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Colorado's Discrimination Statutes: New Legal Issues and Practice for Public Sector

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The Colorado Civil Rights Division – “CCRD” enforces the Colorado Anti-Discrimination Act – “CADA”

- CADA – C.R.S. § 24-34-301 et seq.
 - Part 4, C.R.S. § 24-34-401 “Employment Practices”
 - See also, CCRC Rules and Regulations – 3 CCR 708-1 (PDF copy included in materials)
 - ALL employers (except for religious orgs./assns.) in Colorado are covered by CADA, regardless of # of EEs – if more than 15 EEs – case is “dual filed” with EEOC pursuant to FEPA agreement



CCRD – Current Operations

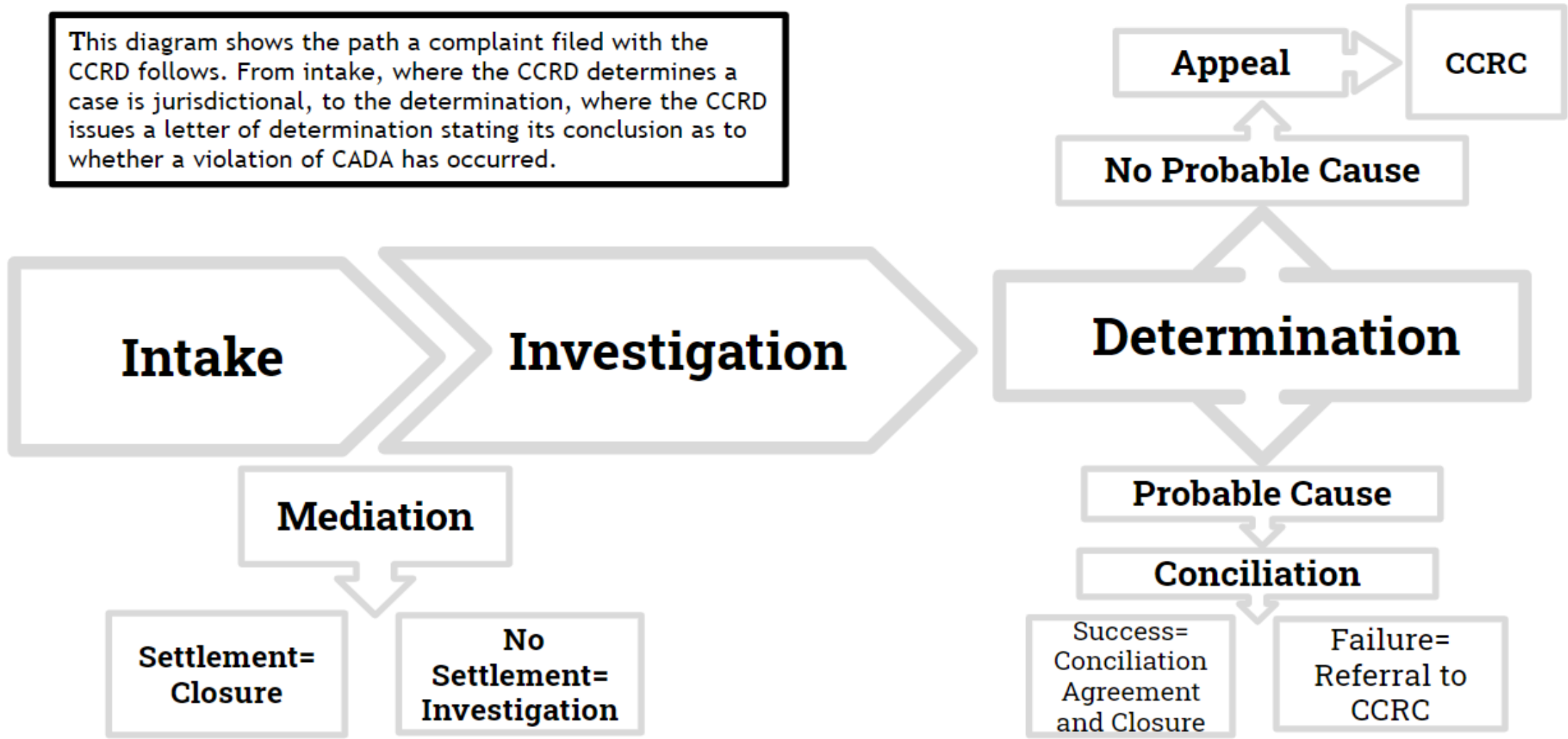
Since mid-March, CCRD staff has primarily worked remotely. Some staff members visit the office on an intermittent, limited basis. We encourage correspondence via email (as opposed to post mail or fax) when possible.

- Intake, ADR, and Investigations all being conducted remotely
- CCRC meetings being held virtually
- dora_ccrd@state.co.us - general inquiries
- dora_ccrdintake@state.co.us - complaints of discrimination and associated documents
- dora_ccrdadr@state.co.us - requesting/scheduling mediations



CCRD Complaint Process

This diagram shows the path a complaint filed with the CCRD follows. From intake, where the CCRD determines a case is jurisdictional, to the determination, where the CCRD issues a letter of determination stating its conclusion as to whether a violation of CADA has occurred.





CCRC New Rules – eff. 7/15/20

- Rule 10.4 (E) - updated to reflect ability to file using electronic filing system, Case Connect.
- Rules 10.6 and 10.7 amended to update process related to appeals before the CCRC and extensions of time.
- Rule 80.6 - updated existing rule related to Pregnancy to better reflect and comport with statutory revisions from 2016 to CADA related to pregnancy and reasonable accommodations.
- Rule 81.6 - updated to clarify that an individual may not be subjected to harassment because of their open discussion or other communication related to gender expression, transgender status, or sexual orientation.



Practice Tips for CCRD Process

- CCRD process straight forward
- Professional Courtesy makes it work
- Mediation through CCRD is professionals is helpful



Practice Tips for Complaints

Know the Facts

- Thorough investigation
- Get first-hand information (talk to managers/ supervisors/ leads)
- Understand weaknesses and strengths clearly

Set the Strategy

- Decide - fight or settle (98% win rate)
- Argue **accurate** facts (law is well settled and secondary)
- Use CCRD mediators (saves time and money)



COVID-19 – Agency Guidance

SOC / CCRD

- covid19.Colorado.gov
- CDLE – enforces a number of regulations often assumed to fall under CCRD juris – (Credit history, social media privacy, “ban the box”)

EEOC

- eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws



Practice Tips for COVID-19 Laws

Understand Legal Hierarchy

- Law most favorable to employee
- Compare and Contrast – Federal, State Laws and Regulations, State and County Orders
- Keep track of changing laws and rules

Create Clear Policies / Procedures

- Protected Leave - policy
- Paid Leave - policy
- Accommodations - procedure
- Workplace Safety - procedure



ADA Practice Tips for COVID-19

- Masks – pre-prepared ADA paperwork (see handout)
- Intermittent Leave – beyond (E)FMLA
- Working from Home – plan ahead



Sexual Orientation and Gender Identity (“Transgender Status” as protected classed under CADA)

CADA Defines/enumerates “Sexual Orientation.” CCRC Rules clarify distinction b/w SO and GI/GE

SCOTUS and Title VII - Bostock v. Clayton County Ga.



Practice Tips for LGBTQ Now

New Policy

- Colorado Language passé
- Awareness has Increased
- Manager awareness key
- Train on language
 - Transgender (No “ed”)
 - They/ them/ their

Training

- Harassment
- Leave for surgery
- Consider Language
- Sensitivity can avoid lawsuits



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CROWN Act = Creating a Respectful and Open World for Natural Hair Act of 2020

Prevents discrimination based on natural and protective Hair Styles typically associated with race – for example: braids, locs, twists, tight coils or curls, cornrows, Bantu knots, Afros, and headwraps.

Effective as of September 13, 2020

Applies to all areas covered by CADA (employment, housing, and places of public accommodation)



Practice Tips

Create Policy

- May only need to update Anti-discrimination policy
- Don't forget the intersection of Transgender protection

Train

- Help managers with pitfalls
- Train employees on how to lodge complaints
- Sensitivity can avoid lawsuits!



Upcoming Legislative Change

Attempt to change behavior:

- No excuses for lower pay
- No system for lower pay
- Easier to gather information

New requirements:

- Limits decision making for raises
- Does not allow external pay history to inform internal pay
- Creates transparency for promotions

**Pay Equity
Legislation**

SB19-085

Effective 1/2021