure that both intended parents are legally recognized regardless of their biological or genetic relationship to the child. The state of Colorado has various rules and statutes that recognize and reflect the evolving landscape of the modern family make-up; however, as discussed more fully below, the best way to ensure that the parental status of both parents is legally recognized is to obtain a court order – either an adoption decree or a declaration of paternity or maternity.¹⁹



¹⁹ Same-sex couples who are planning to have a child should consult with an experienced LGBTQ family law attorney to discuss their options for ensuring that both parents are legally recognized and protected and to determine which option best suits their unique circumstances.

All same-sex couples raising children should keep copies of the following documents easily accessible:

- Adoption decree
- Decree Affirming Parental Status (or similar order if you have one)
- Permanent Orders for Allocation of Parental Responsibilities (if you are divorced)
- Declaration of Paternity²⁰
- Birth certificate
- Guardianship agreement
- Co-parenting agreement
- Marriage License
- Civil Union License
- Medical Powers of Attorney

²⁰ Because birth certificates are “administrative” and because some states have refused to recognize birth certificates from other states, it is strongly advised that same-sex parents get a court order defining their legal status as a parent. As discussed more fully herein, in Colorado this can be done by obtaining an adoption decree or a declaration of paternity or maternity.

Please consult an attorney experienced in LGBTQ law, or the authors, if you experience discrimination from state or local agencies in recognizing your family relationships on the basis of your marriage.

Likewise, if you are an LGBTQ person or same-sex couple thinking about fostering and/or adopting children either from the public child welfare system or through private adoption, it is critical that you hire a Colorado adoption attorney who has experience working with LGBTQ people and couples. It is not enough to simply hire an experienced adoption or family law attorney. There are issues unique to LGBTQ families that can, and should, only be managed by an attorney with particular experience and expertise in this area of the law. If you are unsure where to find an experienced LGBTQ adoption attorney, please contact Family Equality Council www.familyequality.org, and we will do our best to help you find one.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families

ADOPTION

Under Colorado law, single LGBTQ individuals and same-sex couples who are married or in a civil union jointly may petition to adopt. In general, Colorado law provides that any person twenty-one years of age or older, including a foster parent or a minor (with court approval) may petition for an adoption.²¹ A person with a living spouse or partner in a civil union must petition jointly with the spouse/partner unless they are legally separated or the spouse/partner is the natural parent or has previously adopted the child.²²

While Colorado adoption laws have not been updated since nationwide marriage equality was achieved, they expressly account for same-sex couples in civil unions and any reference to “spouse” should be interpreted to include a same-sex spouse. Although there is nothing in state law or policy that prohibits joint adoption by LGBTQ individuals or spouses/partners, there is no explicit protection preventing discrimination. For this and other reasons, it is advisable to contact a Colorado adoption attorney who is experienced in LGBTQ family law. It is equally important to engage with foster and adoption agencies who are welcoming and affirming to LGBTQ people and same-sex couples.

Second-Parent Adoption

Second-parent adoption allows a second parent to adopt a child who has a sole legal

²¹ Colo. Rev. Stat. § 19-5-202.

²² Colo. Rev. Stat. § 19-5-202.

parent. In other words, this process allows a non-biological or non-birth parent to establish their legal rights as a legal parent. In a second-parent adoption, the sole legal parent does not lose any parental rights, so the child is entitled to the benefits of having two legal parents. Colorado law allows second-parent adoption by a “specified second adult.”²³ There is no requirement of marriage, and the statute is written in gender-neutral terms. Thus, in Colorado, this second-parent adoptions are available to married and unmarried same-sex couples.

Colorado courts require a home study report and background check to be completed in a petition for second-parent adoptions.²⁴ Upon a successful petition, the court will issue an adoption judgment, which must be recognized every state throughout the U.S.²⁵

Stepparent Adoption

Stepparent adoption is the legal adoption of a child by the spouse or partner of a child’s custodial legal parent. In Colorado, same-sex spouses or partners who are married or joined in a civil union may petition to adopt their spouse/partner’s child as a stepparent.²⁶ Under Colorado’s stepparent adoption law, the child’s custodial parent must consent to the

²³ Colo. Rev. Stat. § 19-5-203; H.B. 07-1330 (2007).

²⁴ Colo. Rev. Stat. § 19-5-203; 12 Colo. Code Regs. 2509-6 (2017). There is also an unwritten “one year rule” followed by many counties requiring the parental relationship to have had at least a one year duration.

²⁵ *V.L. v E.L.*, 136 S.Ct. 1017 (2016).

²⁶ Colo. Rev. Stat. § 19-5-202.

Obtaining an adoption decree or other court order establishing parentage is irrefutable and undeniable proof of parentage. We strongly recommend that same-sex couples with children ALWAYS get an adoption decree or other court order that recognizes both parents as legal parents, even if you are married or in a civil union and appear on the birth certificate. In Colorado, you can do this through a second-parent or step-parent adoption procedure, or, alternatively, a Declaration of Paternity/Maternity.

adoption and any other non-custodial parent must have relinquished the parent-child relationship voluntarily or through court order.²⁷

The primary difference between a second-parent and stepparent adoption in Colorado is that the petitioning parent does not have to be in a legal relationship with the child's legal parent for a second-parent adoption, but, in a stepparent adoption, the petitioning parent must be in a marriage or civil union with the legal parent. For either method of adoption, consultation with a Colorado attorney who specializes in adoptions and has experience working with LGBTQ couples is essential.

Declaration of Paternity or Maternity

Colorado law provides an alternate method for same-sex couples to ensure that the non-biological or non-birthing parent is recognized as a legal parent. A declaration of paternity or maternity (sometimes referred to as a decree affirming parental status),²⁸ is a court order obtained pursuant to section 19-4-105 of the Colorado statutes that declares that the non-birthing parent

is a legally recognized parent. To obtain a declaration of paternity or maternity, the other parent need not consent, and the presumed parent needs to show proof that they fit into one of the categories of presumed parents set forth in the statute²⁹ by a preponderance of the evidence. All potentially interested parents must be notified.

Parental Presumption

Parental presumption is the idea that when a married woman gives birth, her spouse is the child's other legal parent. In Colorado, the parental presumption applies to create presumptive legal rights to a child for the spouse of the woman giving birth, whether the couple is same-sex or different-sex. Colorado law states that a man is presumed to be the "natural father" of a child if he receives the child into his household and openly holds the child out as his natural child, if he and the child's mother are married when the child is born or if the child is born within 300 days after the marriage is terminated, or if the child is the product of assisted reproduction.³⁰

²⁹ Colo. Rev. Stat. § 19-4-105.

³⁰ Colo. Rev. Stat. § 19-4-105; §19-4-106. It should be noted that there are actually 12 different grounds upon which a parental presumption may rest.

²⁷ Colo. Rev. Stat. § 19-5-203.

²⁸ Colo. Rev. Stat. § 19-4-105.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families

Colorado’s law has not been updated since the recognition of marriage equality and still uses gender-specific language, but the statutes³¹ explicitly allow for declarations of Maternity and for “Father” to mean “Mother” as appropriate and, further, Colorado courts have held that these “parental presumptions” apply equally to married same-sex couples.³²

SURROGACY, ASSISTED REPRODUCTION, & ARTIFICIAL INSEMINATION

Assisted reproductive technology (ART) is the use of medical technology to assist with pregnancy or childbirth and includes methods such as in vitro fertilization or use of an egg donor, sperm donor, embryo donor, and/or a surrogate carrier. Colorado has a law that addresses parentage for children conceived using ART, but its law is silent on surrogacy. Nonetheless, surrogacy is a common practice in Colorado and has been acknowledged by the courts.³³ Without any regulations regarding surrogacy, it is imperative that any individual or couple who is considering surrogacy, consult with an experienced Colorado surrogacy attorney who has experience working with LGBTQ individuals and same-sex couples, and surrogacy agencies if applicable, and who understands the process for establishing the parental rights of the intended parent(s).

31 Colo. Rev. Stat. § 19-4-107, § 19-4-122 and § 19-4-125.

32 *Limberis v. Havens* (In re A.R.L.), 2013 COA 170 (Colo. App. 2013).

33 *C.A.T.C. v. N.M.V.* (In re S.N.V.), 284 P.3d 147 (Colo. App. 2011).

Colorado’s assisted reproduction law, which applies to sperm donors, egg donors, and embryo donations, was passed prior to marriage equality.³⁴ It states, among other things, that a donor is not a parent and, when a married person gives birth to a child conceived through donor insemination, the person’s spouse is the legally recognized parent.³⁵ While the statute uses gender-specific language, Colorado courts have indicated that they are willing to interpret such language broadly and to apply it to same-sex marriages.³⁶ Moreover, in *Pavan v. Smith*, the U.S. Supreme Court recently held that a similar law in Arkansas that provided that the husband of a woman who conceived through sperm donation was presumed to be the father, must be applied equally to spouses of the same sex.³⁷ Nonetheless, LGBTQ couples should consult with an attorney who specializes in ART and has experience working with LGBTQ couples.

BIRTH CERTIFICATES FOR CHILDREN OF SAME-SEX COUPLES

Colorado law governing the issuance of birth certificates has not been updated since the recognition of marriage equality, but married same-sex couples should be entitled to the same presumptions that different-sex couples receive. Colorado law uses gendered language and, as stated

34 Colo. Rev. Stat. § 19-4-106.

35 Colo. Rev. Stat. § 19-4-106.

36 *Limberis v. Havens* (In re A.R.L.), 2013 COA 170 (Colo. App. 2013).

37 *Pavan v. Smith*, No. 16-922 (June 2017).

above, creates a presumption of paternity for the husband of a married woman who gives birth.³⁸ However, in *Pavan*, the U.S. Supreme Court expressly reiterated that equal access to birth certificates is one of the many “rights, benefits, and responsibilities” associated with civil marriage.³⁹ Accordingly, states cannot discriminate against same-sex spouses with regard to the naming of each spouse on a child’s birth certificate, and same-sex parents in Colorado are entitled to the same parental presumption enjoyed by different-sex parents.

As a birth certificate is not a court order and is only evidence of what the parties intended, it is still strongly recommended that same-sex couples petition for an adoption decree or declaration of paternity or maternity as soon as possible, regardless of whether their names appear on the birth certificate.

New birth certificates must be issued following adoption, so a same-sex parent who did not appear on the original birth certificate should be listed on the birth certificate after completing an adoption of a child.⁴⁰

To update a child’s birth certificate, contact the Vital Records Section of the Colorado Department of Health and Environment. They may be contacted at 1-303-692-2200.

APPLYING FOR A SOCIAL SECURITY NUMBER AND CARD FOR A CHILD

To apply for a Social Security Number and Card for a child, the Social Security Administration (SSA) requires a number of different documents, personal information about the parent applying for the Card or Number, the child, and any other legal parent to the child, and a completed SS-5 application form.

These documents may be submitted to the SSA via letter or in person at a local SSA office, which can be found through this link <https://secure.ssa.gov/apps6z/FOLO/fo001.jsp>. Two same-sex parents may be listed on the application for a Social Security Card or Number. However, only parents listed on the child’s birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application.

For more information on the application process, please see Family Equality Council’s FAQ http://www.familyequality.org/get_informed/advocacy/know_your_rights/ssa_faqs, visit the SSA website at <https://www.ssa.gov/ssnumber>, or call the SSA at 1-800-722-1213 or 1-800-325-0778. If difficulties arise, please contact Family Equality Council.

38 Colo. Rev. Stat. § 25-2-112.

39 *Pavan v. Smith*, No. 16-992 (June 2017).

40 Colo. Rev. Stat. § 25-2-113.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families

APPLYING FOR A PASSPORT FOR A CHILD

To apply for a passport for a child, the State Department requires documentary evidence, a completed DS-11 form, a photograph of the child, and personal information about the parent applying for the passport, the child, and the child's other legal parent, if any. These documents must be submitted to the State Department in person at the nearest accepted facility or regional passport agency, listed here <https://iafdb.travel.state.gov>

The required materials are listed here: <http://travel.state.gov/content/passports/english/passports/under-16.html>

Two same-sex parents may be listed on the application for a child's passport. Only parents listed on the child's birth certificate, or on a court-ordered adoption decree, are permitted to be included on the application. However, if the adoptive

(or legal) parent of the child is unavailable, the Department of State permits a non-adoptive parent who stands *in loco parentis* to the child to complete the DS-11 form and application. *In loco parentis* means an adult with day-to-day responsibilities to care for and financially support a child but with whom the child does not have a biological or legal relationship.

Questions about the application process and acceptable materials can be directed to the National Passport Information Center at 1-877-487-2778. The State Department website also provides helpful information at <http://travel.state.gov>

Family Equality Council also maintains an FAQ on applying for a child's passport, available at this link: http://www.familyequality.org/get_informed/advocacy/know_your_rights/passport_faq, or contact Family Equality Council for assistance if problems arise in obtaining the passport.



NON-DISCRIMINATION PROTECTIONS

There are currently no federal laws that explicitly prohibit discrimination of LGBTQ people in employment, housing, and public accommodations. Existing federal civil rights laws have been interpreted to provide some limited protections in housing, employment, education and even in health care, but without explicit and fully inclusive federal protections against discrimination based on sexual orientation and gender identity, LGBTQ people and their families remain vulnerable.

Colorado provides statewide nondiscrimination protections for LGBTQ people, beyond any protections that may exist in federal law or policy. In 2007 and 2008, Colorado legislators passed amendments to the Colorado Anti-Discrimination Act (CADA) to include protections against discrimination on the basis of sexual orientation and gender identity.⁴¹ Thus, LGBTQ people in Colorado are now protected from discrimination in areas such as employment, housing, credit, and public accommodations.

EMPLOYMENT

State Law

Even with the arrival of nationwide marriage equality, LGBTQ people are at risk of being outed at work by simply filing an amended W-4, leading to discrimination in the workplace or even the loss of a job. In 2007,

⁴¹ Senate Bill 07-025 (2007); Senate Bill 08-200 (2008).

Colorado legislators passed the Sexual Orientation Employment Discrimination Act to expand protections against discrimination in the workplace to LGBTQ individuals in Colorado.⁴² The bill defined sexual orientation as “a person’s orientation towards heterosexuality, homosexuality, bisexuality, or transgender status or an employer’s perception thereof.”⁴³ Unlike federal anti-discrimination laws that only apply to employers with at least 15 employees, the CADA applies to all Colorado employers, regardless of size.⁴⁴

With these amendments, CADA prohibits employers from discriminatory practices such as making pre-employment inquiries into an applicant’s sexual orientation or expressing a preference for a particular sexual orientation in job advertisements, refusing to hire or promote based on sexual orientation, having separate lines of job progression or seniority based on sexual orientation, or discipline, and harassing or firing an employee based on sexual orientation.⁴⁵ Employers with a reasonable gender-specific dress code must allow employees to dress according to the person’s gender identity.⁴⁶ The law contains an exception for religious organizations, unless the organization is supported in whole or part by money raised by taxation or public borrowing.⁴⁷

⁴² S.B. 07-025 (2007); Colo. Rev. Stat. § 24-34-401.

⁴³ S.B. 07-025 (2007); Colo. Rev. Stat. § 24-34-301.

⁴⁴ Colo. Rev. Stat. § 24-34-401.

⁴⁵ Colo. Rev. Stat. § 24-34-402.

⁴⁶ Colo. Rev. Stat. § 24-34-402; 3 CCR 708-1, Rule 81.8.

⁴⁷ Colo. Rev. Stat. § 24-34-402.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families

The Colorado Civil Rights Division (CCRD) is responsible for handling and investigating claims of employment discrimination.⁴⁸ Claims must be filed with the CCRD in person or electronically within **six months** of the discriminatory action. More information on where and how to file is available at this website: <https://www.colorado.gov/pacific/dora/civil-rights/employment-discrimination>

Federal Law

While there is no explicit federal law that bars discrimination against LGBTQ people in the workplace, the definition of “sex” in Title VII of the Civil Rights Act of 1964 has been interpreted by some courts to provide employment protections for LGBTQ people. The Equal Employment Opportunity Commission (EEOC) hears and investigates complaints of employment discrimination under Title VII and looks into claims against all private employers, state and local governments, federal government agencies, employment agencies, and labor unions, as long as they have fifteen or more employees or members.

In 2012, the EEOC ruled in *Macy v. Holder* that discrimination against a transgender woman was discrimination under Title VII’s prohibition of discrimination based on sex.⁴⁹ In *Veretto v. US Postal Service*⁵⁰ and *Castello v. US Postal Service*,⁵¹ the EEOC held that employment discrimination on the basis of sexual orientation violated

48 Colo. Rev. Stat. §§ 24-34-301 et al.

49 No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012).

50 No. 0120110873 (E.E.O.C. Jul. 1, 2011).

51 No. 0120111795 (E.E.O.C. Dec. 20, 2011).

prohibitions of sex-based discrimination because it constituted discrimination based on sex-stereotypes. In 2015, the EEOC strengthened the protections for those who may face discrimination on the basis of sexual orientation by ruling in *Complainant v. Foxx*⁵² that claims of discrimination based on sexual orientation inherently amount to claims of sex discrimination and are therefore actionable under Title VII.⁵³ These EEOC decisions, while not binding to courts, reflect the EEOC’s view that LGBTQ individuals are protected under Title VII and may file a claim of employment discrimination utilizing the law’s inclusion of “sex” as a protected class. In 2017, in *Hively v. Ivy Tech Comm. College*, a federal appellate court issued a binding decision citing with approval the EEOC’s conclusions in *Complainant v. Foxx*, thus providing strong legal precedent for reading Title VII as including LGBTQ employees as a protected class.⁵⁴

Victims of discrimination on any protected basis, including sexual orientation and gender identity, must file a Charge of Discrimination with a local EEOC office prior to filing a lawsuit in court alleging discrimination. The EEOC offices serving Colorado can be found at <https://www.eeoc.gov/field>

Generally, the Charge of Discrimination must be filed within 180 days of each

52 *Complainant v. Foxx*, No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 15, 2015).

53 No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 16, 2015).

54 *Hively v. Ivy Tech Comm. College*, 853 F.3d 339 (7th Cir. 2017).

instance of discriminatory treatment. To file a complaint based on sexual orientation or gender identity, the complainant must list the basis for the claim as discrimination on the basis of “sex,” as this is the existing basis that the EEOC and some courts have linked to sexual orientation and gender identity. More about the EEOC process and a claimant’s rights and responsibilities after filing a claim with the EEOC is available at this website: <http://www.eeoc.gov/employees/charge.cfm>. Federal employees and job applicants are subject to a different timeline for making a claim (typically 45 days) and procedures for filing, which are available here: http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm

Coloradans working for companies that contract with the federal government have access to additional protections against discrimination in employment. These protections stem from a 2014 Executive Order that prohibits federal contractors from discriminating against current or prospective employees on the basis of sexual orientation or gender identity.⁵⁵ Contractors who do business with the federal government employ 20% of American workers, all of whom are now covered by non-discrimination protections under this Order. LGBTQ individuals who have been the victim of discrimination by an employer that contracts with the federal government can file a complaint through

⁵⁵ On January 31, 2017, President Trump issued a statement that this Executive Order will remain intact during his presidency. <https://www.whitehouse.gov/the-press-office/2017/01/31/president-donald-j-trump-will-continue-enforce-executive-order>.

the U.S. Department of Labor Office of Federal Contract Compliance Programs. Information about the complaint process is available here: <http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>

Company Policies

Many employers, especially those that operate in multiple states, have enacted their own internal non-discrimination policies that prohibit discrimination against LGBTQ employees. While these policies may not be legally binding, they can often give an employee some recourse where there would otherwise be none. A company’s non-discrimination policy should be available in the company’s employee handbook or through the human resources department, and it is always important to be familiar with it and understand the rights and protections it affords.

Any person who has been or may have been the victim of sexual orientation- or gender identity-based discrimination in the workplace should contact an attorney familiar with LGBTQ employment law.

HOUSING

State Law

The 2008 amendments to the Colorado Anti-Discrimination Act (CADA) extended protections against discrimination in housing and other transactions involving real property to LGBTQ individuals.⁵⁶ The

⁵⁶ S.B. 08-200 (2008); Colo. Rev. Stat. § 24-34-502.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families

law now prohibits the refusal to show, sell, transfer, rent, lease, or otherwise make unavailable or deny housing on the basis of sexual orientation. Further, related practices such as discriminatory financing and stipulations of unequal terms or conditions are prohibited.⁵⁷ Sexual orientation is defined as “a person’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person’s perception thereof.”⁵⁸ Thus, LGBTQ Coloradans are entitled to the same access to housing as other citizens of Colorado.

As with employment discrimination, the Colorado Civil Rights Division is charged with investigating allegations of housing discrimination. Claims of discrimination in housing or related terms (such as residency privileges, interest rates, or insurance rates) on the basis of sexual orientation or gender identity must be filed within **one year** of the last discriminatory action. More information on filing is available through this link: <https://www.colorado.gov/pacific/dora/civil-rights/housing-discrimination>

Federal Law

The federal Fair Housing Act, which was enacted as Title VIII of the Civil Rights Act of 1968 and is enforced by the Department of Housing and Urban Development (HUD), does not explicitly prohibit discrimination against LGBTQ people and their families. However, an LGBTQ person experiencing discrimination on the basis of sexual

orientation or gender identity may still be covered by the Fair Housing Act on the basis of such discrimination constituting discrimination on the basis of “sex,” similar to the employment context.

In 2012, HUD issued the “Equal Access Rule,” which prohibits discrimination on the basis of sexual orientation or gender identity by any housing or service provider that receives funding or insurance from HUD.⁵⁹ It also prohibits lenders from determining a borrower’s eligibility for Fair Housing Authority (FHA) insurance on the basis of sexual orientation or gender identity. For example, any landlord receiving funding through HUD is prohibited from refusing to rent, offering unequal and inflated rental prices, or mistreating potential renters based on their sexual orientation, gender identity, or HIV/AIDS status. Further, any lender or operator of HUD-assisted housing is prohibited from inquiring as to the sexual orientation or gender identity of an applicant and barred from using such criteria in assessing an application. A violation of this rule may result in HUD pursuing a number of remedies, including sanctions against the violator.

HUD allows individuals to submit housing discrimination complaints by telephone (1-800- 955-2232), by mail, or online http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination. The HUD Office of Fair Housing and Equal Opportunity Denver Regional Office

⁵⁷ Colo. Rev. Stat. § 24-34-502.

⁵⁸ S.B. 08-200 (2008); Colo. Rev. Stat. § 24-34-301.

⁵⁹ Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, Final Rule (2012); 24 CFR § 5.106.

is located at 1670 Broadway, Denver CO 80202. To learn more about filing a complaint, as well as the process for filing a lawsuit, please read this page: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process

PUBLIC ACCOMMODATIONS

State Law

Colorado law protects LGBTQ people from discrimination in public accommodations. Public Accommodations are defined in Colorado as “any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public.”⁶⁰ Examples include retail stores, hotels, restaurants, educational institutions, hospitals, public parks, libraries, and recreational facilities. Religious institutions are specifically exempt from this definition in the statute.⁶¹

In the 2008 amendments to the Colorado Anti-Discrimination Act (CADA), Colorado legislators added sexual orientation to the state’s Public Accommodations Law, defining sexual orientation as “a person’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or an employer’s perception thereof.”⁶² Thus, all persons of Colorado are “entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a

place of public accommodation.”⁶³ The law prohibits any sort of publication indicating that full and equal enjoyment will be refused, withheld, or denied on the basis of sexual orientation or that a person is unwelcome at a place of public accommodation.⁶⁴ Claims of discrimination in a place of public accommodation based upon sexual orientation or gender identity must be filed with the Colorado Civil Rights Division within **sixty days** of the discriminatory act. The online complaint form is available here: <https://www.colorado.gov/pacific/dora/civil-rights/public-accommodations-discrimination>

There currently is a case arising out of Colorado’s anti-discrimination laws that is pending before the U.S. Supreme Court. *Masterpiece Cakeshop v. Colorado Civil Rights Commission* will decide whether private business owners and other places of public accommodation can discriminate – refuse service in violation of Colorado’s law non-discrimination law – in the name of religion or free speech.⁶⁵ Although the case originated out of a bakery owner’s 2012 refusal to make a cake for a same-sex couple’s wedding reception in Colorado because of his personally held religious beliefs, the case could have significant implications for LGBTQ people and other historically marginalized communities across the U.S. that rely on nondiscrimination protections to ensure against discrimination. The Supreme Court is expected to hear oral arguments and issue

63 Colo. Rev. Stat. § 24-34-601.

64 Colo. Rev. Stat. § 24-34-601.

65 *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111 (cert granted June 26, 2017).

60 Colo. Rev. Stat. § 24-34-601.

61 Colo. Rev. Stat. § 24-34-601.

62 S.B. 08-200 (2008); Colo. Rev. Stat. § 24-34-301.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families

an opinion by the end of the 2017-2018 term. Currently, in addition to arguing that his religious beliefs allow him to discriminate, the bakery owner is claiming that his refusal to make the cake is exercise of his artistic freedom of speech.

Federal Law

Federal public accommodations protection provisions can be found in Title II of the Civil Rights Act of 1964 and Title III of the Americans with Disabilities Act of 1990. Unfortunately, neither law provides express protections based on sexual orientation or gender identity. However, in 1998, the Supreme Court ruled that being HIV-positive is a physical disability covered by the Americans with Disabilities Act, even if the infection has not yet progressed to the symptomatic phase.⁶⁶ Businesses that hold themselves open to the public (restaurants, stores, hotels, etc.) are therefore prohibited from refusing service or business to individuals because they are HIV-positive.



66 *Bragdon v. Abbott*, 524 U.S. 624 (1998).

SCHOOL POLICIES AND ANTI-BULLYING

STATE LAW

Discrimination against LGBTQ students and employees in the public education system is also prohibited under Colorado law. With the 2008 amendments to the Colorado Anti-Discrimination Act (CADA), the state of Colorado added nondiscrimination protections for LGBTQ public school students and employees.⁶⁷ All school districts in Colorado are required to have a written non-discrimination policy stating that the districts are subject to federal and state laws prohibiting discrimination on the basis of sexual orientation.⁶⁸ The definition of “sexual orientation” is the same as for the housing and public accommodations provisions, encompassing “a person’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person’s perception thereof.”⁶⁹ Thus, Colorado is among the progressive states that provide a state-level, fully inclusive non-discrimination policy. In combination with the public accommodations law, transgender students in Colorado have the right to use the bathroom, dress, and participate in school activities in accordance with their gender identity.⁷⁰ In fact, in 2013,

67 S.B. 08-200 (2008).

68 Colo. Rev. Stat. § 22-32-109.

69 S.B. 08-200 (2008); Colo. Rev. Stat. § 2-4-401.

70 3 CCR 708-1, Rule 81.9; Colo. Rev. Stat. § 24-34-601.

the Colorado Civil Rights Division issued the first ruling in the United States that upheld the right of transgender students to use the bathroom that is consistent with their gender identity.⁷¹ Recently, One Colorado collaborated with the Colorado Association of School Boards, the Colorado Association of School Executives, the Colorado Education Association, the Colorado High School Activities and Athletics Association, and the Colorado League of Charter Schools to create a guide outlining legal requirements and best practices for schools, educators, and the school community to meet the needs of transgender students. The guide is available at this link: http://www.one-colorado.org/wp-content/uploads/2017/02/TransResourceGuide_2016.pdf.

Colorado also has an anti-bullying law that protects LGBTQ students. In 2011, Colorado legislators passed a law to address school bullying prevention.⁷² The law defines bullying as “any written or verbal expression, or physical or electronic act or gesture, or a pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student” and prohibits bullying “against any student for any reason.”⁷³ The law also specifies that bullying includes behavior directed at a student against

71 *Mathis v. Fountain-Fort Carson School District 8*, CCRD Case Number P20130034X (June 18, 2013); <https://archive.org/stream/716966-pdf-of-coy-mathis-ruling/716966-pdf-of-coy-mathis-ruling-djvu.txt>.

72 H.B. 11-1254 (2011); Colo. Rev. Stat. §§ 22-93-101 *et al.*

73 Colo. Rev. Stat. § 22-93-101, § 22-32-109.1; H.B. 11-1254 (2011).

whom federal or state law protects from discrimination and, as discussed previously, Colorado state law expressly protects students from discrimination on the basis of sexual orientation and gender identity.⁷⁴ Legislators included a provision that created a School Bullying Prevention and Education Grant Program to fund efforts to reduce the number of bullying incidents, directed the Colorado Department of Education to create a website that provided best practices for bullying prevention and education, and instructed school districts to set forth appropriate disciplinary consequences for students who bully others or retaliate a student who reported a bullying incident in good faith.⁷⁵

FEDERAL LAW

Federal law, specifically Title IX of the United States Education Amendments of 1972, also provides some protections and support to students facing bullying or discrimination based on their sexual orientation or gender identity. Title IX specifically prohibits discrimination against students in schools and other programs that receive federal funding, where that discrimination is based on a student’s sex or gender. While Title IX does not explicitly include sexual orientation or gender identity as bases for a claim of discrimination, the law has been applied to prohibit discrimination where a student is mistreated for being sex- or gender non-conforming,⁷⁶ meaning the student

74 Colo. Rev. Stat. § 22-32-109.1.

75 H.B. 11-1254 (2011); Colo. Rev. Stat. § 22-93-102, § 22-32-109.1.

76 *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015).

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families

faces discrimination for not subscribing to the stereotypical notions of femininity or masculinity. In past policy statements, the Department of Education (DOE) included transgender students in those classes protected by Title IX, and lesbian, gay, and bisexual students have successfully filed claims of discrimination under Title IX.⁷⁷ In a May 2016 statement, the DOE and Department of Justice (DOJ) explained that compliance with Title IX requires schools to treat transgender students consistent with their gender identity and does not allow schools to impose a medical diagnosis or treatment requirement.⁷⁸

However, in February 2017, under the Trump Administration, the DOE and DOJ rescinded this guidance.⁷⁹ Despite the DOE and DOJ's withdrawal of the guidance, the underlining law that the guidance interpreted remains. Since then, the U.S. Court of Appeals for the Seventh Circuit unanimously held that transgender students are protected from discrimination under Title IX and the Equal Protection Clause of the U.S. Constitution.⁸⁰

The DOE's Office for Civil Rights (OCR)

⁷⁷ United States Dept. of Education Office for Civil Rights, *Dear Colleague Letter on Transgender Students* (May 2016): <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

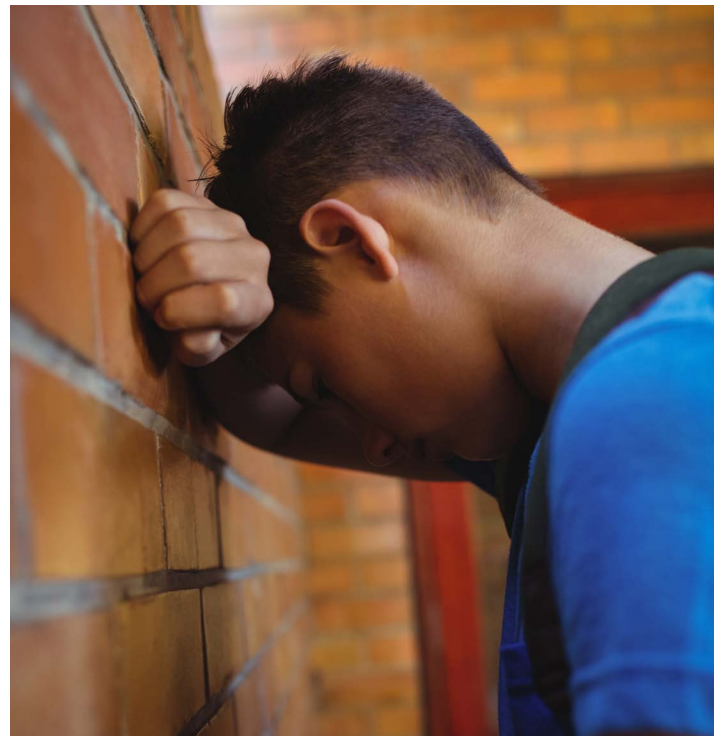
⁷⁸ United States Dept. of Education Office for Civil Rights, *Dear Colleague Letter on Transgender Students* (May 2016).

⁷⁹ United States Dept. of Education Office for Civil Rights, *Dear Colleague Letter on Title IX* (Feb 2017): <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx>

⁸⁰ *Whitaker v. Kenosha Unified School District*, No. 16-3522 (7th Cir. 2017).

investigates claims of discrimination on the basis of race, sex, national origin, sex, and disability in programs or activities that receive funding from the DOE (such as public elementary or secondary schools, vocational schools, colleges and universities, museums, libraries, and public after-school programming.). To open an OCR investigation, an individual must file a complaint on behalf of himself or herself, a group, or another person facing discrimination within 180 days of the last instance of discrimination. Since Title IX does not list sexual orientation or gender identity as separate bases for a claim, the complaint must indicate "sex" as a basis for the claim.

More details on drafting a complaint, as well as an electronic complaint form, are available on the OCR website, located here: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>



STATE LAW

Colorado law prohibits private health insurance companies from discrimination against LGBTQ people. In March 2013, the Colorado Division of Insurance released a bulletin stating that discrimination in healthcare on the basis of sexual orientation (defined as heterosexuality, homosexuality, bisexuality or transgender status or another person's perception thereof) is prohibited in Colorado.⁸¹ The bulletin clarifies that, in accordance with Colorado law, private insurance carriers are prohibited from acts including: imposing differential rates or charges with regard to sexual orientation; designating sexual orientation as a pre-existing condition; and denying, excluding, or otherwise limiting coverage for medically necessary services, as determined by a medical provider, if the item or service would be provided based on current standards of care to another individual without regard to their sexual orientation.⁸² This only applies to private insurance plans sold in Colorado, which are indicated by a "CO-DOI" designation on the health plan ID card. Wrongful denials of claims must first be appealed internally through the insurance

81 Colorado Department of Insurance (DOI) Bulletin B-4.49 (March 2013): <http://www.one-colorado.org/wp-content/uploads/2013/03/B-4.49.pdf>

82 Colorado Department of Insurance (DOI) Bulletin B-4.49 (March 2013): <http://www.one-colorado.org/wp-content/uploads/2013/03/B-4.49.pdf>

provider's appeal process. If the appeal is not satisfactorily resolved, complaints may be filed with the Colorado Division of Insurance through this website: <https://www.colorado.gov/pacific/dora/ask-question-make-complaint-division-insurance>

FEDERAL LAW

Each year, the federal government opens enrollment for individual and family healthcare coverage under the Affordable Care Act (ACA). Historically, enrollment for the following year opened in November and closed mid-February of the following year; however, in 2017 the open enrollment period is much shorter – from November 1st to December 15th – although individuals who experience a major life change, such as moving, getting married, or having a baby, may qualify to enroll in one of the ACA's Special Enrollment Periods during another part of the year. For detailed information about plans, Special Enrollment Periods, or to find out where and how to enroll, go to www.healthcare.gov and select a state of residence.

Under the ACA, insurers and marketplace navigators – the people whose job it is to help individuals select an insurance plan that best matches their needs – are prohibited from discriminating against consumers based on their sexual orientation or gender identity, or on the sexual orientation or gender identity of a family member.

Find more information at:

www.familyequality.org
www.one-colorado.org

In addition, the ACA prohibits denial of coverage for an individual or family member because of a pre-existing condition. This includes a current illness or a history of chronic illness or disease, HIV status, receiving or having received transgender-related care, or a prior pregnancy. However, it is important to note that, despite the fact that the ACA prohibits insurance providers from discriminating against individuals and families by denying them the ability to obtain healthcare coverage, the ACA does not mandate that insurance plans offer coverage that is inclusive of the many needs of LGBTQ individuals and families. For example, the ACA does not require insurers to cover transgender-related care, or treatment for HIV and AIDS. However, insurers are prohibited from categorically denying coverage for transition-related care, nor can they refuse to cover transition related care if they cover that same treatment for other people. While insurers are not required to cover these treatments, they may offer plans that do so; any person seeking coverage of transition-related care should speak with a navigator and investigate plans thoroughly to find the best option. Further, definitions of “family” may be too narrow to include many dependents in an LGBTQ family structure, given the myriad LGBTQ family structures that exist.

Section 1557 of the ACA prohibits discrimination based on sex in all health programs and activities receiving federal financial assistance.⁸³ The final agency rule implementing Section 1557 prohibits

⁸³ 42 U.S.C § 18116.

discrimination based upon gender identity, requiring that any healthcare provider receiving federal funding (i.e. Medicaid or Medicare, any health program administered by the federal government, and any health insurance marketplace) must treat individuals consistent with their gender identity.⁸⁴ The final rule also prohibits discrimination based on sex stereotyping, providing potential protections to lesbian, gay, and bisexual people.⁸⁵

Anyone who has experienced discrimination on the basis of their sexual orientation or gender identity in a health care setting should immediately file a complaint with the United States Department of Health and Human Services Office for Civil Rights. More details on drafting a complaint, as well as an electronic complaint form, are available at the HHS website, located at <http://www.hhs.gov/civil-rights/filing-a-complaint/index.html>

For more information on how the Affordable Care Act and the insurance marketplaces benefit LGBTQ-headed families, this is a helpful resource developed by multiple LGBTQ advocacy organizations: [Where to Start, What to Ask: A Guide for LGBTQ People Choosing Health Care Plans.](#)

⁸⁴ 45 CFR 92 (2016); 81 FR 31375 (2016). In *Franciscan Alliance v. Burwell*, Case No. 7:16-cv-00108-O (N.D. Texas 2016), a district court judge issued an injunction against enforcing this rule, but an appeal is pending.

⁸⁵ 45 CFR 92 (2016); 81 FR 31375 (2016).

FAMILY AND/OR PARENTING LEAVE

Colorado does not have a state family or medical leave law requiring employers to provide paid family leave. However, Colorado has passed legislation expanding the federal Family and Medical Leave Act (FMLA) to include domestic partners and partners in a civil union.⁸⁶ The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees are entitled to up to 12 unpaid workweeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- the care of the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."

FMLA applies to all public agencies (state, local, and federal) and all local education agencies (schools). The FMLA also applies to private sector employees who employ 50 or more employees for more than 20 workweeks in the current or preceding calendar year.

⁸⁶ Family Care Act, H.B. 13-1222 (2013); Colo. Rev. Stat. §§ 8-13.3-201 *et al.*

And, it entitles eligible employees to 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

In 2010, the Department of Labor issued a clarification of the definition of "son or daughter" to include a child for whom a person provides a certain amount of day-to-day care or financial support, regardless of whether or not there is a legal or biological relationship. This clarification ensures the ability of a same-sex parent and/or partner has the ability to take time off from work to care for their child without fear of losing their job. The text of the Department of Labor's clarification is available at: http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm

In 2014, following the *Windsor* decision and the repeal of DOMA, the FMLA's benefits were extended to married same-sex couples. Because of this, married same-sex couples became entitled to take time off to care for their spouses. This was solidified further in 2015 when the definition of "spouse" in the FMLA was expanded to include all employees in a same-sex marriage regardless of whether their state of residence recognized their marriage. Finally, the *Obergefell* decision led to all federal marriage benefits being extended to all same-sex couples across the country.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed Families

CHANGES OF NAME AND GENDER

Under Colorado law, transgender individuals may change their legal name by submitting a notarized petition to the court in the county of residence. Criminal history checks are required from the FBI and Colorado Bureau of Investigation within 90 days of filing the petition and must be included with the petition. Upon approval of the petition, the court will require publication of the name change in a newspaper at least three times in 21 days, except with good cause.⁸⁷ Once the applicant has satisfied these requirements, the court will issue a Final Decree for Change of Name.⁸⁸

⁸⁷ Colo. Rev. Stat. §§ 13-15-101, 13-15-102.

⁸⁸ The Center, a Colorado LGBTQ advocacy organization, offers a helpful presentation detailing the process of name changes in Colorado. The presentation is available through this link: [https://](https://gltbcolorado.org/wp-content/uploads/2013/10/Name-Change-Presentation-2014-04-22-final.pdf)

Transgender individuals may request an amended birth certificate to reflect their true sex and name but must submit a certified copy of a court order changing their name and indicating that the individual's "sex... has been changed by surgical procedure."⁸⁹ The Colorado Department of Public Health and the Environment explains that "Gender change via sex reassignment surgery is a process in which a person's physical characteristics and/or social gender role are changed to reflect the sex opposite of that determined at birth."⁹⁰ The

gltbcolorado.org/wp-content/uploads/2013/10/Name-Change-Presentation-2014-04-22-final.pdf

⁸⁹ Colo. Rev. Stat. § 25-2-115.

⁹⁰ <https://www.colorado.gov/pacific/cdphe/gender-changes-due-surgical-procedures> (last visited October 2017).



Colorado
Driver License
07-05-201

necessary forms and further information is available on the Colorado Department of Public Health and the Environment website at <https://www.colorado.gov/pacific/cdphe/correct-or-change-birth-certificate> - Upon approval of the application, the newly issued birth certificate will indicate that it has been amended, although it will not indicate that the gender was amended.⁹¹

Colorado will update names and gender markers on driver's licenses as well.⁹² To change a name on a Colorado driver's license, the applicant must first submit the name change to the Social Security Administration and then bring a certified copy of the court-issued Final Decree of Change of Name to a local driver's license office.⁹³ To update the gender marker, the applicant must first obtain a Medical Information Authorization form, which must be completed by a licensed Colorado physician. The form asks the physician to certify the applicant's gender identity; there is no surgical requirement to change the gender marker on a Colorado driver's license. Upon completion of the form, it must be submitted to a driver's license office.



91 National Center for Transgender Equality, ID Documents Center, Colorado, available at <https://www.transequality.org/documents/state/colorado> (last visited October 2017).

92 National Center for Transgender Equality, ID Documents Center, Colorado, available at <https://www.transequality.org/documents/state/colorado> (last visited October 2017).

93 Colorado Department of Revenue, Division of Motor Vehicles, Change Your Name, available at <https://www.colorado.gov/pacific/dmv/change-your-name> (last visited October 2017).

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families

HATE CRIMES PROTECTIONS

Colorado law includes protections for LGBTQ people who are targeted by hate crimes. In Colorado, the law provides for an increase in penalties for defendants when there is a finding that the crime was committed “with the intent to intimidate or harass another person because of that person’s actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation.”⁹⁴ As with other anti-discriminatory provisions in Colorado law, “sexual orientation” is defined as “a person’s actual or perceived orientation toward heterosexuality, homosexuality, bisexuality, or transgender status” and therefore includes gender identity.⁹⁵ Consistent with the state hate crimes law, in May 2017, Colorado expanded its harassment law to increase the penalty from a class 3 misdemeanor to a class 1 misdemeanor when there is a finding of intent to intimate or harass based on actual or perceived sexual orientation or gender identity.⁹⁶

Additionally, in 2009, Congress enacted the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands federal hate crimes to LGBTQ people.⁹⁷ The law allows federal law enforcement agencies, such as the FBI, to investigate and prosecute hate crimes against LGBTQ individuals when local or state authorities fail to act. Victims of a

hate crime should report the crime both to the local authorities and the FBI. The FBI maintains its Colorado field office in Denver at 8000 East 36th Avenue, Denver, CO 80238, and may be contacted at (303) 629-7171.

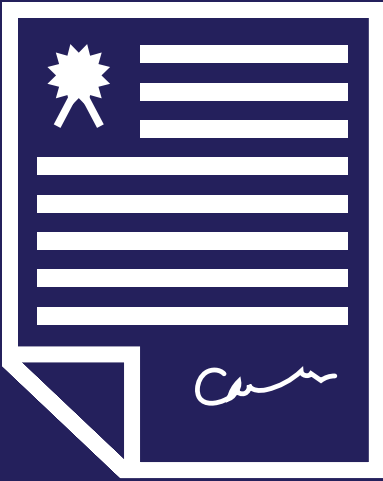


94 Colo. Rev. Stat. § 18-9-121.

95 Colo. Rev. Stat. § 18-9-121.

96 H.B. 17-1188 (2017); Colo. Rev. Stat. § 18-9-111.

97 18 U.S.C. § 249.



TIPS FOR LEGAL DOCUMENTS

- ✓ Always have copies of these forms with you, we recommend carrying electronic copies on a thumb drive attached to your keychain.
- ✓ Keep several signed original copies of the forms.
- ✓ Write with a blue pen when completing or signing forms so health care providers don't question whether the document is an original.
- ✓ Always have original copies with you when you travel out of state.
- ✓ Keep an extra copy of your forms somewhere easy for a close friend or family member to find.
- ✓ Keep copies online on a secure server.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families

RECOMMENDED LEGAL DOCUMENTS FOR SAME-SEX COUPLES

LAST WILL AND TESTAMENT

A Will is a legal document by which a person directs how real estate and personal property will be distributed upon death. Unmarried same-sex couples must have Wills in which their partners are designated beneficiaries, so that the partner will be able to inherit any of the deceased partner's property. Even if married, it is best to have a Will. In addition to deciding property distribution, a Will also provides the opportunity to designate who should become guardian to any minor children. If both parents are not legally recognized as such, and the legal parent dies, a judge will decide who the guardian will be. A legally recognized parent naming the other parent in a Will expresses their wishes and increases the likelihood that a judge will respect those wishes about who should raise the children after the death of the legally recognized parent.

A Will does not affect beneficiaries that have been designated on bank accounts, insurance policies, or retirement accounts. The company that holds those funds will disburse them to the designated beneficiary. It is important to keep such designations up-to-date.

More information is available from the Colorado Bar Association at:

http://www.cobar.org/Portals/COBAR/Repository/publicDocs/Wills%20in%20Colorado_web.pdf?ver=2012-07-27-130616-460

ADVANCE DIRECTIVE FOR HEALTHCARE

An Advance Directive for Healthcare allows Colorado individuals to direct whom they want to make medical decisions for them, as well as providing for end-of-life choices in the event they are unable to express that intent at the time that care is required. More information on Advance Directives in Colorado is available at:

https://www.colorado.gov/pacific/sites/default/files/HF_Colorado-Law-in-Plain-English.pdf

FINANCIAL POWER OF ATTORNEY

It is important that partners consider providing each other with the power to handle personal finances on their behalf through a “financial power of attorney” in the event that a partner becomes unable to manage his/her own finances due to sickness or incapacitation. We recommend consulting a Colorado attorney in drafting this document.

DOMESTIC PARTNERSHIP AGREEMENT

A Domestic Partnership Agreement expresses a couple’s understanding as to how they will share income, expenses, assets and liabilities. It also discusses a plan for division of those things in the event the couple separates. This document is especially important for couples who are not married and do not have a civil union.

CO-PARENTING AGREEMENT

A Co-Parenting Agreement is a document that expresses a couple’s understanding of the manner in which they will raise children and what each parent’s rights and obligations are with respect to each child while they are together and in the event that the parents separate.

Although the Co-Parenting and Partnership agreements are not “standard” and will require the advice of an LGBTQ aware attorney licensed in Colorado (and could still prove to be not legally binding), they are often useful to have. These documents can establish a clear understanding between the parties and can provide clarification about the intent and wishes of all involved. They may be useful, at some future time, should an issue ever come before a court in the case of death, dissolution of the relationship, or other event causing separation.

Find more information at:

www.familyequality.org
www.one-colorado.org

COLORADO LGBTQ FAMILY LAW

A Resource Guide for LGBTQ-Headed
Families

This Resource Guide was prepared and distributed by:

Daniel Ramos

Executive Director

One Colorado

danielr@one-colorado.org

www.one-colorado.org

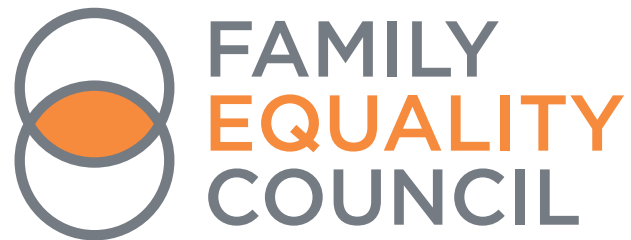
Denise Brogan-Kator

Chief Policy Officer

Family Equality Council

DeniseBK@FamilyEquality.org

www.familyequality.org



The authors would like to gratefully acknowledge the review and editing of this Guide provided by:

Ann Gushurst, Esq.

Gutterman Griffiths, PC

10375 Park Meadows Blvd.,

Suite 520

Littleton, CO 80124

(303) 858-8090

ann@ggfamilylaw.com

<https://ggfamilylaw.com>

Rachel Catt, Esq.

Harrington Brewster & Clein, P.C.

1623 Washington Street

Denver, Colorado 80203

(303) 831-0808

rc@hbc-law.net

www.harringtonbrewsterclein.com