

Statute of Limitation

- UALD: Must file a charge within 180 days from the alleged discriminatory act. Utah Code § 34A-5-107.
- EEOC: Must file a charge within 300 days from the alleged discriminatory act.

www.eeoc.gov

- Claim of harassment can be ongoing, which means EEOC and UALD may look back more than 180/300 days.
- Charge filed with UALD is dual filed with EEOC.



Jurisdiction

- Employer must have at least 15 employees
- Must be an employer/employee relationship (no jurisdiction over independent contractors).
 - “In Utah there is a presumption that a person[] who performs ‘[s]ervices . . . for wages or under any contract of hire [is an] employee[]’”, unless Respondent can establish they are an independent contractor. *See Needle Inc. v Department of Workforce Servs.*, 2016 UT App 95, ¶8, 372 P.3d 696.



Protected Classes ◀ Member of a Protected Class

State of Utah

Color

Race

Religion

Gender

National Origin

Age

Disability

Pregnancy

Sexual Orientation

Gender Identity

Religious Liberty

Federal Statutes



1. Member of a protected class
2. Qualified for the position
3. Suffered adverse action
4. Inference of discrimination



Disparate Treatment

Legal Elements



Burden Shifting & Pretext

McDonnell Douglas Corp. v. Green,
411 U.S. 792, 802 (1973).

Employer's Burden

If the employee establishes a prima facie claim of discrimination, the burden shifts to the employer (burden of production – not burden of proof) to provide a legitimate non-discriminatory reasons for its actions. If successful, burden shifts back to the employee.



Employee's Burden - Pretext

The employee must establish that Respondent's legitimate non-discriminatory reason is a pretext, by showing that (1) it is more likely than not that the employer's actions were motivated by a discriminatory reason; or (2) the employer's articulated reason is not credible.



Harassment

Legal Elements

*Harris v. Forklift Systems, Inc.,
510 US 17 (1993)*

- Unwelcome and unwanted conduct (subjective)
- based on one or more of the protected classes
- Severe or pervasive enough to alter the terms and conditions of employment, creating a hostile work environment.
 - Conduct that **unreasonably** interferes with an individual's work performance.
 - Conduct which creates an intimidating, hostile, or offensive work environment.

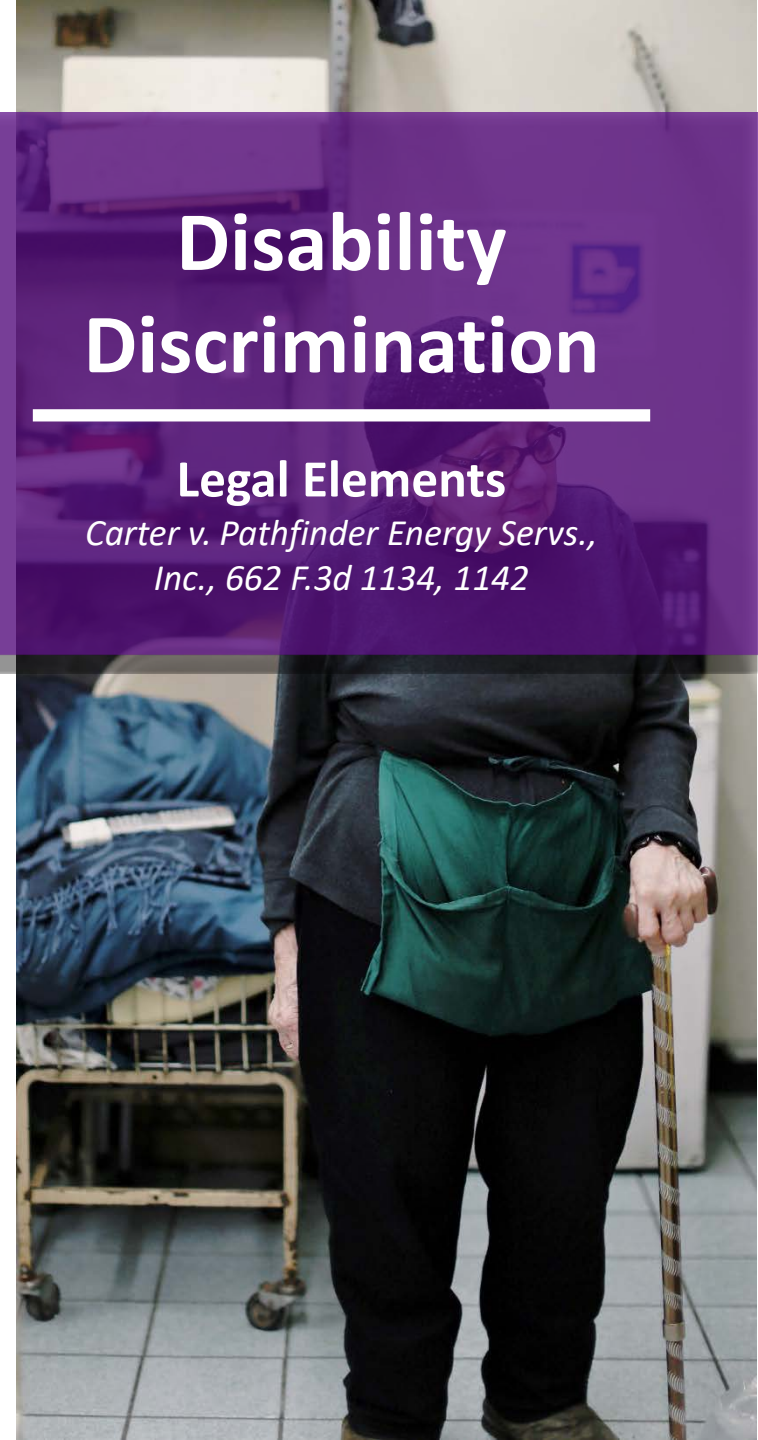


1. Has a disability (protected class)
2. Qualified for the position
3. Suffered an adverse action
4. Inference of discrimination

Disability Discrimination

Legal Elements

Carter v. Pathfinder Energy Servs., Inc., 662 F.3d 1134, 1142



A person wearing a blue uniform is carrying a large cardboard box. The person is standing in front of a white van with its back door open. The scene is outdoors on a paved area. A purple circular graphic is overlaid on the left side of the image, containing text.

Failure to Accommodate

*Sanchez v. Vilsack, 695 F.3d
1174, 1177*

1. Has a disability
2. Qualified for the position (with or without accommodation)
3. Made a request for “plausibly reasonable” accommodation
4. Employer refuses to accommodate





Pregnancy Discrimination

Unlawful to **discriminate** on the basis of:

- **Pregnancy**
(or related medical conditions)
- **Childbirth**
(or related medical conditions)

Additional protection:

- **Reasonable extra breaks**
(no medical certification required)
- **Reasonable accommodation**
for breastfeeding and related
conditions.



Retaliation



Protected Activities:

- Complaining of discrimination
- Participating in any formal complain process (UALD, EEOC, EO, etc.)
- Opposing discrimination (reasonable belief/manner)
- Requesting reasonable accommodation

UALD EMPLOYMENT DISCRIMINATION INTAKE QUESTIONNAIRE

Utah Antidiscrimination & Labor Division Employment Discrimination 160 East 300 South, 3rd Floor INTAKE QUESTIONNAIRE PO Box 146630 Salt Lake City, UT 84114-6630 Phone: 801-530-6801 Fax: 801-530-7609 Email: discrimination@utah.gov	FOH _____ LOR _____ Intake Waiver _____ LOH _____ 180 _____ 300 _____
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DO NOT WRITE ABOVE THIS LINE - FOR UALD STAFF ONLY



This form does not represent a Charge of Discrimination with the Utah Antidiscrimination and Labor Division (the "Division"). In order to file a Charge with the Division, you must first complete and return all four pages of this form and return it to the Division by e-mail to discrimination@utah.gov, or mail to the address above. REMEMBER, a charge of employment discrimination must be filed with the Division within the time limits imposed by law, which is 180 days from the date you knew about the discrimination. However, in cases within 300 days, the Division will process and waive the charge to the Equal Employment Opportunity Commission. When the Division receives this form, it will review it to determine Division coverage. Answer all questions completely, and attach additional pages if needed to complete your responses. If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "NA." (PLEASE PRINT). The Division will use the information in this Intake Questionnaire to draft a Charge and send it to you. The Division can only open a case after it has received your signed, notarized Charge back. To help the Division identify the correct Employer, provide a copy of a W-2 or paycheck with this Questionnaire, where available.

I have attached a copy of a W-2 or paycheck I am unable to because: _____

I. Personal Information

Last Name: _____ First Name: _____ MI: _____
 Street or Mailing Address: _____ Apt or Unit #: _____
 City: _____ County: _____ State: _____ Zip: _____
 Phone Numbers: Home: (____) _____ Work: (____) _____ Cell: (____) _____

YOU MUST PROVIDE THE DIVISION WITH YOUR EMAIL ADDRESS: Please be advised that the Division will send all written correspondence via e-mail unless you elect to receive communications with the Division via U.S. Mail and opt out of e-mail communication below:

Check this box to opt out of e-mail communication and for all communication with the Division to be via U.S. mail.
 Email Address: _____ Date of Birth: (MM/DD/YYYY) _____

Sex: Male Female Intersex Decline to specify Do You Have a Disability? Yes No

Please answer each of the next three questions:

- i. Are you Hispanic or Latino? Yes No
- ii. What is your Race? Please choose all that apply. American Indian or Alaskan Native Asian White Black or African American Native Hawaiian or Other Pacific
- iii. What is your National Origin (country of origin or ancestry)? _____

Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: _____ Relationship: _____
 Address: _____ City: _____ State: _____ Zip Code: _____
 Home Phone: (____) _____ Other Phone: (____) _____ Email: _____

<https://laborcommission.utah.gov/all-forms/uald-forms/>

UALD CHARGE OF DISCRIMINATION



1. Within 10 days of UALD receiving a Intake Questionnaire, UALD will send the Charging Party the Charge of Discrimination (Complaint) using Adobe Sign.
2. Charging Party will receive an email from with the Charge through Adobe Sign. Charging Party is asked to “Review and Sign” the Charge. Once the Charge is signed, Adobe Sign provides Charging Party and UALD with the signed Charge.
3. UALD no longer requires a Charge to be notarized.
4. The Charge (agency action) is considered filed with UALD as of the date the signed charge is received by UALD. UALD will look back 180 days from this date, EEOC 300 days from this date.



Response and Mediation

1. Employer has 30 days from date Charge is mailed to respond to the Charge and UALD's Request for Mediation.
 - If UALD has a point of contact for an employer, UALD will email the Charge to the company representative and request the employer sign a document acknowledging receipt w/in 5 days.
 - If UALD does not receive the receipt of charge from the employer, the Charge is mailed via certified mail.
2. Mediation within 30-45 days of charge being filed, unless parties opt out.
3. If mediation is successful, case is closed with UALD and EEOC.
4. If mediation is unsuccessful, or refused, the case will be assigned to a UALD Investigator.