

**Headquarters**

40 Worth Street, 10<sup>th</sup> Floor  
New York, NY 10013  
tel: 212.430.5982

info@abetterbalance.org  
abetterbalance.org

**Southern Office**

2301 21<sup>st</sup> Avenue South, Suite 355  
Nashville, TN 37212  
tel: 615.915.2417

## **Legal Memorandum: Independent Contractors and State Anti-Discrimination Laws**

**Background:** This memo is a 50-state survey (also including D.C. and N.Y.C.) detailing the extent to which independent contractors are covered by laws prohibiting discrimination in employment. It looks at employment discrimination laws and, where applicable, laws relating to discrimination in contracting. This memo is current as of December 2019.

This memo uses the term “independent contractor” while recognizing that this term might be defined differently in different states, and that some states might use other terms, such as “non-employee,” or “freelancer,” to refer to the same or similar group of people this memo intends to refer to. In general, this memo intends to refer to those people who are not formally employees of an employer, and who are not misclassified as independent contractors when they are in fact functioning as employees.

This memo proceeds by laying out, for each state, D.C., and N.Y.C.:

- 1) Whether independent contractors (in any form or through any term) are *explicitly* covered by the state’s antidiscrimination law;
- 2) The state’s antidiscrimination law’s relevant definitions—employment protections are often defined by reference to “employers,” “employees,” “individuals,” and “persons,” and sometimes explicitly reference “independent contractors,” “non-employees,” “freelancers,” etc., and the definitions sections seek to include any relevant terms that are defined in the statutes (note, however, that terms may be used in the statutes that are not defined by those statutes);
- 3) Each state’s statutory language, seeking to determine whether any provisions of the statute could be interpreted to apply to independent contractors;
- 4) State and federal case law interpreting that state law’s independent contractor coverage. State and federal courts may differ in their approach, and it should be noted that the highest state court has the final word on interpretations of state law.

For purposes of these sections, it is important to note that many states interpret their state antidiscrimination laws in accordance with federal antidiscrimination law, namely Title VII of the Civil Rights Act of 1964. Title VII provides that “It shall be an unlawful employment practice for an employer - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”<sup>1</sup> It does not apply to independent contractors.<sup>2</sup> It should be noted that many state statutes

---

<sup>1</sup> U.S.C. § 2000e.

<sup>2</sup> U.S.C. § 2000e-2; E.E.O.C., Coverage, <https://www.eeoc.gov/employers/coverage.cfm> (last visited Dec. 4, 2019)

use the term “person” where the federal statute uses the term “individual,” and in those cases the terms should likely be viewed and interpreted as synonyms.<sup>3</sup> For example, under Colorado law, “(1) It shall be a discriminatory or unfair employment practice: (a) For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against any *person* otherwise qualified because of [membership in a protected class].”<sup>4</sup>

“Person,” when used in this context, can be viewed as a synonym for federal law’s use of the term “individual,” because, in determining the scope of coverage of both Title VII and state statutes that are interpreted in line with federal law, courts have focused on the fact that these provisions apply to “employer[s],” and interpreted that to mean that an employment relationship is necessary for the law to apply.<sup>5</sup> This renders the use of either “person” or “individual,” rather than “employee” essentially irrelevant. It is theoretically possible that a court could interpret the use of “person” or “individual” to mean that “employer[s]” have obligations to a broader class of workers than those who are employees. The Florida Division of Administrative Hearings has taken this approach, but no cases were found in which a court did so.<sup>6</sup> Some states also use the term “person” to define the class of persons who are prohibited from discriminating—in this latter case, at least one state has found that “person” is a broader term than “employer,” and accordingly that where “persons” are prohibited from discriminating, independent contractors receive the benefit of that broader coverage.<sup>7</sup>

This memo notes, for each state, D.C., and N.Y.C., whether independent contractors are 1) protected, 2) not protected, 3) likely not protected, or 4) where coverage for independent contractors is unclear. These determinations were made as follows:

- **Independent Contractors Protected:** States in which independent contractors are either explicitly protected by the statute or have been held to be protected in case law are considered states where independent contractors are protected.
  - Independent contractors are protected in Maryland, Minnesota, New York, New York City, and Rhode Island.
  - In Pennsylvania, certain statutorily defined independent contractors are protected, while other independent contractors are not.
  - In California, New Jersey, and Washington, independent contractors have some specific protections, but are otherwise unprotected.

---

(“People who are not employed by the employer, such as independent contractors, are not covered by the anti-discrimination laws.”); see also, e.g., *Levitin v. Northwest Community Hospital*, 923 F.3d 499, 501 (7th Cir. 2019) (“[Title VII] protects only employees.”); *Diggs v. Harris Hospital-Methodist Inc.*, 847 F.2d 270, 272 (5th Cir. 1988); *Lutcher v. Musicians Union Local 47*, 633 F.2d 880, 883-84 (9th Cir. 1980) (“There must be some connection with an employment relationship for Title VII to apply.”); *Spirides v. Reinhardt*, 613 F.2d 826, 829 (D.C. Cir. 1979).

<sup>3</sup> Alaska (AS 18.80.220), California (Cal. Gov’t Code § 12940), Colorado (Colo. Rev. Stat. Ann. § 24-34-402), Idaho (Idaho Code Ann. § 67-5909), Indiana (IN ST 22-9-1-3), Kansas (KS ST 44-1009), Louisiana (LSA—R.S. 23:312), Maine (5 M.R.S.A. § 4572), Montana (Mont. Code Ann. § 49-2-303), Nevada (NV ST § 613.330), New Mexico (NM ST § 28-1-7), North Carolina (N.C. Gen.Stat. § 143-422.2), Ohio (*O.R.C. § 4112.02*), Utah (Utah Code Ann. § 34A-5-106), and Wyoming (WY ST 27-9-105) use “person” in this way.

<sup>4</sup> Colo. Rev. Stat. Ann. § 24-34-402

<sup>5</sup> See, e.g., *McWeeny v. City of Hartford*, 287 Conn. 56, 67 (2008).

<sup>6</sup> *Kim-Renee Roberts v. the Keyes Company*, No. 2017-005779, 2018 WL 3132234, at \*3 (2017).

<sup>7</sup> *DeSouza v. EGL Eagle Global Logistics LP*, 596 F.Supp.2d 456, 467 (D. Conn. 2009).

- **Independent Contractors Not Protected:** States in which independent contractors are either explicitly excluded by the statute or have been held to be excluded in case law are considered states where independent contractors are not protected.
  - Independent contractors are not protected in Alabama, Arizona, Colorado, Delaware, D.C., Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, Oregon, South Dakota, Tennessee, Texas, Virginia, and West Virginia.
  - In California, New Jersey, and Washington, independent contractors have some specific protections, but are otherwise unprotected.
  - In Connecticut, independent contractors are generally not protected, but it is unclear whether they are protected by the anti-retaliation provision of the law.
  - In Pennsylvania, certain statutorily defined independent contractors are protected, while other independent contractors are not.
  - In Wisconsin, real estate agents who are independent contractors are explicitly unprotected, but it is otherwise unclear whether independent contractors are protected.
- **Independent Contractors Likely Not Protected:** States in which no statutory language or case law directly speaks to the issue, but where state statutes are interpreted by looking to federal law, are considered states in which independent contractors are likely not protected (because state law is likely to be interpreted in line with federal law), as are states with case law on related issues that, if extended, would render independent contractors unprotected.
  - Independent contractors are likely not protected in Arkansas, Indiana, Iowa, Nevada, New Hampshire, Ohio, Oklahoma, South Carolina, and Wyoming.
- **Unclear if Independent Contractors Protected:** States in which there is no statutory language or case law on point, and where state statutes are often interpreted independently of federal law or where case law points in multiple directions, are considered states where protections for independent contractors are unclear.
  - It is unclear whether independent contractors are protected in Alaska, Florida, Georgia, Hawai'i, North Dakota, Utah, and Vermont.
  - In Connecticut, it is unclear whether independent contractors are protected by the anti-retaliation provision of the law, but they are generally not protected.
  - In Wisconsin, real estate agents who are independent contractors are explicitly unprotected, but it is otherwise unclear whether independent contractors are protected.

## CONCLUSION

Independent contractors have few employment protections in most states. They have at least some protections in eight states (CA, MD, MN, NJ, NY, PA, RI, WA) and in New York City. Of those nine locations, six (CA, MD, MN, NY, NYC, PA) have at least some protections in statutes, and seven (CA, CT, MN, NJ, PA, RI, WA) have at least some protections via case law (some states have protections via both statute and case law and are accordingly included in both lists). In 31 states and D.C., federal law is at least frequently considered in determining the

application of state antidiscrimination laws, if not binding on interpretations of state antidiscrimination law.

## TABLE OF CONTENTS

Alabama .....	5
Alaska.....	7
Arizona.....	7
Arkansas .....	8
California.....	10
Colorado .....	12
Connecticut.....	13
Delaware.....	15
District of Columbia .....	16
Florida .....	18
Georgia.....	19
Hawai'i.....	21
Idaho.....	22
Illinois .....	23
Indiana.....	24
Iowa.....	25
Kansas .....	27
Kentucky .....	28
Louisiana .....	29
Maine .....	31
Maryland .....	33
Massachusetts .....	34
Michigan.....	35
Minnesota .....	36
Mississippi.....	37
Missouri.....	38
Montana.....	39
Nebraska.....	40

Nevada.....	42
New Hampshire .....	42
New Jersey .....	44
New Mexico .....	45
New York .....	46
New York City.....	47
North Carolina .....	49
North Dakota .....	49
Ohio.....	51
Oklahoma .....	52
Oregon.....	53
Pennsylvania.....	54
Rhode Island.....	56
South Carolina .....	57
South Dakota .....	58
Tennessee .....	59
Texas .....	60
Utah.....	61
Vermont.....	62
Virginia .....	63
Washington.....	64
West Virginia.....	65
Wisconsin .....	66
Wyoming.....	67

**Alabama**  
**Independent Contractors Not Protected**

**Explicit coverage in statute? No.**

**Definitions:**

Alabama’s [Age Discrimination Statute](#) defines the following relevant terms

- “EMPLOYER. Any person employing 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, including any agent of that person.”<sup>8</sup>
- The statute does not define “employee,” “person,” “individual,” “independent contractor,” or any similar terms.<sup>9</sup>

**Alabama’s Uniform Minimum Wage and Right-to-Work Act, which includes an adverse action provision, defines the following relevant terms:**

- “EMPLOYEE. An individual employed in this state by an employer or a natural person who performs services for an employer for valuable consideration and does not include a self-employed independent contractor.”<sup>10</sup>
- “EMPLOYER. A person engaging in any activity, enterprise, or business in this state employing one or more employees, or a person, association, or legal or commercial entity receiving services from an employee or independent contractor and, in return, giving compensation of any kind to such employee or independent contractor.”<sup>11</sup>
- “INDEPENDENT CONTRACTOR. A self-employed individual who does not meet the definition of employee, as provided in this article, but otherwise does meet the definition of independent contractor as defined by the Internal Revenue Service.”<sup>12</sup>

**Statutory Language:** Alabama does not have a general anti-discrimination statute, though the state does prohibit discrimination in employment based on age.<sup>13</sup> The age discrimination statute does not define employee and does not mention independent contractors. Its protections are defined in terms of an employer’s behavior towards an individual.<sup>14</sup>

Additionally, in 2016, Alabama enacted the minimum wage statute referenced above, which prohibits “an action by an employer or a distinction by an employer that adversely affects an employee or job applicant based on a group, class, or category to which that person belongs.”<sup>15</sup> This statute defines employee as “an individual employed in this state by an employer or a natural person who performs services for an employer for valuable consideration and **does not include a self-employed independent contractor.**”<sup>16</sup> This language might suggest that some category of independent contractors who are not self-employed *would* be covered by this statute’s anti-discrimination language, but “independent contractor” itself is defined as “[a] self-employed individual who does not meet the definition of employee.”<sup>17</sup> This circular language does not suggest any meaningful coverage for true independent contractors, but it does suggest that if a worker is misclassified (and, accordingly, is an independent contractor who *does* meet

---

<sup>8</sup> Ala. Code § 25-1-20(2).

<sup>9</sup> Ala. Code § 25-1-20.

<sup>10</sup> Ala. Code § 25-7-41(a)(2).

<sup>11</sup> Ala. Code § 25-7-41(a)(3).

<sup>12</sup> Ala. Code § 25-7-41(a)(5).

<sup>13</sup> Ala. Code § 25-1-20 et seq.

<sup>14</sup> Ala. Code § 25-1-22

<sup>15</sup> Ala. Code § 25-7-41 (a)(1).

<sup>16</sup> Ala. Code § 25-7-41(a)(2).

<sup>17</sup> Ala. Code § 25-7-41(a)(5).

the definition of employee), they would be covered by the statute's very limited anti-discrimination protections.

**Case Law:** The Alabama Age Discrimination Act is generally interpreted in accordance with the ADEA.<sup>18</sup>

## Alaska

### Unclear if Independent Contractors Protected

**Explicit coverage in statute? No.**

**Definitions:** [Alaska's Human Rights Act](#) does not define any relevant terms.

**Statutory Language:** Alaska's Human Rights Act lays out some protections that apply to employers' treatment of "persons," namely that it is unlawful for "an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of [membership in a protected class] when the reasonable demands of the position do not require distinction on the basis of [membership in a protected class]."<sup>19</sup> The use of the term "persons," is similar to federal law's use of the term "individual."

**Case Law:** In *Smith v. Anchorage Sch. Dist.*, the Alaska Supreme Court held that "AS 18.80.220 is intended to be more broadly interpreted than federal law to further the goal of eradication of discrimination."<sup>20</sup> No case law discussing if these protections extend to independent contractors was found, but it is possible that independent contractors could be covered if the question were litigated.

## Arizona

### Independent Contractors Are Not Protected

**Explicit coverage in statute? No.**

**Definitions:** The [Arizona Civil Rights Act](#) (ACRA) defines the following relevant terms:

- "'Employee': (a) Means an individual employed by an employer."<sup>21</sup>

---

<sup>18</sup> See, e.g., *Robinson v. Alabama Cent. Credit Union*, 964 So.2d 1225, 1228 (Ala. 2007) (applying federal standards to an ADEA claim); *Lambert v. Mazer Discount Home Centers, Inc.*, 33 So.3d 18, 24 (Ala. Ct. App. 2009) (interpreting *Robinson* to mean that "our supreme court agreed that cases applying the ADEA should govern the application of the ADEA").

<sup>19</sup> AS 18.80.220(a)(1).

<sup>20</sup> 240 P.3d 834, 842 (Alaska 2010).

<sup>21</sup> AZ ST § 41-1463(5).

- “‘Employer’: (a) Means a person who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of that person, except that to the extent that any person is alleged to have committed any act of sexual harassment, employer means, for purposes of administrative and civil actions regarding those allegations of sexual harassment, a person who has one or more employees in the current or preceding calendar year.”<sup>22</sup>
- “‘Person’ means one or more individuals, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.”<sup>23</sup>

**Statutory Language:** Some of ACRA’s provisions apply to employers’ behavior towards “individual[s],” namely that “[i]t is an unlawful employment practice for an employer: 1. To fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to the individual’s compensation, terms, conditions or privileges of employment because of the individual’s [membership in a protected class].”<sup>24</sup> While this arguably indicates broader coverage than those protections defined specifically in terms of behavior towards “employees,” this mirrors the language of Title VII which also references “individuals”, and does not cover independent contractors.

**Case Law:** The Arizona Civil Rights Act “is generally similar in both intent and purpose to the federal employment discrimination laws,” and so “unless the federal law exceeds the scope of the ACRA, [Arizona courts] look to federal case law for guidance in this area.”<sup>25</sup> An Arizona court, in determining whether a physician’s employment discrimination claim was covered by the Arizona Civil Rights Act, found it necessary to assess whether an “employment relationship” existed between the physician and the hospital he was suing; finding that no such relationship existed, the court found that the Arizona Civil Rights Act did not apply.<sup>26</sup> This is strong evidence that independent contractors are not covered by the Arizona Civil Rights Act.

## Arkansas

### Independent Contractors Are Likely Not Protected

**Explicit Coverage in Statute? No.**

**Definitions:** The [Arkansas Civil Rights Act](#) (ACRA) defines the following relevant terms

- “‘Employee’ does not include: (A) Any individual employed by his or her parents, spouse, or child; (B) An individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility; or (C) An

---

<sup>22</sup> AZ ST § 41-1463(6).

<sup>23</sup> AZ ST § 41-1463(10).

<sup>24</sup> AZ ST § 41-1463(B) (defining unlawful employment practices).

<sup>25</sup> *St. Luke’s Health System v. State*, 884 P.2d 259, 263 (Ariz. Ct. App. 1994) (quoting *Bogue v. Better-Bilt Aluminum Co.*, 875 P.2d 1327, 1332 (Ariz. Ct. App. 1994)).

<sup>26</sup> *St. Luke’s Health System v. State*, 884 P.2d 259 (Ariz. Ct. App. 1994).



individual employed outside the State of Arkansas.”<sup>27</sup> Note that the statute does not include a positive definition of “employee,” but rather only notes a few exceptions to that category.

- “‘Employer’ means a person who employs nine (9) or more employees in the State of Arkansas in each of twenty (20) or more calendar weeks in the current or preceding calendar year.”<sup>28</sup>
- ACRA does not define “individual,” “person,” “independent contractor,” or other relevant terms. Independent contractors are not specifically mentioned in the statute.

**Statutory Language:** The Act defines employment discrimination as such: “(a) The right of an otherwise qualified person to be free from discrimination because of race, religion, national origin, gender, or the presence of any sensory, mental, or physical disability is recognized as and declared to be a civil right. This right shall include, but not be limited to: (1) The right to obtain and hold employment without discrimination.”<sup>29</sup> The retaliation and interference provisions of the law specify that “An employment-related claim or a claim arising out of the employee-employer relationship for a violation of [the retaliation or interference subsections] may be brought only against an employer.”<sup>30</sup>

There is not a comparable limitation in the provision providing for a right of action based on discrimination—indeed, that section notes that “[a]ny person who is injured by an intentional act of discrimination in violation of subdivisions (a)(2)-(5) of this section shall have a civil action in a court of competent jurisdiction to enjoin further violations,” which could provide independent contractors with a right of action for discrimination regardless of the existence of an employment relationship.<sup>31</sup>

The right of action provision also provides that “[a]ny individual who is injured by employment discrimination by an employer in violation of subdivision (a)(1) of this section shall have a civil action against the employer only in a court of competent jurisdiction, which may issue an order prohibiting the discriminatory practices and provide affirmative relief from the effects of the practices, and award back pay, interest on back pay, and, in the discretion of the court, the cost of litigation and a reasonable attorney’s fee,” and that “[i]n addition to the remedies under subdivision (c)(1)(A) of this section, any individual who is injured by intentional discrimination by an employer in violation of subdivision (a)(1) of this section shall be entitled to recover compensatory damages and punitive damages.”<sup>32</sup>

### Case Law:

In construing ACRA, courts “may look” to Title VII caselaw as persuasive authority.<sup>33</sup> This suggests that Arkansas courts may, but would not be required to, adopt the federal interpretation of Title VII in interpreting ACRA and accordingly exclude independent

---

<sup>27</sup> Ark. Code Ann. § 16-123-102(4).

<sup>28</sup> Ark. Code Ann. § 16-123-102(5).

<sup>29</sup> Ark. Code Ann. § 16-123-107.

<sup>30</sup> Ark. Code Ann. § 16-123-108(c)(2).

<sup>31</sup> Ark. Code Ann. § 16-123-107.

<sup>32</sup> Ark. Code Ann. § 16-123-107.

<sup>33</sup> See, e.g., *Brown v. United Parcel Service*, 531 S.W.3d 427, 437 (Ark. App. 2017);

contractors from coverage. Additionally, in *Gilzow v. Lenders Title Co.*, the district court used a multi-factor test to determine if a claimant was an independent contractor or an employee, noting that the plaintiff “is in that class of persons with standing to sue” for employment discrimination under the ACRA only if he is an employee.<sup>34</sup> This strongly suggests that independent contractors are not covered by ACRA, despite potentially helpful language in the statute. And in *Lacey v. Norac, Inc.*, the district court held that temporary employees are also not covered by ACRA’s retaliation provision, and focused on the specific language limiting the application of that section to the “employee-employer relationship.”<sup>35</sup> This focus on the employee-employer relationship again supports a conclusion that independent contractors are likely not covered by ACRA.

## California

### **Independent Contractors are Protected from Harassment; Otherwise Not Protected**

**Explicit coverage in statute? Yes, for harassment protections. Otherwise, no.**

#### **Definitions:**

- **In general, under [California civil rights law](#):**
  - o “‘Employer’ includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows: ‘Employer’ does not include a religious association or corporation not organized for private profit.”<sup>36</sup>
  - o No other relevant terms are defined in the law.
- **For the anti-harassment provision of the law only:**
  - o “For purposes of this subdivision only, ‘employer’ means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.”<sup>37</sup>
  - o “For purposes of this subdivision, ‘a person providing services pursuant to a contract’ means a person who meets all of the following criteria: (A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance. (B) The person is customarily engaged in an independently established business. (C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer’s work.”<sup>38</sup>

---

<sup>34</sup> *Gilzow v. Lenders Title Co.*, No. 05-5091, 2006 WL 522472, at \*3 (W.D. Ark. Mar. 3, 2006).

<sup>35</sup> No. 2:16-CV-00016 KGB, 2018 WL 1569482, at \*7 (E.D. Ark. Mar. 30, 2018).

<sup>36</sup> Cal. Gov’t Code § 12926(d) (incorporated into the anti-discrimination law by § 12940 (j)(4) (“[t]he definition of ‘employer’ in subdivision (d) of Section 12926 applies to all other provisions of this section other than this subdivision”).

<sup>37</sup> Cal. Gov’t Code § 12940 (j)(4).

<sup>38</sup> Cal. Gov’t Code § 12940 (j)(5).

### **Statutory Language:**

Independent contractors are protected from harassment under California civil rights law. The statute specifies that it is an unlawful employment practice “[f]or an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.”<sup>39</sup>

More generally, the law provides that it is an unlawful employment practice for “an employer, because of the [protected class] status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.”<sup>40</sup> The use of the term “person[s],” is similar to federal law’s use of the term “individual.”

It should be noted that California recently passed a law changing the way that employees are defined; this is aimed at remedying employee misclassification, and will mean that more workers will be covered by the state antidiscrimination laws as employees.<sup>41</sup> True independent contractors, however, will remain a separate category from employees, and thus unprotected by the law except in harassment cases.

### **Case Law:**

California courts “look to Title VII federal cases when interpreting FEHA, they do so [o]nly when FEHA provisions are similar to those in Title VII. [D]ifferences between [Title VII] and [FEHA] diminish the weight of the federal precedents.”<sup>42</sup> Cal. Gov’t Code § 12940 (j), which prohibits “any [] person” from discriminating against “a person providing services pursuant to a contract,” is substantially different from Title VII. Cal. Gov’t Code § 12940 (a), which defines unlawful employment practices in terms of “employer[s] treatment of “person[s],” is similar to Title VII. Accordingly, federal caselaw is more likely to be persuasive in interpreting the latter.

In *Hirst v. City of Oceanside*, the state court of appeals held that a phlebotomist, whose work for the city was contracted out by another employer, had standing to sue the City when a police officer repeatedly sexually harassed her.<sup>43</sup> The appellate court discussed the legislative history of Cal. Gov’t Code § 12940 (j) and the legislature’s intention to expand the anti-

---

<sup>39</sup> Cal. Gov’t Code § 12940 (j).

<sup>40</sup> Cal. Gov’t Code § 12940 (a).

<sup>41</sup> Cal. AB-5 (2019). The bill was signed into law on August 9, 2019, and will take effect on January 1, 2020. The text of the law is available here: [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB5](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5).

<sup>42</sup> *Terry v. Prevolos*, D060904, 2013 WL 51932 at \*6 (Cal.App. 2013) (internal citations omitted).

<sup>43</sup> 236 Cal. App.4th 774, 787-88 (Cal. App. 2015).

harassment protections to FEHA to independent contractors, noting that “[a] legislative committee analysis noted that prior regulatory definitions and judicial decisions had excluded independent contractors from harassment-protection coverage, and the new language would ‘extend FEHA’s harassment protections to independent contractors.’”<sup>44</sup>

FEHA protections for non-harassment discrimination, however, don’t extend to independent contractors. This is indicated by the narrower statutory definition of “employer” used for the provisions of the civil rights law dealing with non-harassment discrimination and is confirmed by case law. In *Sistare–Meyer v. Young Men’s Christian Assoc.*, the California Court of Appeals held that wrongful termination based on race and sex discrimination pursuant to Cal. Const., Art. 1., § 8 does not apply to independent contractors.<sup>45</sup> This reading was affirmed in *Leramo v. Premier Anesthesia Med. Grp.* by the 9<sup>th</sup> Circuit in 2013.<sup>46</sup>

## Colorado

### Independent Contractors Are Not Protected

**Explicit protection in statute? No.**

**Definitions: The [Colorado Anti-Discrimination Act](#) (CADA) defines the following relevant terms**

- “‘Employee’ means any person employed by an employer, except a person in the domestic service of any person.”<sup>47</sup>
- “‘Employer’ means the state of Colorado or any political subdivision, commission, department, institution, or school district thereof, and every other person employing persons within the state; but it does not mean religious organizations or associations, except such organizations or associations supported in whole or in part by money raised by taxation or public borrowing.”<sup>48</sup>
- CADA does not define “individual,” “person,” “independent contractor,” or other relevant terms. Independent contractors are not specifically mentioned in the statute.

### **Statutory Language:**

Many of CADA’s protections apply to employers’ treatment of employees, but some of CADA’s protections apply to employers’ treatment of “person[s],” namely that “[i]t shall be a discriminatory or unfair employment practice: (a) For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise

---

<sup>44</sup> (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1670 (1999–2000 Reg. Sess.) as amended May 6, 1999, p. 8.)

<sup>45</sup> 58 Cal.App.4th 10, 16–17, 67 Cal.Rptr.2d 840 (1997).

<sup>46</sup> No. CV F 09-2083 LJO JTL, 2011 WL 2680837, at \*9 (E.D. Cal. July 8, 2011), *aff’d*, 514 F. App’x 674 (9th Cir. 2013) (“Title VII, FEHA and California Constitution Art. 1., § 8 protect employees, but do not protect independent contractors.”).

<sup>47</sup> Colo. Rev. Stat. Ann. § 24-34-401(2) (West).

<sup>48</sup> Colo. Rev. Stat. Ann. § 24-34-401(3) (West).

qualified because of [membership in a protected class].”<sup>49</sup> The use of the term “persons,” is similar to federal law’s use of the term “individual.”

### **Case Law:**

Colorado courts look to federal law as persuasive, not binding, authority in discrimination cases.<sup>50</sup> In *Wisniewski v. Medical Action Ind.*, the district court held that CADA articulates a public policy directed to employers and employees, and therefore applies exclusively to employees, not independent contractors.<sup>51</sup> No Colorado court cases on this question were found.

## Connecticut

### **Unclear Whether Independent Contractors Are Protected by Anti-Retaliation Provisions; Otherwise Not Protected**

**Explicitly protected in the statute? No.**

**Definitions:** [Connecticut’s anti-discrimination statute](#) defines the following relevant terms

- “‘Employee’ means any person employed by an employer but shall not include any individual employed by such individual’s parents, spouse or child.”<sup>52</sup>
- “‘Employer’ includes the state and all political subdivisions thereof and means any person or employer with three or more persons in such person’s or employer’s employ.”<sup>53</sup>
- “‘Person’ means one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, receivers and the state and all political subdivisions and agencies thereof.”<sup>54</sup>

### **Statutory Language:**

Connecticut’s anti-discrimination law makes it unlawful “[f]or an employer, by the employer or the employer’s agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual’s [membership in a protected class];” and for “any person, employer, employment agency or labor organization, except in the case of a bona fide occupational qualification or need, to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against individuals because of their [membership in a protected class].”<sup>55</sup> Other protections are defined explicitly in terms of the employer-employee relationship, or relate to aiding and abetting. The use of the term “individual,” could arguably be interpreted as broad enough to extend protections to both employees and

---

<sup>49</sup> Colo. Rev. Stat. Ann. § 24-34-402.

<sup>50</sup> *George v. Ute Water Conservancy Dist.*, 950 P.2d 1195, 1198 (Colo. App. 1997).

<sup>51</sup> *Wisniewski v. Med. Action Ind., Inc.*, No. 99-D-409, 2000 WL 1679612, at \*5 (D. Colo. Sept. 27, 2000) (“CADA applies exclusively to employees, not independent contractors.”).

<sup>52</sup> Conn. Gen. Stat. Ann. § 46a-51(9) (West).

<sup>53</sup> Conn. Gen. Stat. Ann. § 46a-51(10) (West).

<sup>54</sup> Conn. Gen. Stat. Ann. § 46a-51(14) (West).

<sup>55</sup> Conn. Gen. Stat. Ann. § 46a-60.

independent contractors, but it mirrors federal law’s use of the same term, and the federal law does not extend to independent contractors.

### Case Law:

Connecticut courts interpret state antidiscrimination law in accordance with federal law.<sup>56</sup> This indicates that independent contractors will not be protected under Connecticut antidiscrimination law, since they are not protected under federal law.

Moreover, the Connecticut Supreme Court has held that § 46a-60(a), which uses the “individual” language, applies only to “those persons who have sought or obtained an employment relationship with the employer alleged to have engaged in a discriminatory employment practice.”<sup>57</sup> In that case, the court specifically rejected a broader reading based on the use of the term “individual,” holding that the “plaintiff’s argument fails because it ignores the statutory language that immediately precedes the term “any individual” and that limits the meaning of the term to those persons who have been denied employment or have been discharged from employment.”<sup>58</sup> The Connecticut Supreme Court has also held that, where a provision of the FEPA covers “employers,” that word is to be understood narrowly.<sup>59</sup> This suggests that independent contractors are not protected by the FEPA. Consistent with that understanding, the federal district court in *DeSouza v. EGL Eagle Global Logistics LP* held the plaintiff was an independent contractor and so the defendant company could not be considered his employer, and therefore that the CFEPA did not apply to the plaintiff (and specifically finding that a provision of the CFEPA that applies to “individual[s]” did not apply to him).<sup>60</sup> Another federal district court has analyzed the independent contractor question under FEPA under the same framework as is used for Title VII cases (that is, with the understanding that an independent contractor could not bring a discriminatory failure to hire case).<sup>61</sup>

Despite lacking anti-discrimination protections under the CFEPA, independent contractors may have protection from retaliation. The *DeSouza* court held that independent contractors were protected against retaliation if they complained about employment discrimination under the CFEPA. The court noted that CFEPA makes it unlawful for, “any *person* [rather than employer] . . . to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under CFEPA’s discriminatory practice procedures.”<sup>62</sup> Additionally, the Connecticut Supreme Court has held that retaliation claims may be brought

---

<sup>56</sup> *Jackson v. Water Pollution Control Authority*, 278 Conn. 692, 705–709, 900 A.2d 498 (2006) (applying federal antidiscrimination caselaw to state disability claim); *Levy v. Commission on Human Rights & Opportunities*, 236 Conn. 96, 102–103, 671 A.2d 349 (1996) (same); *Wroblewski v. Lexington Gardens, Inc.*, 188 Conn. 44, 53, 448 A.2d 801 (1982) (“confirm[ing] our legislature’s intention ‘to make the Connecticut [antidiscrimination] statute coextensive with the federal’ ” law when addressing sex discrimination); *Pik-Kwik Stores, Inc. v. Commission on Human Rights & Opportunities*, 170 Conn. 327, 331, 365 A.2d 1210 (1976) (stating, in a sex discrimination case, that the principle of reliance on federal law applies to all protected classes then in § 46a-60).

<sup>57</sup> *McWeeny v. City of Hartford*, 287 Conn. 56, 67 (2008).

<sup>58</sup> *Id.* (note that this was an action by a surviving spouse of an employee, not an independent contractor).

<sup>59</sup> *Perodeau v. City of Hartford*, 259 Conn. 729, 737–38 (2002).

<sup>60</sup> 596 F.Supp.2d 456, 462-468 (D. Conn. 2009).

<sup>61</sup> *Fabian v. Hospital of Central Connecticut*, 172 F.Supp.3d 509, 514-15 n.3 (D. Conn. 2016).

<sup>62</sup> *DeSouza*, 172 F.Supp.3d at 467.

against individuals, finding that it extends to more than just employers.<sup>63</sup> However, this holding has been understood by other courts to extend non-employer liability to supervisory or other employees in their individual capacity, not to those who contract with independent contractors.<sup>64</sup>

## Delaware

### Independent Contractors Are Not Protected

**Explicitly protected in the statute? No.**

**Definitions:** [Delaware's anti-discrimination law](#) defines the following relevant terms

- “‘Employee’ means an individual employed by an employer, but does not include: a. Any individual employed in agriculture or in the domestic service of any person, b. Any individual who, as a part of that individual’s employment, resides in the personal residence of the employer, c. Any individual employed by said individual’s parents, spouse or child, or d. Any individual elected to public office in the State or political subdivision by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the merit service rules or civil service rules of the state government or political subdivision.”<sup>65</sup>
- “‘Employer’ means any person employing 4 or more employees within the State at the time of the alleged violation, including the State or any political subdivision or board, department, commission or school district thereof. The term “employer” with respect to discriminatory practices based upon sexual orientation or gender identity does not include religious corporations, associations or societies whether supported, in whole or in part, by government appropriations, except where the duties of the employment or employment opportunity pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under § 511(a) of the Internal Revenue Code of 1986 [26 U.S.C. § 511(a)].”<sup>66</sup>
- “‘Person’ includes 1 or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.”<sup>67</sup>
- Note that Delaware’s law against sexual harassment, unlike the general anti-discrimination law, includes a definition of independent contractors (by way of reference to the labor code’s definition) and has only been effective since January 1, 2019.<sup>68</sup> The law does not explicitly extend sexual harassment protections to independent contractors, and explicitly excludes them from the employee threshold calculation and provides that

---

<sup>63</sup> *Perodeau v. City of Hartford*, 259 Conn. 729, 737–38 (2002).

<sup>64</sup> *Ahmad v. Yellow Cab Co.*, 49 F.Supp.3d 178, 187 (D. Conn., 2014) (noting that this liability has been extended only to other employees and suggesting it may not extend to those who contract with independent contractors, but not deciding the issue).

<sup>65</sup> DE ST TI 19 § 710(6).

<sup>66</sup> DE ST TI 19 § 710(7).

<sup>67</sup> DE ST TI 19 § 710(16).

<sup>68</sup> DE ST TI 19 § 711A,

employers do not have to provide anti-sexual-harassment training to independent contractors.

### **Statutory Language:**

Delaware’s anti-discrimination law makes it illegal to “[f]ail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual’s race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin”<sup>69</sup> It does not explicitly protect independent contractors and it does not define individual. The statute’s use of the term “individual” is broad enough that it could potentially extend protections to independent contractors, though it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

One court has held that § 711 does not cover independent contractors.<sup>70</sup> Additionally, in *Shah v. Bank of America* the court analyzed a Title VII and a Delaware anti-discrimination law claim together under the Title VII framework, and granted summary judgement to the employer because the plaintiff could not prove that he was an employee (and thus covered by the law).<sup>71</sup> This suggests that the Delaware law was interpreted not to extend to independent contractors, but no ruling explicitly stating that the DDEA is interpreted coextensively with federal law was found. No Delaware state courts have discussed coverage of independent contractors under the DDEA.

## District of Columbia Independent Contractors Are Likely Not Protected

### **Explicitly Protected in the Statute? No.**

**Definitions: The [DC Human Rights Act](#) (DCHRA) defines the following relevant terms**

- “‘Employee’ means any individual employed by or seeking employment from an employer; provided, that the term “employee” shall include an unpaid intern.”<sup>72</sup>
- “‘Employer’ means any person who, for compensation, employs an individual, except for the employer’s parent, spouse, children or domestic servants, engaged in work in and about the employer’s household; any person acting in the interest of such employer, directly or indirectly; and any professional association.”<sup>73</sup>
- “‘Person’ means any individual, firm, partnership, mutual company, joint-stock company, corporation, association, organization, unincorporated organization, labor union,

---

<sup>69</sup> DE ST TI 19 § 711(a)(1).

<sup>70</sup> *Nichols v. Bennett Detective & Protective Agency, Inc.*, No. Civ.A. 05–55–KAJ, 2006 WL 1530223 at \*4 n.10 (D. Del. 2006) (finding that an employee of an independent contractor did not have a claim against the independent contractor’s employer, because, among other reasons “such claims are cognizable only against an ‘employer’”).

<sup>71</sup> 346 F. App’x 831, 834 (3d Cir. 2009). The court noted that it “limited its analysis to Title VII standards because they are virtually identical to those of the DDEA.” *Id.* at 834 n.2.

<sup>72</sup> DC Code § 2-1401.02(9).

<sup>73</sup> DC Code § 2-1401.02(10).



government agency, incorporated society, statutory or common-law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, trustee in bankruptcy, committee, assignee, officer, employee, principal or agent, legal or personal representative, real estate broker or salesman or any agent or representative of any of the foregoing.”<sup>74</sup>

**Statutory Language:**

The DCHRA makes it “an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived [protected class status] of any individual:

(A)(1) *By an employer.* – To fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his or her status as an employee.”<sup>75</sup> The statute’s use of the term “individual” is broad enough that it could potentially extend protections to independent contractors, though it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

**Case Law:**

DCHRA claims “are generally scrutinized under the same legal framework used by courts to analyze claims under Title VII,” that is, unless “there is an indication either from legal precedent or statutory language that the DCHRA is meant to depart from the federal courts’ Title VII jurisprudence.”<sup>76</sup> In *Miles v. University of the District of Columbia*, the federal district court held that “there is no indication in District of Columbia case law or in the statutory or regulatory language of the DCHRA that it would be inappropriate to apply Title VII case law to the plaintiff’s DCHRA claims,” and looked to federal joint-employment law to determine whether there was an employment relationship that would allow plaintiff to bring a claim under the DCHRA.<sup>77</sup> This implies that the court determined that an employment relationship is necessary to bring a DCHRA claim, which would likely preclude independent contractors from suing under the DCHRA. No local court cases addressing this issue were found.

More specifically, the federal district court has held that independent contractors are not covered by the DCHRA because the law requires an employment relationship.<sup>78</sup> Similarly, in *Adams v. Hitt Contracting, Inc.*, a joint-employer case, the court noted that “because [the DCHRA] prohibits discriminatory conduct in the context of employment by an employer, labor organization, or employment agency, the preliminary issue facing the court is whether [plaintiff] alleges that [defendant] was his “employer” for purposes of DCHRA liability. . . . Courts have determined that an independent contractor is an ‘employee’ only if the employer retains the right to control and direct the day-to-day activities of the employee.”<sup>79</sup> This suggests that, while the

---

<sup>74</sup> DC Code § 2-1401.02(21).

<sup>75</sup> D.C. Code § 2-1402.11(a).

<sup>76</sup> *Konah v. Dist. of Columbia*, 815 F.Supp.2d 61, 71 (D.D.C.2011).

<sup>77</sup> No. 12–378(RBW), 2013 WL 5817657 at \*8 (D.D.C. 2013).

<sup>78</sup> *Samuels v. Rayford*. No. CIV A 91-0365 (JHG), 1995 WL 376939, at \*6–7 (D.D.C. Apr. 10, 1995).

<sup>79</sup> No. Civ.A. 04-1026(HHK), 2005 WL 1903547 at \*4 (D.D.C. 2005).

D.C. law would provide recourse for misclassified workers, it does not protect true independent contractors.

## Florida

### Unclear Whether Independent Contractors Are Protected

**Explicitly protected in the statute? No.**

**Definitions: The [Florida Civil Rights Act](#) (FCRA) defines the following relevant terms**

- “‘Person’ includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.”<sup>80</sup>
- “‘Employer’ means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.”<sup>81</sup>
- The statute does not define “employee” and does not mention independent contractors.

#### **Statutory Language:**

The FCRA states that “[i]t is an unlawful employment practice for an employer:

- (A) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.”<sup>82</sup> The statute’s use of the term “individual” is broad enough that it could potentially extend protections to independent contractors, though it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

#### **Case Law:**

Because the FCRA is patterned on Title VII, courts generally analyze the FCRA in line with Title VII.<sup>83</sup> Some courts have suggested that the equivalence between the FCRA and Title VII means that independent contractors are not covered by the FCRA.<sup>84</sup>

In 2015, the 11<sup>th</sup> Circuit declined to apply federal standards to a physician’s claim of *retaliation* for complaining about age discrimination, noting that courts generally interpret the FCRA in line with federal law but also noting differences in statutory language in the retaliation provisions, namely that the retaliation provision makes it unlawful to retaliate against “any person because that person has opposed any practice which is an unlawful employment practice under [the FCRA],” and holding: “we are not aware of any Florida appellate case that expressly

---

<sup>80</sup> Fla. Stat. Ann. § 760.02(6).

<sup>81</sup> Fla. Stat. Ann. § 760.02(7).

<sup>82</sup> Fla. Stat. Ann. § 760.10(1)(a).

<sup>83</sup> See, e.g., *Latrece Lockett v. Choice Hotels Inter.. Inc.*, 315 Fed.Appx. 862, 865 (11th Cir. 2009).

<sup>84</sup> See *Helm v. J.H. Gatewood Emergency Services, P.A.*, No. 8:11-cv-572-EAK-AEP, 2012 WL 2793134 at \*1 (M.D. Fla. 2012) (“The parties dispute whether Plaintiff was an independent contractor, not an employee, and therefore not subject to coverage under Title VII and FCRA.”).

construes the FCRA’s ‘any person’ language in age-based retaliation claims as pertaining to only employees, and not independent contractors... We have never adopted a categorical rule that the scope of the entire FCRA is identical to the ADEA, such that a person must be an employee to proceed on an age-based FCRA retaliation suit. We decline to pass on this question [of whether a person must be an employee to proceed on an age-based FCRA retaliation suit] today.”<sup>85</sup> As such, independent contractors may be protected from retaliation under the FCRA, even if they are not protected by the antidiscrimination provisions of the FCRA (that is, because the antidiscrimination provisions are interpreted in accordance with federal law). This question has not been resolved.

*Ashkenazi* was cited for support in a Florida State administrative decision, *Kim-Renee Roberts v. the Keyes Company*.<sup>86</sup> In *Roberts* the Division of Administrative Hearings held that the plain language of the FCRA extends coverage to “individuals,” which includes independent contractors, and that therefore the complainant’s sexual harassment “FCRA claim under Florida Statutes § 760.10(1)(a) as an independent contractor is proper, especially given the dominion and control exercised over her by Respondent.”<sup>87</sup> This is inconsistent with federal law, which, as noted above, generally guides interpretation of the FCRA. As such, the extent of independent contractor coverage under the FCRA’s antidiscrimination provisions is unclear.

## Georgia

### Unclear Whether Independent Contractors Have Any Protections

**Explicitly protected in the statute? No.**

#### Definitions:

The [Georgia Fair Employment Practices Act](#) (GFEPA) (which applies only to public employers) defines the following relevant terms

- “‘Public employer’ or ‘employer’ means any department, board, bureau, commission, authority, or other agency of the state which employs 15 or more employees within the state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. A person elected to public office in this state is a public employer with respect to persons holding positions or individuals applying for positions which are subject to the state system of personnel administration created by Chapter 20 of this title, including the rules and regulations promulgated by the State Personnel Board or any personnel merit system of any agency or authority of this state. A person elected to public office in this state is not a public employer with respect to persons holding positions or individuals applying for positions on such officer’s personal staff or on the policy-making level or as immediate advisers with respect to the exercise of the constitutional or legal powers of the office held by such officer.”<sup>88</sup>
- The GFEPA does not define any other relevant terms.

The [law prohibiting employers from age discrimination](#) does not contain any definitions.

---

<sup>85</sup> *Ashkenazi v. S. Broward Hosp. Dist.*, 607 F. App’x 958, 965 (11<sup>th</sup> Cir. 2015).

<sup>86</sup> No. 2017-005779, 2018 WL 3132234, at \*3 (2017).

<sup>87</sup> *Id.*

<sup>88</sup> Ga. Code Ann. § 45-19-22(5).

The [law prohibiting employers from wage discrimination](#) based on sex defines the following relevant terms:

- “‘Employ’ means to permit to work.”<sup>89</sup>
- “‘Employee’ means any individual employed by an employer, other than domestic or agricultural employees, and includes individuals employed by the state or any of its political subdivisions, including public bodies.”<sup>90</sup>
- “‘Employer’ means any person employing ten or more employees and acting directly or indirectly in the interest of an employer in relation to an employee. The term ‘employer,’ as used in this chapter, means an employer who is engaged in intrastate commerce.”<sup>91</sup>
- “‘Person’ means one or more individuals, partnerships, corporations, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.”<sup>92</sup>

### **Statutory language:**

Georgia only prohibits private employers from age discrimination and from discrimination in wages based on sex. The age discrimination law provides that “[n]o person, firm, association, or corporation carrying on or conducting within this state any business requiring the employment of labor shall refuse to hire, employ, or license nor shall such person, firm, association, or corporation bar or discharge from employment any individual between the ages of 40 and 70 years, solely upon the ground of age, when the reasonable demands of the position do not require such an age distinction, provided that such individual is qualified physically, mentally, and by training and experience to perform satisfactorily the labor assigned to him or for which he applies.”<sup>93</sup> While the language specifying that no “person” shall so discriminate may be understood to be broad enough to apply to persons who are not employers, the statute does speak specifically to hiring, employing, and licensing, and so may be understood as limited to those situations (and not to contracting with independent contractors).

The sex-based wage rate discrimination law provides that “[n]o employer having employees subject to any provisions of this chapter shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work in jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions, except where such payment is made pursuant to (1) a seniority system, (2) a merit system, (3) a system which measures earnings by quantity or quality of production, or (4) a differential based on any other factor other than sex.”<sup>94</sup> This explicitly defines the prohibitions of the law in terms of the employer-employee relationship, and therefore likely does not apply to independent contractors, though the question does not appear to have been litigated.

Public employees are protected by the GFEPA, which provides that “It is an unlawful practice for an employer: (1) To fail or refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of such individual’s [protected class status]; (2) To limit,

---

<sup>89</sup> Ga. Code Ann. § 34-5-2(2).

<sup>90</sup> Ga. Code Ann. § 34-5-2(3).

<sup>91</sup> Ga. Code Ann. § 34-5-2(4).

<sup>92</sup> Ga. Code Ann. § 34-5-2(6).

<sup>93</sup> Ga. Code Ann. § 34-1-2 (West).

<sup>94</sup> Ga. Code Ann. § 34-5-3(a).

segregate, or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's [protected class status]; or (3) To hire, promote, advance, segregate, or affirmatively hire an individual solely because of [protected class status], but this paragraph shall not prohibit an employer from voluntarily adopting and carrying out a plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance in employment with respect to [protected class status] if the plan has first been filed with the administrator for review and comment for a period of not less than 30 days."<sup>95</sup> The statute's use of the broad term "individual" could potentially extend protections to independent contractors, but it mirrors the federal law's use of the same term, and the federal law does not cover independent contractors.

**Case law:** None found.

## Hawai'i Unclear Whether Independent Contractors Are Protected

**Explicit protection in the statute? No.**

**Definitions:** [Hawai'i's anti-discrimination law](#) defines the following relevant terms

- "'Employer' means any person, including the State or any of its political subdivisions and any agent of such person, having one or more employees, but shall not include the United States."<sup>96</sup>
- "'Employment' means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered into. Employment does not include services by an individual employed as a domestic in the home of any person, except as provided in section 378-2(a)(9)."<sup>97</sup>
  - o Note that section 378-2(a)(9) provides that it is an unlawful practice "[f]or any employer to discriminate against any individual employed as a domestic, in compensation or in terms, conditions, or privileges of employment because of the individual's race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, or reproductive health decision."<sup>98</sup>
- "'Person' means one or more individuals, and includes, but is not limited to, partnerships, associations, or corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or the State or any of its political subdivisions."<sup>99</sup>

### **Statutory Language:**

Hawai'i anti-discrimination law provides that "It shall be an unlawful discriminatory practice: (1) Because of [protected class] status: (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in

---

<sup>95</sup> Ga. Code Ann. § 45-19-29.

<sup>96</sup> Haw. Rev. Stat. Ann. § 378-1.

<sup>97</sup> *Id.*

<sup>98</sup> Haw. Rev. Stat. Ann. § 378-2(a)(9).

<sup>99</sup> Haw. Rev. Stat. Ann. § 378-1.

compensation or in the terms, conditions, or privileges of employment.”<sup>100</sup> The statute’s use of the broad term “individual” could potentially extend protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

In construing discrimination claims brought under Hawai’i’s employment discrimination statute, Hawai’i courts may look to federal law, and will do so particularly when presented with novel questions, but are not bound by federal law.<sup>101</sup> There is no caselaw dealing directly with the question of whether independent contractors are covered by § 378. The Hawai’i Supreme Court has held that § 378 does not impose individual liability on supervisory employees because they are not “employers,” within the meaning of the act.<sup>102</sup> While this is a significantly different context, it suggests that courts might focus on the employment relationship in determining whether liability can attach. This suggests that independent contractors may not be covered.

## **Idaho Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The [Idaho Human Rights Act \(IHRA\)](#) defines the following relevant terms**

- “‘Person’ includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, any other legal or commercial entity, the state, or any governmental entity or agency.”<sup>103</sup>
- “‘Employer’ means a person, wherever situated, who hires five (5) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year whose services are to be partially or wholly performed in the state of Idaho, except for domestic servants hired to work in and about the person’s household. The term also means: (a) A person who as contractor or subcontractor is furnishing material or performing work for the state; (b) Any agency of or any governmental entity within the state; and (c) Any agent of such employer.”<sup>104</sup>

### **Statutory Language:**

The IHRA states that “It shall be a prohibited act to discriminate against a person because of [protected class status] in any of the following subsections . . . (1) For an employer to fail or refuse to hire, to discharge, or to otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment or to reduce the wage of any

---

<sup>100</sup> Haw. Rev. Stat. Ann. § 378-2(a).

<sup>101</sup> *Furukawa v. Honolulu*, 936 P.2d 643, 649 (Haw. 1997), *reconsideration denied* 940 P.2d 403 (1997).

<sup>102</sup> *Lales v. Wholesale Motors Co.*, 133 Hawai’i 332, 370 (2014) (“Accordingly, the term “employer,” which indicates who may be sued in HRS § 378–2 for discriminatory practices, would not include an agent, such as supervisory employees. Agents and supervisory employees therefore would not be subject to personal liability under HRS § 378–2).

<sup>103</sup> Idaho Code Ann. § 67-5902(5) (West).

<sup>104</sup> Idaho Code Ann. § 67-5902(6) (West).

employee in order to comply with this chapter.”<sup>105</sup> The use of the term “persons,” is similar to federal law’s use of the term “individual.”

### **Case Law:**

The Supreme Court of Idaho ruled in *Ostrader v. Farm Bureau Mut. Ins. Co. of Idaho* that, because the IHRA is co-extensive with federal protections,<sup>106</sup> independent contractors are not protected.<sup>107</sup>

## Illinois

### **Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The [Illinois Human Rights Act](#) (IHRA) defines the following relevant terms**

- “Employee. (1) “Employee” includes: (a) Any individual performing services for remuneration within this State for an employer; (b) An apprentice; (c) An applicant for any apprenticeship. For purposes of subsection (D) of Section 2-102 of this Act, “employee” also includes an unpaid intern. . . . (2) “Employee” does not include: (a) (Blank); (b) Individuals employed by persons who are not “employers” as defined by this Act; (c) Elected public officials or the members of their immediate personal staffs; (d) Principal administrative officers of the State or of any political subdivision, municipal corporation or other governmental unit or agency; (e) A person in a vocational rehabilitation facility certified under federal law who has been designated an evaluatee, trainee, or work activity client.”
- “Employer. (1) “Employer” includes: (a) Any person employing one or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation; (b) Any person employing one or more employees when a complainant alleges civil rights violation due to unlawful discrimination based upon his or her physical or mental disability unrelated to ability, pregnancy, or sexual harassment; (c) The State and any political subdivision, municipal corporation or other governmental unit or agency, without regard to the number of employees; (d) Any party to a public contract without regard to the number of employees; (e) A joint apprenticeship or training committee without regard to the number of employees. (2) “Employer” does not include any place of worship, religious corporation, association, educational institution, society, or non-profit nursing institution conducted by and for those who rely upon treatment by prayer through spiritual means in accordance with the tenets of a recognized church or religious denomination with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such place of worship,

---

<sup>105</sup> Idaho Code Ann. § 67-5909 (West).

<sup>106</sup> See *O'Dell v. Basabe*, 119 Idaho 796, 811, 810 P.2d 1082, 1097 (1991).

<sup>107</sup> *Ostrader v. Farm Bureau Mut. Ins. Co. of Idaho*, 123 Idaho 650, 653 (1993) (“As an independent contractor, Ostrander is not protected by the provisions of Title VII, the ADEA or the Idaho Human Rights Act”).

corporation, association, educational institution, society or non-profit nursing institution of its activities.”<sup>108</sup>

- The statute does not define “individual,” “person,” “independent contractor,” or any other similar term.

### **Statutory Language:**

Under the IHRA, “it is a civil rights violation: (A) Employers. For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status.”<sup>109</sup> Unlawful discrimination is not defined.

### **Case Law:**

Illinois courts “often look to the standards applicable to analogous federal claims when analyzing discrimination claims under the IHRA,” including in determining whether someone counts as an employer for the purposes of IHRA.<sup>110</sup> No cases addressing independent contractor coverage under the IHRA were found. That said, the Human Rights Commission has held, repeatedly, that the definition of employee used in IRHA does not extend to independent contractors. For instance, in *In re. Request for Review By: Nicolas Maldonado*, the Commission held that “the Act defines an employee as any individual performing services for remuneration within this State for an employer . . . the Commission does not have jurisdiction over actions involving independent contractors.”<sup>111</sup> And in *In re. Request for Review by Larry Shaw, Petitioner*, the Commission held that “[t]he Act defines ‘employee’ to include, ‘any individual performing services for remuneration within this state for an employer.’ Independent contractors are not employees under the Act.”<sup>112</sup>

## Indiana

### **Independent Contractors Are Likely Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The [Indiana Civil Rights Law](#) defines the following relevant terms**

- “‘Person’ means one (1) or more individuals, partnerships, associations, organizations, limited liability companies, corporations, labor organizations, cooperatives, legal

---

<sup>108</sup> 775 ILCS 5/2-101(B) (effective July 1, 2020) (the current version of this section, instead of the language in (1)(a) above, uses this language: “Any person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation.”).

<sup>109</sup> 775 ILCS 5/2-102(A).

<sup>110</sup> *Nischan v. Stratosphere Quality, LLC*, No: 13 C 50389, 2016 WL 9711037 at \*2 (N.D. Ill. 2016).

<sup>111</sup> 2019 WL 2412031, at \*1 (2019) (internal citations omitted) (dismissing a race discrimination case for lack of jurisdiction because the Petitioner was an independent contractor).

<sup>112</sup> 2018 WL 7287104, at \*1 (2018) (internal citations omitted). *See also Matter of: Whittington and K-Mart Corp.*, 1992 WL 721840, at \*1 (citing *Anderson and Memory Lane Photography, 14 Ill. HRC Rep. 304 (1984)*, in which the Commission looked to the intent behind “employee” and decided that the legislator wanted to exclude from regulation smaller employers who only need a limited number of people to perform the services required in their businesses).



representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons.”<sup>113</sup>

- “‘Employer’ means the state or any political or civil subdivision thereof and any person employing six (6) or more persons within the state, except that the term “employer” does not include: (1) any nonprofit corporation or association organized exclusively for fraternal or religious purposes; (2) any school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution; or (3) any exclusively social club, corporation, or association that is not organized for profit.”<sup>114</sup>
- “‘Employee’ means any person employed by another for wages or salary. However, the term does not include any individual employed: (1) by the individual's parents, spouse, or child; or (2) in the domestic service of any person.”<sup>115</sup>

### **Statutory Language:**

Indiana’s antidiscrimination law defines “discriminatory practice” as “(1) the exclusion of a person from equal opportunities because of race, religion, color, sex, disability, national origin, ancestry, or status as a veteran; (2) a system that excludes persons from equal opportunities because of race, religion, color, sex, disability, national origin, ancestry, or status as a veteran; (3) the promotion of racial segregation or separation in any manner [ . . . ]” and then establishes that “[e]very discriminatory practice relating to [ . . . ] employment [ . . . ] shall be considered unlawful unless it is specifically exempted by this chapter.”<sup>116</sup> The use of the term “person,” is similar to federal law’s use of the term “individual.”

### **Case Law:**

According to the Supreme Court of Indiana, “[i]n construing Indiana civil rights law our courts have often looked to federal law for guidance,” including in Title VII cases.<sup>117</sup> That would suggest that Indiana courts might interpret Indiana civil rights law not to cover independent contractors, in accordance with federal law. Consistent with that approach, an Attorney General Opinion says that “[t]he distinction between an ‘employee’ and an ‘independent contractor’ is a technical legal distinction which is meaningless in terms of the Civil Rights Act; the crucial question being whether a condition exists between two persons which can be called an ‘employment.’”<sup>118</sup> This suggests that coverage for independent contractors will turn on whether the treatment in question is a “practice relating to [ . . . ] *employment*.”<sup>119</sup> This further suggests that, in Indiana, this question is one of appropriate classification, and true independent contractors are not covered, but no cases specifically stating that were found.

## Iowa

### **Independent Contractors Are Likely Not Protected**

---

<sup>113</sup> IN ST 22-9-1-3(a).

<sup>114</sup> IN ST 22-9-1-3(h).

<sup>115</sup> IN ST 22-9-1-3(j).

<sup>116</sup> IN ST 22-9-1-3(l).

<sup>117</sup> *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 839 (2009).

<sup>118</sup> 1964 Op. Atty. Gen. No. 49.

<sup>119</sup> IN ST 22-9-1-3 (emphasis added).

**Explicitly protected in the statute? No.**

**Definitions: The [Iowa Civil Rights Act](#) (ICRA) defines the following relevant terms**

- “‘Employee’ means any person employed by an employer.”<sup>120</sup>
- “‘Employer’ means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state.”<sup>121</sup>
- “‘Person’ means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.”<sup>122</sup>

**Statutory Language:**

The ICRA states that “[i]t shall be an unfair or discriminatory practice for any: a. *Person* to refuse to hire, accept, register, classify, or refer for employment, to discharge any *employee*, or to otherwise discriminate in *employment* against any applicant for employment or any employee because of [the protected class membership] of such applicant or employee, unless based upon the nature of the occupation.”<sup>123</sup> This is a reversal from what is seen in many states—that is, the protections of the ICRA are not specifically limited to the behavior of *employers*, but the protections appear to extend only to “any person[‘s]” behavior towards employees and applicants for employment, rather than towards individuals or persons. That said, since the protections are defined as protecting employees or as applying within the context of employment, this language does not necessarily suggest that it would apply to independent contractors.

**Case Law:**

The Iowa Supreme Court has noted that, while “ we have looked to the corresponding federal statutes to help establish the framework to analyze claims and otherwise apply our statute,” “[f]ederal law does not necessarily control our interpretation of a state statute,” and has noted that “the ICRA declares that it *shall be construed broadly to effectuate its purposes*.”<sup>124</sup> Accordingly, it has held that in certain circumstances under the ICRA, “federal cases do not aid in the interpretation of our Iowa statute.”<sup>125</sup> This broad interpretation of the ICRA is also employed in construing the definition of “employee” under the ICRA.<sup>126</sup> In *Renda*, a case looking at whether a prisoner could be an employee of the prison for purposes of the ICRA, the Iowa Supreme Court noted that evidence from elsewhere in the statutory code that inmates were different from other employees did not support a finding that they were excepted from the

---

<sup>120</sup> Iowa Code Ann. § 216.2(6) (West).

<sup>121</sup> Iowa Code Ann. § 216.2(7) (West).

<sup>122</sup> Iowa Code Ann. § 216.2(12) (West).

<sup>123</sup> Iowa Code Ann. § 216.6(1)(a) (West) (emphasis added).

<sup>124</sup> *Goodpaster v. Schwan’s Home Service, Inc.*, 849 N.W.2d 1, 9 (Iowa 2014).

<sup>125</sup> *Id.* (finding that federal cases under the ADA did not resolve the question of whether someone was disabled under the ICRA).

<sup>126</sup> *Renda v. Iowa Civil Rights Commission*, 784 N.W.2d 8, 17 (Iowa 2010) (“Given the sheer breadth of the definitions of “employee” and “employer” and the fact that the few exclusions that are identified are extremely narrow, we are inclined to start from the premise that inmates may be considered employees unless some compelling reason exists to convince us that the legislature meant to exclude them despite utilizing such expansive language.”).

protections of the ICRA, but rather “these explicit exceptions for inmates demonstrate the legislature is well aware that many inmates work within correctional settings and that certain worker-related provisions may apply to them unless they are expressly excluded or exempted. The fact that the legislature did not provide an explicit exception for inmates within the Act leads us to believe that the legislature did not intend one.”<sup>127</sup> However, in *Renda*, the Iowa Supreme Court focused on the question of whether there was an “employer-employee” relationship formed between the prisoner and the prison, and looking to the tests distinguishing employees from independent contractors under Title VII as instructive on the question of the similarity between the prisoner’s work and “employment” outside of the penal context.<sup>128</sup> This suggests that independent contractors are not covered by ICRA.

The 8th Circuit also squarely held that the ICRA does not cover independent contractors.<sup>129</sup> In doing so, it cited to a district court opinion that extended federal statute requirements to the ICRA.<sup>130</sup> This is not necessarily consistent with the approach that the Iowa Supreme Court would take.<sup>131</sup>

In sum, it is likely that the ICRA does not extend to independent contractors given the discussion in *Renda*. That said, the Iowa Supreme Court was not squarely presented with the question in that case. Federal courts have decided the issue, but their approach was not consistent with the one applied by the Iowa Supreme Court.

## Kansas

### Independent Contractors Are Not Protected

**Explicitly protected in the statute? No.**

**Definitions: The [Kansas Act Against Discrimination](#) (KAAD) defines the following relevant terms**

- “Person’ includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.”<sup>132</sup>
- “Employer’ includes any person in this state employing four or more persons and any person acting directly or indirectly for an employer, labor organizations, nonsectarian corporations, organizations engaged in social service work and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.”<sup>133</sup>
- “Employee’ does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.”<sup>134</sup>

---

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Wortham v. American Family Insurance Group*, 385 F.3d 1139, 1141 (8th Cir. 2004).

<sup>130</sup> *Loeckle v. State Farm Auto. Ins. Co.*, 59 F.Supp.2d 838, 846 (N.D.Iowa 1999); *aff'd*, 210 F.3d 379 (8th Cir.2000).

<sup>131</sup> *See Renda*, 784 N.W.2d at 17.

<sup>132</sup> KS ST 44-1002(a).

<sup>133</sup> KS ST 44-1002(b).

<sup>134</sup> KS ST 44-1002(c).

### **Statutory Language:**

The KAAD makes it “an unlawful employment practice: (1) For an employer, because of the [protected class status] of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.”<sup>135</sup> The use of the term “persons,” is similar to federal law’s use of the term “individual.”

### **Case Law:**

The Kansas Supreme Court has held that “[g]iven the similarity of the language of the state [Act Against Discrimination] and federal provisions [that is, Title VII], it is appropriate to look to federal civil rights jurisprudence for general rules of construction.”<sup>136</sup> Moreover, a district court held that a female radiologist’s claims of gender discrimination could not be brought under KAAD because she was an independent contractor and not an employee.<sup>137</sup> The district court held that the “plaintiff was an independent contractor and, thus, not an ‘employee’ for purposes of the KAAD. . . . Thus, she is not entitled to the protections of the KAAD, at least with respect to her claims that defendants’ termination of her employment violated the KAAD.”<sup>138</sup>

## **Kentucky**

### **Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The [Kentucky Civil Rights Act](#) defines the following relevant terms**

- “‘Person’ includes one (1) or more individuals, labor organizations, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, fiduciaries, receivers, or other legal or commercial entity; the state, any of its political or civil subdivisions or agencies.”<sup>139</sup>
- “‘Employer’ means a person who has eight (8) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person, except for purposes of determining accommodations for an employee’s own limitations related to her pregnancy, childbirth, or related medical conditions, employer means a person who has fifteen (15) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and any agent of the person, and, except for purposes of determining discrimination based on disability, employer means a person engaged in an industry affecting commerce

---

<sup>135</sup> KS ST 44-1009(1).

<sup>136</sup> *Garvey Elevators, Inc. v. Kansas Human Rights Commission*, 921 P.2d 696, 702 (1998).

<sup>137</sup> *Parsells v. Manhattan Radiology Grp., L.L.P.*, 255 F. Supp. 2d 1217, 1228 (D. Kan. 2003).

<sup>138</sup> *Id.*

<sup>139</sup> KRS § 344.010(1).

who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of that person, . . . For the purposes of determining discrimination based on disability, employer shall not include: (a) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or (b) A bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Service Code of 198<sup>140</sup>.

- “‘Employee’ means an individual employed by an employer, but does not include an individual employed by his parents, spouse, or child, or an individual employed to render services as a domestic in the home of the employer.”<sup>141</sup>

### **Statutory Language:**

The KCRA provides that “It is an unlawful practice for an employer: (a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual’s [membership in a protected class].”<sup>142</sup> The statute’s use of the broad term “individual” could potentially extend protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

The Kentucky Supreme Court has held that the KCRA is meant to track Title VII. The Court held, “since the language of the Kentucky Civil Rights Act generally tracks the language of Title VII of the Civil Rights Act of 1964, provisions of the Act “should be interpreted consonant with federal interpretation.”<sup>143</sup> This suggests that independent contractors are not covered, since they are not covered by federal law. This understanding is supported by a 2008 Kentucky Appellate Court ruling. The court determined that the KCRA was not intended to cover independent contractors and that its meaning should not be extended because the KCRA was modeled after federal law, which doesn’t include independent contractors.<sup>144</sup>

## Louisiana

### **Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions:** [Louisiana’s employment discrimination law](#) defines the following relevant terms

- “‘Employee’ means an individual employed by an employer.”<sup>145</sup>
- “‘Employer’ means a person, association, legal or commercial entity, the state, or any state agency, board, commission, or political subdivision of the state receiving services

---

<sup>140</sup> KRS § 344.030(2).

<sup>141</sup> KRS § 344.030(5).

<sup>142</sup> KRS § 344.040(1)(a).

<sup>143</sup> *Meyers v. Chapman Printing Co., Inc.*, 840 S.W.2d 814, 820 (Ky.1992).

<sup>144</sup> *Steilberg v. C2 Facility Sols., LLC*, 275 S.W.3d 732, 735 (Ky. Ct. App. 2008).

<sup>145</sup> LSA—R.S. 23:302(1).

from an employee and, in return, giving compensation of any kind to an employee. The provisions of this Chapter shall apply only to an employer who employs twenty or more employees within this state for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. "Employer" shall also include an insurer, as defined in R.S. 22:46, with respect to appointment of agents, regardless of the character of the agent's employment. This Chapter shall not apply to the following: (a) Employment of an individual by a parent, spouse, or child or to employment in the domestic service of the employer. (b) Employment of an individual by a private educational or religious institution or any nonprofit corporation, or the employment by a school, college, university, or other educational institution or institution of learning of persons having a particular religion if the school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of the school, college, university, other educational institution, or institution of learning is directed toward the propagation of a particular religion."<sup>146</sup>

- Louisiana's employment discrimination law does not define "individual," "person," "independent contractor," or any other similar terms.

### **Statutory Language:**

Louisiana's age discrimination law state that it is "unlawful for an employer to engage in any of the following practices: (1) Fail or refuse to hire, or to discharge, any individual or otherwise discriminate against any individual with respect to his compensation, or his terms, conditions, or privileges of employment because of the individual's age. (2) Limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of the individual's age. (3) Reduce the wage rate of any employee in order to comply with this Part."<sup>147</sup> Louisiana's disability discrimination law provides that "[n]o otherwise qualified person with a disability shall, on the basis of a disability, be subjected to discrimination in employment," and provides that an employer must not take a variety of discriminatory actions against an "otherwise qualified person with a disability."<sup>148</sup> The intentional discrimination in employment law provides that "It shall be unlawful discrimination in employment for an employer to engage in any of the following practices: (1) Intentionally fail or refuse to hire or to discharge any individual, or otherwise to intentionally discriminate against any individual with respect to compensation, or terms, conditions, or privileges of employment, because of the individual's [membership in a protected class]. (2) Intentionally limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's [membership in a protected class]. (3) Intentionally pay wages to an employee at a rate less than that of another employee of the opposite sex for equal work on jobs in which their performance requires equal skill, effort, and responsibility and which are performed under

---

<sup>146</sup> LSA—R.S. 23:302(2).

<sup>147</sup> LSA—R.S. 23:312(A).

<sup>148</sup> LSA—R.S. 23:323. Note that "'[p]erson with a disability' means any person who has a physical or mental impairment which substantially limits one or more of the major life activities, or has a record of such an impairment, or is regarded as having such an impairment." LSA—R.S. 23:322(3).

similar working conditions. An employer paying wages in violation of this Section may not reduce the wages of any other employee in order to comply with this Section.”<sup>149</sup> Many of these provisions apply to employers’ behavior with respect to “individual[s]” or “person[s].” These terms are arguably broad enough to encompass independent contractors, but they are similar or identical to federal law’s use of the term “individual,” and federal law does not cover independent contractors.

### **Case Law:**

Courts have looked to federal law in interpreting the Louisiana antidiscrimination laws.<sup>150</sup> Accordingly, courts have interpreted Louisiana’s antidiscrimination laws not to apply to independent contractors.<sup>151</sup>

## Maine

### **Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The [Maine Human Rights Act](#) (MHRA) defines the following relevant terms**

- “‘Employee’ means an individual employed by an employer. “Employee” does not include any individual employed by that individual’s parents, spouse or child, except for purposes of disability-related discrimination, in which case the individual is considered to be an employee.”<sup>152</sup>
- “‘Employer’ includes any person in this State employing any number of employees, whatever the place of employment of the employees, and any person outside this State employing any number of employees whose usual place of employment is in this State; any person acting in the interest of any employer, directly or indirectly, such that the person’s actions are considered the actions of the employer for purposes of liability; and labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees. ‘Employer’ does not include a religious or fraternal corporation or association, not organized for private profit and in fact not conducted for private profit, with respect to employment of its members of the same

---

<sup>149</sup> LSA—R.S. 23:331(A).

<sup>150</sup> See, e.g., *Deloach v. Delchamps, Inc.*, 897 F.2d 815, 818 (5th Cir.1990) (interpreting Louisiana’s age discrimination law as previously codified at LSA—R.S. 23:971, *et seq.*, repealed by Acts 1997, No. 1409, consistent with the ADEA); *Greer v. Industries, Inc.*, 715 So.2d 1235, 1237–38 (La.App. 3 Cir.1998) (same); *McCain v. City of Lafayette*, 1999 WL 274863,\*3 (La.App. 3 Cir.) (same) (looking to federal jurisprudence to interpret the Louisiana law’s definition of “employer”).

<sup>151</sup> See *Barrera v. Aulds*, No. 14-1889, 2016 WL 3001126 (E.D. La., May 25, 2016) (holding that plaintiff, an independent contractor, “cannot bring any claims of discrimination or retaliation against Acme under the Louisiana Employment Discrimination Law or whistleblower statute because those statutes apply only to employers”); *Guillory v. State Farm Ins. Co.*, 662 So. 2d 104, 113 (La. App. 4 Cir. 9/28/95) (holding that the plaintiff was an independent contractor and therefore LSA—R.S. 51:2242 (renumbered, now at LSA—R.S. 23:301 *et seq.*) does not apply to his claims).

<sup>152</sup> 5 M.R.S.A. § 4553(3).

religion, sect or fraternity, except for purposes of disability-related discrimination, in which case the corporation or association is considered to be an employer.”<sup>153</sup>

- “‘Person’ includes one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, labor organizations, mutual companies, joint-stock companies and unincorporated organizations and includes the State and all agencies thereof.”<sup>154</sup>

### **Statutory Language:**

The MHRA states that “[t]he opportunity for an individual to secure employment without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin is recognized as and declared to be a civil right.”<sup>155</sup> The law further provides that “It is unlawful employment discrimination, in violation of this Act, except when based on a bona fide occupational qualification: **A.** For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of [protected class status],”<sup>156</sup> and that “It is unlawful employment discrimination in violation of this Act, except where based on a bona fide occupational qualification, for an employer, employment agency or labor organization to treat a pregnant person who is able to work in a different manner from other persons who are able to work.”<sup>157</sup> The provisions of this law that apply specifically to applicants should be understood as limited to applicants. The provisions that apply more broadly to “individual[s]” and “persons” are arguably broad enough to encompass independent contractors, but they are similar or identical to federal law’s use of the term “individual,” and federal law does not cover independent contractors.

### **Case Law:**

Maine’s highest court has noted that “[t]he Maine Human Rights Act is our state’s counterpart to the federal discrimination law, Title VII of the Civil Rights Act of 1964, and has been construed consistently with the analogous federal statute.”<sup>158</sup> Accordingly, the MHRA, like its federal counterpart, likely does not protect independent contractors. Consistent with this view, in *Gavrilovic v. Worldwide Language Res., Inc.*, the parties agreed that independent contractors were not covered by state law, and so the federal district court did not have to directly address the issue.<sup>159</sup> Nonetheless, the court did note that there was “no material difference between federal and state law on sexual harassment and retaliation claims . . . because the relevant provisions of the Maine Human Rights Act [] are similar to Title VII,” and used the same test to determine if an employee was misclassified as an independent contractor under federal should be

---

<sup>153</sup> 5 M.R.S.A. § 4553(4).

<sup>154</sup> 5 M.R.S.A. § 4553(7).

<sup>155</sup> 5 M.R.S.A. § 4571.

<sup>156</sup> 5 M.R.S.A. § 4572(1).

<sup>157</sup> 5 M.R.S.A. § 4572-A(2).

<sup>158</sup> *Maine Human Rights Com’n v. Maine Dept. of Defense and Veterans’ Services*, 627 A.2d 1005, 1007 (Me. 1993).

<sup>159</sup> 441 F. Supp. 2d 163, 176 (D. Me. 2006).



used for claims brought under MHRA.<sup>160</sup> A federal district court has also accepted the view that liability under the MHRA requires an employment relationship.<sup>161</sup>

## Maryland Independent Contractors Are Protected

**Explicitly protected in the statute? Yes.**

**Definitions: The [Maryland Fair Employment Practices Act](#) (MFEPA) defines the following relevant terms**

- “‘Employee’ means: (i) an individual employed by an employer; or (ii) **an individual working as an independent contractor for an employer.**
  - o (2) Unless the individual is subject to the State or local civil service laws, “employee” does not include: (i) an individual elected to public office; (ii) an appointee on the policy making level; or (iii) an immediate adviser with respect to the exercise of the constitutional or legal powers of an elected office.”<sup>162</sup>
- “‘Employer’ means: (i) a person that: 1. is engaged in an industry or business; and 2. A. has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; or B. if an employee has filed a complaint alleging harassment, has one or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; and (ii) an agent of a person described in item (i) of this paragraph. (2) “Employer” includes the State to the extent provided in this title. (3) Except for a labor organization, “employer” does not include a bona fide private membership club that is exempt from taxation under § 501(c) of the Internal Revenue Code.”<sup>163</sup>

### **Statutory Language:**

The statutory language of the MFEPA prohibits employers from discriminating against individuals in a range of scenarios.<sup>164</sup> Independent contractors are explicitly included in the definition of employees.

### **Case Law:**

The language extending coverage of MFEPA to independent contractors went into effect on October 1, 2019. There is no caselaw interpreting it yet. In general, the MFEPA is to be interpreted consistently with federal anti-discrimination law.<sup>165</sup> The coverage of independent contractors now in place will likely necessitate deviating from that background rule.

---

<sup>160</sup> *Id.* At 177.

<sup>161</sup> *Brown v. Bank of America N.A.*, 5 F.Supp.3d 121, 137 (D. Me. 2014) (finding that dismissal was inappropriate when there was an open question as to whether a third-party counted as plaintiff’s employer).

<sup>162</sup> MD State Govt § 20-601(c).

<sup>163</sup> MD State Govt § 20-601(d).

<sup>164</sup> MD State Govt § 20-606.

<sup>165</sup> *Schmidt v. Town of Cheverly, MD.*, 212 F.Supp.3d 573, 579 (D. Md. 2016).

Massachusetts  
**Independent Contractors Are Not protected**

**Explicitly protected in the statute? No.**

**Definitions: [Massachusetts' anti-discrimination law](#) defines the following relevant terms**

- “The term ‘person’ includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and the commonwealth and all political subdivisions, boards, and commissions thereof.”<sup>166</sup>
- “The term ‘employer’ does not include a club exclusively social, or a fraternal association or corporation, if such club, association or corporation is not organized for private profit, nor does it include any employer with fewer than six persons in his employ, but shall include an employer of domestic workers including those covered under section 190 of chapter 149, the commonwealth and all political subdivisions, boards, departments and commissions thereof. Notwithstanding the provisions of any general or special law nothing herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, and which limits membership, enrollment, admission, or participation to members of that religion, from giving preference in hiring or employment to members of the same religion or from taking any action with respect to matters of employment, discipline, faith, internal organization, or ecclesiastical rule, custom, or law which are calculated by such organization to promote the religious principles for which it is established or maintained.”<sup>167</sup>
- “The term ‘employee’ does not include any individual employed by his parents, spouse or child.”<sup>168</sup>
- The law does not include a positive definition of “employer” or “employee.”

**Statutory Language:**

Massachusetts’ anti-discrimination law provides that “It shall be an unlawful practice: 1. For an employer, by himself or his agent, because of the [protected class status] of any individual to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.”<sup>169</sup> The statute’s use of the broad term “individual” could potentially extend protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

The implementing regulations interpret the law to exclude independent contractors, stating that “the term “employee” does not include independent contractors.”<sup>170</sup>

---

<sup>166</sup> Mass. Gen. Laws Ann. ch. 151B, § 1(1) (West).

<sup>167</sup> Mass. Gen. Laws Ann. ch. 151B, § 1(5) (West).

<sup>168</sup> Mass. Gen. Laws Ann. ch. 151B, § 1(6) (West).

<sup>169</sup> Mass. Gen. Laws Ann. ch. 151B, § 4(1) (West).

<sup>170</sup> 804 MA ADC 3.01. Note that proposed Mass. Senate Bill 1079 was introduced to expand the definition of employee to include independent contractors.

### Case Law:

In construing Massachusetts' anti-discrimination law, courts "have looked to the considerable case law applying the analogous Federal statute for guidance."<sup>171</sup> This suggests that Massachusetts' anti-discrimination law, like its federal counterpart, should be interpreted not to protect independent contractors. The caselaw available on this specific question supports that interpretation. In *Comey v. Hill*, Massachusetts' highest court held that "[a]lthough G.L. c. 151B, affects a 'broad array of employment practices' and extensively prohibits discrimination against certain protected classes, we do not read the statute as intending to broaden the definition of employee to include an independent contractor."<sup>172</sup> This statutory interpretation was cited by the 1<sup>st</sup> Circuit in *Dykes v. DePuy, Inc.*<sup>173</sup>

## Michigan

### Independent Contractors Are Not protected

**Explicitly protected in the statute? No.**

**Definitions: Michigan's anti-discrimination law, the [Elliot-Larsen Civil Rights Act \(ELCRA\)](#) defines the following relevant terms**

- "'Employer' means a person who has 1 or more employees, and includes an agent of that person."<sup>174</sup>
- The law does not include a definition of "employee," "individual," "person," "independent contractor," or other similar language.

### Statutory Language:

ELCRA does not specifically mention independent contractors, but some of its protections extend to employers' treatment of "individual[s];" namely that "(1) [a]n employer shall not do any of the following: (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of [membership in a protected class]."<sup>175</sup> The statute's use of the broad term "individual" could potentially extend protections to independent contractors, but it mirrors the federal law's use of the same term, and the federal law does not cover independent contractors.

### Case Law:

In interpreting ELCRA, "although not bound by federal precedent, courts in the state of Michigan often look to federal case law . . . particularly when the language is substantially identical."<sup>176</sup> This suggests that ELCRA, like federal law, should be interpreted not to protect independent contractors. Consistent with that interpretation, the 6<sup>th</sup> Circuit held that ELCRA "did not cover independent contractors."<sup>177</sup> This interpretation is consistent with state court decisions

---

<sup>171</sup> *Tate v. Dep't of Mental Health*, 419 Mass. 356, 361 (1995).

<sup>172</sup> *Comey v. Hill*, 438 N.E.2d 811, 814 (1982).

<sup>173</sup> 140 F.3d 31, 37 (1st Cir. 1998).

<sup>174</sup> Mich. Comp. Laws Ann. § 37.2201(a) (West).

<sup>175</sup> Mich. Comp. Laws Ann. § 37.2202 (West).

<sup>176</sup> *Marotta v. Ford Motor Co.*, 119 F. Supp.3d 676, 687-88 (E.D. Mich. 2015) (collecting cases).

<sup>177</sup> *Falls v. Sporting News Pub. Co.*, 834 F.2d. 611 (6<sup>th</sup> Cir. 1987).

on the issue. In *Badiee v. Brighton Area Sch.*, when the Michigan Appellate Court held “an independent contractor is not an employee and may not bring a claim against an employer under § 202.”<sup>178</sup>

## Minnesota Independent Contractors Are Protected

**Explicitly protected in the statute? Generally, no; yes for commission salespeople**

**Definitions: The [Minnesota Human Rights Act](#) (MHRA) defines the following relevant terms**

- “‘Employee’ means an individual who is employed by an employer and who resides or works in this state. Employee includes a commission salesperson, as defined in section 181.145, who resides or works in this state.”<sup>179</sup>
  - o Section 181.145 states that “‘commission salesperson’ means a person who is paid on the basis of commissions for sales and who is not covered by [sections 181.13](#) and 181.14 because the person is an independent contractor.”<sup>180</sup>
- “‘Employer’ means a person who has one or more employees.”<sup>181</sup>
- “‘Person’ includes partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, receiver, and the state and its departments, agencies, and political subdivisions.”<sup>182</sup>

### **Statutory Language:**

Some of the MHRA’s protections extend to “employer[‘s]” treatment of “person[s]”, namely that “[e]xcept when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, because of [protected class status] to: (1) refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or [. . .] (3) discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.”<sup>183</sup>

Additionally, § 363A.17 provides that it is “an unfair discriminatory practice for a person engaged in a trade or business or in the provision of a service: (1) to refuse to do business with or provide a service to a woman based on her use of her current or former surname; or (2) to impose, as a condition of doing business with or providing a service to a woman, that a woman use her current surname rather than a former surname; or (3) to intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person's race, national origin, color, sex, sexual

---

<sup>178</sup> *Badiee v. Brighton Area Sch.*, 265 Mich. App. 343, 360–61(2005); *see also Kamalnath v. Mercy Memorial Hosp. Corp.*, 487 N.W.2d 499, 505 (Mich. App. 1992) (“[P]laintiff's employment discrimination claim [under ELCRA] fails because plaintiff was not defendant's employee. The trial court properly found that plaintiff was an independent contractor, not an employee.”).

<sup>179</sup> Minn. Stat. Ann. § 363A.03(Subd. 14) (West).

<sup>180</sup> Minn. Stat. Ann. § 181.145 (West).

<sup>181</sup> Minn. Stat. Ann. § 363A.03(Subd. 15) (West).

<sup>182</sup> Minn. Stat. Ann. § 363A.03(Subd. 30) (West).

<sup>183</sup> Minn. Stat. Ann. § 363A.08.

orientation, or disability, unless the alleged refusal or discrimination is because of a legitimate business purpose.”<sup>184</sup>

### Case Law:

The MHRA is coextensive with Title VII, which suggests that the MHRA should not extend protections to independent contractors.<sup>185</sup> Consistent with that interpretation, the MHRA generally has been interpreted not to protect independent contractors other than commission salespeople.<sup>186</sup>

However, § 363A.17, which prohibits persons from discriminating based on protected class status in terms of who they will do business with, *has* been held to protect independent contractors. This has been interpreted to provide protections to non-employees, including independent contractors.<sup>187</sup>

## Mississippi Independent Contractors Are Not Protected

**Explicitly protected in the statute? No (explicitly excluded).**

**Definitions: Mississippi’s [Personnel Administration System Law](#) defines the following relevant terms**

- “‘State service’ means all employees of state departments, agencies and institutions as defined herein, except those officers and employees excluded by this chapter.”<sup>188</sup>
- “‘Nonstate service’ means the following officers and employees excluded from the state service by this chapter. The following are excluded from the state service: . . . (x) Contract personnel; provided that any agency which employs state service employees

---

<sup>184</sup> Note that this provision was held to be unconstitutional as applied to wedding videographers who objected to the state’s interpretation of the law as requiring them to convey positive messages about same-sex marriage if they conveyed positive messages about opposite-sex marriages. *Telescope Media Group v. Lucero*, 936 F.3d 740 (8th Cir. 2019). The court in that case noted that “our holding leaves intact other applications of the MHRA that do not regulate speech based on its content or otherwise compel an individual to speak.” *Id.* at 758.

<sup>185</sup> *Wages v. Stuart Management Corp.*, 21 F.Supp.3d 985, 993 (D. Minn. 2014).

<sup>186</sup> See, e.g., *Wilson v. CFMOTO Powersports, Inc.*, No. 15–3192 (JRT/JJK), 2016 WL 912182 at \*7 (D. Minn. 2016) (“Wilson must show that he is an employee for purposes of his § 363A.08 claim.”); *Bubble Pony, Inc. v. Facepunch Studios Ltd.*, No. 15-601(DSD/FLN), 2015 WL 8082708 at \*4 (D. Minn. 2015) (holding that since plaintiff conceded that he was an independent contractor, his § 363A claim fails as a matter of law); *Tong v. Am. Pub. Media Grp.*, No. A05-432, 2005 WL 3527273, at \*6 (Minn. Ct. App. Dec. 27, 2005) (holding that plaintiff could not bring a claim against her employer under the MHRA when they refused to hire her as an independent contractor because independent contractors are not protected under the MHRA); *Hanson v. Friends of Minn. Sinfonia*, 181 F.Supp.2d 1003, 1006 (D. Minn.2002) (“[T]he Minnesota Human Rights Act do[es] not apply to non-employees, therefore independent contractors are excluded from its coverage.”), *aff’d*, 322 F.3d 486 (8th Cir.2003); see also *Midwest Sports Marketing, Inc. v. Hillerich & Bradsby of Canada, Ltd.*, 552 N.W.2d 254, 261 (Minn. Ct. App. 1996) (implying that, to be covered by § 363A, one must be either an “employee” or a “commission salesperson,” exclusively).

<sup>187</sup> See *Wilson v. CFMOTO Powersports, Inc.*, No. 15–3192 (JRT/JJK), 2016 WL 912182 at \*7 (D. Minn. 2016) (“The Court first notes that [plaintiff] does not need to show that he is an “employee” for the purposes of his § 363A.17(3) claim.”); *Boone v. PCL Const. Servs., Inc.*, No. 05-24, 2005 WL 1843354, at \*1-4 (D. Minn. Aug. 2, 2005) (allowing an independent contractor’s claim under § 363A.17 to go forward (the independent contractor did not bring other MHRA claims)).

<sup>188</sup> MS ST § 25-9-107(b).

may enter into contracts for personal and professional services only if such contracts are approved in compliance with the rules and regulations promulgated by the State Personal Service Contract Review Board.”<sup>189</sup>

### **Statutory Language:**

Mississippi has no general employment discrimination law that applies to private employers. The state does have laws prohibiting discrimination in public employment. The state Personnel Administration System law provides that “[i]t is the intent of the Legislature that no person seeking employment in state service or employed in state service shall be discriminated against on the basis of race, color, religion, sex, national origin, age or handicap.”<sup>190</sup> The Personnel Administration System law also provides that “[t]he State Personnel Board herein established shall administer a state personnel system in accordance with the following principle. . . (e) To assure fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, national origin, sex, religious creed, age or disability.”<sup>191</sup>

Since these laws protect only those in, or seeking, employment in state service, and contract personnel are defined as in “nonstate service,” independent contractors<sup>192</sup> appear to be explicitly excluded from the protections of these laws.

### **Case Law:**

No case law assessing independent contractor coverage under Mississippi’s Personnel Administration System law, or assessing whether the Personnel Administration System law is analogous to federal law, was found.

## Missouri

### **Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The Missouri Human Rights Act (MHRA) defines the following relevant terms**

- **“Employer”**, a person engaged in an industry affecting commerce who has six or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and shall include the state, or any political or civil subdivision thereof, or any person employing six or more persons within the state but does not include corporations and associations owned or operated by religious or sectarian organizations. ‘Employer’ shall not include: (a) The United States; (b) A corporation wholly owned by the government of the United States; (c) An individual employed by an employer; (d) An Indian tribe; (e) Any department or agency of the District of Columbia subject by statute to procedures of the competitive service, as defined in 5 U.S.C. Section

---

<sup>189</sup> MS ST § 25-9-107(c). Note that nothing in the rules and regulations of the State Personal Service Contract Review Board appears to prohibit discrimination against contractors. See <https://www.dfa.ms.gov/media/6559/4-6-18-final-opscr-rules-sos-apa.pdf>.

<sup>190</sup> MS ST § 25-9-149 (internal citations omitted).

<sup>191</sup> MS ST § 25-9-103.

<sup>192</sup> Independent contractors are contract personnel. See MS ST § 25-9-120 (“Contract personnel, *whether classified as contract workers or independent contractors* shall not be deemed state service or nonstate service employees.”(emphasis added)).

2101; or (f) A bona fide private membership club, other than a labor organization, that is exempt from taxation under 26 U.S.C. Section 501(c).”<sup>193</sup>

- “Person” includes one or more individuals, corporations, partnerships, associations, organizations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized groups of persons.”<sup>194</sup>

### **Statutory Language:**

Some of the MHRA’s protections extend to “employer[‘s]” treatment of “individual[s]”, namely that “It shall be an unlawful employment practice: (1) For an employer, because of the race, color, religion, national origin, sex, ancestry, age or disability of any individual: (a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, sex, ancestry, age or disability.”<sup>195</sup> The statute’s use of the broad term “individual” could potentially extend protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

The MHRA and Title VII are “coextensive but not identical acts,” and “[t]hese statutes create different causes of action. Missouri Courts have adopted federal Title VII case law when interpreting analogous discrimination statutes in the Missouri Human Rights Act. However, the MHRA is not merely a reiteration of Title VII. The Act is in some ways broader than Title VII, and in other ways is more restrictive. If the wording in the MHRA is clear and unambiguous, then federal case law which is contrary to the plain meaning of the MHRA is not binding.”<sup>196</sup> Missouri courts have applied a multi-factor test in determining if a claimant is an employee or an independent contractor under the Missouri Human Rights Act.<sup>197</sup> Implicit in applying this multi-factor test is the assumption that the MHRA does not apply to independent contractors. This exclusion was made explicit in *State ex rel. Sir v. Gateway Taxi Mgmt. Co.*, where the court held that “[t]he MHRA . . . does not apply to those seeking work as independent contractors.”<sup>198</sup>

## **Montana**

### **Independent Contractors Are Not Protected Where A Certificate is Required**

**Explicitly protected in the statute? No (explicitly excluded where a certificate is required).**

---

<sup>193</sup> MO ST 213.010(8) (Vernon’s).

<sup>194</sup> MO ST 213.010(15) (Vernon’s).

<sup>195</sup> MO ST 213.013(1) (Vernon’s).

<sup>196</sup> *Brady v. Curators of Mo.*, 213 S.W.3d 101, 112-13 (Mo.App. 2006)

<sup>197</sup> *Howard v. City of Kansas City*, 332 S.W.3d 772, 784 (Mo. 2011) (applying this multi-factor test to determine if the judge-claimant was an employee of the state or an independent contractor).

<sup>198</sup> 400 S.W.3d 478, 484 (Mo. Ct. App. 2013) (holding that taxi drivers are employees and not independent contractors when they bring claims of employment discrimination under the MHRA and therefore are not covered by the law).

**Definitions:** [Montana’s law prohibiting discrimination in employment](#) defines the following relevant terms

- “‘Employee’ means an individual employed by an employer. (b) The term does not include an individual providing services for an employer if the individual has an independent contractor exemption certificate issued under 39-71-417 and is providing services under the terms of that certificate.”<sup>199</sup>
  - o 39-71-417 requires that “a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.”
- “‘Employer’ means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.”<sup>200</sup>
- “‘Person’ means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.”<sup>201</sup>

### **Statutory Language:**

Montana’s law prohibiting discrimination in employment provides that “It is an unlawful discriminatory practice for: (a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of [membership in a protected class].”<sup>202</sup> The use of the term “person,” is similar to federal law’s use of the term “individual.”

### **Case Law:**

Montana looks to federal interpretations (both caselaw and agency decisions) of analogous federal law in interpreting the state anti-discrimination law.<sup>203</sup> No case law was found on the question of whether independent contractors who do not have independent contractor exemption certificates are covered by the law.

## Nebraska

### **Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

---

<sup>199</sup> Mont. Code Ann. § 49-2-101(10) (West).

<sup>200</sup> Mont. Code Ann. § 49-2-101(11) (West).

<sup>201</sup> Mont. Code Ann. § 49-2-101(18) (West).

<sup>202</sup> Mont. Code Ann. § 49-2-303(1) (West).

<sup>203</sup> See, e.g., *Burlington Northern Santa Fe Railway Co. v. Felt*, 663 Fed. Appx. 504, 507 (9th Cir. 2016); *BNSF Ry. Co. v. Felt*, 365 Mont. 359, 366 (2012); *Hafner v. Conoco, Inc.*, 268 Mont. 396, 950-51 (1994);



**Definitions: Nebraska’s [Fair Employment Practices Act](#) (NEPA) defines the following relevant terms**

- “Person shall include one or more individuals, labor unions, partnerships, limited liability companies, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.”<sup>204</sup>
- “Employer shall mean a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such a person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees and shall include the State of Nebraska, governmental agencies, and political subdivisions, but such term shall not include (a) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe or (b) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501(c) of the Internal Revenue Code.”<sup>205</sup>
- “Employee shall mean an individual employed by an employer.”<sup>206</sup>

**Statutory Language:**

NEPA provides that “It shall be an unlawful employment practice for an employer: (1) To fail or refuse to hire, to discharge, or to harass any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, disability, marital status, or national origin; or (2) To limit, advertise, solicit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee, because of such individual's race, color, religion, sex, disability, marital status, or national origin.”<sup>207</sup> The statute’s use of the broad term “individual” could potentially extend protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

**Case Law:**

The Nebraska Supreme Court has held that “NFEPA is patterned after federal Title VII and that it is appropriate to look to federal court decisions construing Title VII for guidance with respect to the NFEPA.”<sup>208</sup> This suggests that, as under federal law, independent contractors are excluded from NFEPA’s protections. Consistent with that interpretation, in a 1998 Opinion written by Nebraska’s Attorney General, independent contractors are excluded from the protections of the

---

<sup>204</sup> NE ST § 48-1102(1).

<sup>205</sup> NE ST § 48-1102(2).

<sup>206</sup> NE ST § 48-1102(7).

<sup>207</sup> NE ST § 48-1104.

<sup>208</sup> *Knapp v. Ruser*, 901 N.W.2d 31, 43 (Neb. 2017).

Nebraska Fair Employment Practices Act.<sup>209</sup> This understanding is consistent with available court decisions.<sup>210</sup>

## Nevada

### Independent Contractors Are Likely Not Protected

**Explicitly protected in the statute? No.**

**Definitions:** Nevada's antidiscrimination law defines the following relevant terms

- "'Employer' means any person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, but does not include: (a) The United States or any corporation wholly owned by the United States. (b) Any Indian tribe. (c) Any private membership club exempt from taxation pursuant to 26 U.S.C. § 501(c)."<sup>211</sup>
- "'Person' includes the State of Nevada and any of its political subdivisions."<sup>212</sup>
- The law does not include a positive definition of "person," or a definition of "employee," "individual," "independent contractor," or other similar terms.

#### Statutory Language:

Nevada's antidiscrimination law makes it unlawful for "an employer: (a) To fail or refuse to hire or to discharge *any person*, or otherwise to discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment, because of [membership in a protected class]."<sup>213</sup> The use of the term "person," is similar to federal law's use of the term "individual."

#### Case Law:

Nevada courts look to federal case law to determine how its anti-discrimination statute should be applied.<sup>214</sup> This suggests that § 613.330 will not extend to independent contractors. What is more, while there have not been any cases directly addressing the application of § 613.330 to independent contractors, the law has been held by a federal district court to apply only to "employers," which further suggests that the law will not extend to independent contractors.<sup>215</sup>

## New Hampshire

### Independent Contractors Are Likely Not Protected

---

<sup>209</sup> Neb. Op. Att'y Gen. No. 89054 (July 17, 1989); *see also* Neb. Op. Att'y Gen. No. 2001 WL 276853 (Mar. 9, 2001) (reiterating the 1989 letter).

<sup>210</sup> *Torre v. Northrop Grumman Systems Corp.*, No. 8:13CV319, 2016 WL 6581858 at \*5 (D. Neb. 2016) (interpreting NFEPA consistently with Title VII on this question); *Hill v. Emergency Dental, Inc.*, No. 8:04CV613, 2006 WL 1888657 at \*6 n.3 (D. Neb. 2006) (same).

<sup>211</sup> NV ST § 613.310(2).

<sup>212</sup> NV ST § 613.310(6).

<sup>213</sup> NV ST § 613.330(1) (emphasis added).

<sup>214</sup> *Kennedy v. UMC University Medical Center*, 203 F.Supp.3d 1100, 1106 (2016) (interpreting a Title VII and a § 613.330 together using a Title VII framework).

<sup>215</sup> *Nissenbaum v. NNH Cal Neva Servs. Co., LLC*, 983 F. Supp. 2d 1234, 1245 (D. Nev. 2013).

## Explicitly protected in the statute?

**Definitions:** [New Hampshire's law prohibiting discrimination in the workplace](#) defines the following relevant terms

- “‘Employee’ does not include any individual employed by a parent, spouse or child, or any individual in the domestic service of any person.”<sup>216</sup>
- “‘Employer’ does not include any employer with fewer than 6 persons in its employ, an exclusively social club, or a fraternal or religious association or corporation, if such club, association, or corporation is not organized for private profit, as evidenced by declarations filed with the Internal Revenue Service or for those not recognized by the Internal Revenue Service, those organizations recognized by the New Hampshire secretary of state. Entities claiming to be religious organizations, including religious educational entities, may file a good faith declaration with the human rights commission that the organization is an organization affiliated with, or its operations are in accordance with the doctrine and teaching of a recognized and organized religion to provide evidence of their religious status. ‘Employer’ shall include the state and all political subdivisions, boards, departments, and commissions thereof.”<sup>217</sup>
- “‘Person’ includes one or more individuals, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, trustees in bankruptcy, receivers, and the state and all political subdivisions, boards, and commissions thereof.”<sup>218</sup>

### Statutory Language:

New Hampshire’s law prohibiting discrimination in the workplace states that it is unlawful “For an employer, because of the age, sex, gender identity, race, color, marital status, physical or mental disability, religious creed, or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.”<sup>219</sup> The statute’s use of the broad term “individual” could potentially extend protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### Case Law:

New Hampshire’s antidiscrimination law is “identical in all relevant respects” to Title VII, and claims under the state and federal law may be analyzed together.<sup>220</sup> New Hampshire courts look to analogous federal law to interpret state anti-discrimination law.<sup>221</sup> This suggests

---

<sup>216</sup> N.H. Rev. Stat. Ann. § 354-A:2.

<sup>217</sup> N.H. Rev. Stat. Ann. § 354-A:2.

<sup>218</sup> N.H. Rev. Stat. Ann. § 354-A:2.

<sup>219</sup> N.H. Rev. Stat. Ann. § 354-A:7.

<sup>220</sup> *Slater v. Town of Exeter*, No. 07-cv-407-JL, 2009 WL 737112 at \*4 (D.N.H. 2009).

<sup>221</sup> See *McCusker v. Lakeview Rehabilitation Center, Inc.*, No. Civ. 03-243-JD, 2003 WL 22143245 at \*2 n.3 (D.N.H. 2003).

that independent contractors are not covered under the New Hampshire law, just as they are not covered under federal law. New Hampshire has no case law directly on point.

## New Jersey Independent Contractors Have Some Protections

**Explicitly protected in the statute? No.**

**Definitions:** New Jersey’s [Law Against Discrimination](#) (LAD) defines the following relevant terms

- “‘Person’ includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.”<sup>222</sup>
- “‘Employer’ includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of P.L.1945, c. 169 (C.10:5-1 et seq.), and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards or bodies.”<sup>223</sup>
- “‘Employee’ does not include any individual employed in the domestic service of any person.”<sup>224</sup>
  - o The LAD does not include a positive definition of the term “employee.”

### **Statutory Language:**

The LAD provides that “It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination: a. For an employer, because of the [protected class status] of any individual . . . to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment . . . [and] (l) For any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of the [protected class status].”<sup>225</sup> The statute’s use of the broad term “individual” could potentially extend protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

“It is well settled that state and federal courts interpreting the NJLAD look to federal law for guidance, specifically Title VII of the Civil Rights Act and the Age Discrimination in Employment Act of 1967 (“ADEA”),” and, accordingly, independent contractors should be understood not to be protected by the provisions of the LAD which are analogous to federal law

---

<sup>222</sup> *N.J.S.A.* 10:5-5(a).

<sup>223</sup> *N.J.S.A.* 10:5-5(e).

<sup>224</sup> *N.J.S.A.* 10:5-5(f).

<sup>225</sup> *N.J.S.A.* 10:5-12.

(namely, 12(a)).<sup>226</sup> Accordingly, 12(a), which prohibits employers from discriminating against employees, was held to not cover independent contractors in *Pukowsky v. Caruso*.<sup>227</sup>

Section 12(l) of LAD, which prohibits any person from discriminating against another person in doing business or making contracts, has been interpreted by the Appellate Court to protect independent contractors in certain circumstances, while the workplace antidiscrimination protections of 12(a) have been held not to apply to independent contractors. In *J.T.'s Tire Serv., Inc. v. United Rentals N. Am., Inc.*, the New Jersey Appellate Court held 12(l) protects independent contractors. The court wrote, “*N.J.S.A. 10:5–12l* is directed at refusals to do business with persons because of a protected characteristic.<sup>1</sup> In simpler terms *N.J.S.A. 10:5–12a* deals with workplace discrimination, *N.J.S.A. 10:5–12l* addresses refusal to deal.”<sup>228</sup>

12(l) has been held not to apply to discrimination during the ongoing execution of a contract.<sup>229</sup> Accordingly, it does not provide independent contractors with protection from hostile work environment sexual harassment.<sup>230</sup> That said, it does prohibit *quid pro quo* sexual harassment, since that constitutes a refusal to contract with or continue to do business with someone unless they submit to sexual demands.<sup>231</sup>

12(l) extends to the refusal to continue contracting with an independent contractor, including when that contract has been terminated because of *allegations* of a hostile work environment.<sup>232</sup> This statutory interpretation was recently relied on in *Seagull v. Chandler*.<sup>233</sup>

## New Mexico

### Independent Contractors Are Not Protected

**Explicitly protected in the statute? No.**

**Definitions: The [New Mexico Human Rights Act](#) (NMHRA) defines the following relevant terms**

---

<sup>226</sup> *Smith v. M&M Management Co.*, No. 3:17-cv-7978-BRM-LHG, 2019 WL 1397401 at \*6 (D.N.J. 2019).

<sup>227</sup> 312 N.J. Super. 171, 178 (App. Div. 1998) (“We choose to follow the federal precedent pertaining to anti-discrimination statutes, and find that independent contractors are not to be considered ‘employees’ within the meaning of the LAD, and are therefore not entitled to avail themselves of its protections.”).

<sup>228</sup> *J.T.'s Tire Serv., Inc. v. United Rentals N. Am., Inc.*, 411 N.J. Super. 236, 242 (App. Div. 2010). *certif. denied*, 201 N.J. 441 (2010).

<sup>229</sup> *See 7 Eleven Inc. v. Sodhi*, 706 F. App’x 777 (3d Cir. 2017).

<sup>230</sup> *Axakowsky v. NFL Productions, LLC*, Civil No. 17-4730, 2018 WL 5961923 at \*7-8 (D.N.J. 2018) (finding that plaintiff, as an independent contractor, could not bring a NJLAD claim under the statute’s “creation and termination of contracts” subsection for hostile environment sexual harassment because causes of action under that section are limited to cases of *quid pro quo* sexual harassment).

<sup>231</sup> *J.T.'s Tire Serv., Inc. v. United Rentals N. Am., Inc.*, 411 N.J. Super. 236, 241 (App. Div. 2010) (finding that *quid pro quo* sexual harassment is actionable under the NJLAD’s section prohibiting discriminatory termination of contracts). *certif. denied*, 201 N.J. 441 (2010); *Plaso v. IJG, LLC*, 553 Fed. Appx. 199, 206-07 (3d Cir. 2014).

<sup>232</sup> *Rowan v. Hartford Plaza Ltd.*, No. A-0107-11T3, 2013 WL 1350095, at \*10 (N.J. Super. Ct. App. Div. Apr. 5, 2013) (note again, however, the LAD does not provide independent contractors with protection from hostile work environment sexual harassment itself).

<sup>233</sup> No. A-5297-16T3, 2019 WL 1960029, at \*5 (N.J. Super. Ct. App. Div. May 2, 2019) (holding that independent contractors may “legitimately advance a claim” of age discrimination under this statute).

- “[P]erson’ means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions.”<sup>234</sup>
- “[E]mployer’ means any person employing four or more persons and any person acting for an employer.”<sup>235</sup>
- “[E]mployee’ means any person in the employ of an employer or an applicant for employment.”<sup>236</sup>

**Statutory Language:**

Some of NMHRA’s protections extend to employers’ treatment of “any person;” specifically, “It is an unlawful discriminatory practice for: A. an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of [membership in a protected class].”<sup>237</sup> The use of the term “person,” while similar to federal law’s use of the term “individual,” could be interpreted as broad enough to extend protections to both employees and independent contractors.

**Case Law:**

In general, “although New Mexico Courts look to federal decisions for guidance in interpreting the NMHRA, New Mexico courts ultimately are required to defer to the language enacted by the New Mexico Legislature.”<sup>238</sup> Thus, where the language of NMHRA is not similar to the language of analogous federal statutes, federal interpretation is not relevant. NMHRA’s language is somewhat similar to Title VII, and it is still likely that federal guidance would be applicable.

A federal court has held that NMHRA does not apply to independent contractors.<sup>239</sup> No other cases addressing this issue were found.

New York  
**Independent Contractors Are Protected**

**Explicitly protected in the statute? Yes.**

---

<sup>234</sup> NM ST § 28-1-2(A).

<sup>235</sup> NM ST § 28-1-2(B).

<sup>236</sup> NM ST § 28-1-2(E).

<sup>237</sup> NM ST § 28-1-7.

<sup>238</sup> *Hernandez v. City of Sunland Park, N.M.*, No. 12-CV-00176 MCA/WPL, 2013 WL 12329160 at \*5 (D.N.M. 2013).

<sup>239</sup> *Adams v. C3 Pipeline Constr. Inc.*, No. CV 18-925 KG/GBW, 2019 WL 2232224, at \*9 (D.N.M. May 23, 2019). This case dealt with a triangulated work relationship, similar to a temp worker, where the person hired by the independent contractor was not able to sue the business she directly worked for. *Adams v. C3 Pipeline Constr. Inc.*, No. CV 18-925 KG/GBW, 2019 WL 2232224, at \*9 (D.N.M. May 23, 2019). The court concluded that no NMHRA liability could attach both because the plaintiff was an independent contractor and because the defendant did not employ the plaintiff (the latter assertion, on its own, could solely indicate that an employer is not liable to the employees of independent contractors). *Id.*

**Definitions: The [New York State Human Rights Law](#) (NYSHRL) defines the following relevant terms**

- “The term ‘person’ includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.”<sup>240</sup>
- “The term ‘employer’ shall include all employers within the state.”<sup>241</sup>
- “The term ‘employee’ in this article does not include any individual employed by his or her parents, spouse or child, or in the domestic service of any person except as set forth in section two hundred ninety-six-b of this title.”<sup>242</sup>
- The section of the law dealing with non-employees specifies that it applies to “a non-employee who is a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace, with respect to an unlawful discriminatory practice, when the employer, its agents or supervisors knew or should have known that such non-employee was subjected to an unlawful discriminatory practice in the employer's workplace, and the employer failed to take immediate and appropriate corrective action. In reviewing such cases involving non-employees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of the person who engaged in the unlawful discriminatory practice shall be considered.”<sup>243</sup>
- 

**Statutory Language:**

In 2018, the New York State Human Rights Law was updated to include certain non-employees in the law’s sexual harassment protections. The law was expanded in 2019; the definition of “unlawful discriminatory practice” under the law now prohibits “an employer to permit unlawful discrimination against [certain] non-employees in its workplace,” when the “employer, its agents or supervisors knew or should have known that such non-employee was subjected to an unlawful discriminatory practice in the employer’s workplace, and the employer failed to take immediate and appropriate corrective action.”<sup>244</sup> This provision went into effect on October 11, 2019.

**Case Law:**

No cases have yet interpreted this new amendment.

**New York City  
Independent Contractors Are Protected**

---

<sup>240</sup> N.Y. Exec. L. § 292(1).

<sup>241</sup> N.Y. Exec. L. § 292(5) (effective February 8, 2020). Until February 8, 2020, the definition of “employer” is as follows: “The term “employer” does not include any employer with fewer than four persons in his or her employ except as set forth in section two hundred ninety-six-b of this article, provided, however, that in the case of an action for discrimination based on sex pursuant to subdivision one of section two hundred ninety-six of this article, with respect to sexual harassment only, the term “employer” shall include all employers within the state.” *Id.*

<sup>242</sup> N.Y. Exec. L. § 292(6).

<sup>243</sup> N.Y. Exec. L. § 296-d (2019).

<sup>244</sup> N.Y. Exec. L. § 296-d (2019).

## Explicitly protected in the statute? Yes.

### Definitions: The [New York City Human Rights Law](#) defines the following relevant terms

- “Employer. For purposes of subdivisions 1, 2, 3, 11-a, and 22, subparagraph 1 of paragraph a of subdivision 21, paragraph e of subdivision 21 and subdivision 23 of section 8-107, the term "employer" does not include any employer that has fewer than four persons in the employ of such employer at all times during the period beginning twelve months before the start of an unlawful discriminatory practice and continuing through the end of such unlawful discriminatory practice, provided however, that in an action for unlawful discriminatory practice based on a claim of gender-based harassment pursuant to subdivision one of section 8-107, the term ‘employer’ shall include any employer, including those with fewer than four persons in their employ. For purposes of this definition, (i) natural persons shall be counted as persons in the employ of such employer and (ii) the employer’s parent, spouse, domestic partner or child if employed by the employer are included as in the employ of such employer.”<sup>245</sup>
- “Person. The term ‘person’ includes one or more natural persons, proprietorships, partnerships, associations, group associations, organizations, governmental bodies or agencies, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.”<sup>246</sup>

### Statutory Language:

Intro No. 136-A, which was passed by the City Council and enacted on October 13, 2019, specifies that “[t]he protections of [the NYCHRL] relating to employees apply to interns, freelancers and independent contractors.”<sup>247</sup>

### Case Law:

There is no caselaw interpreting the newly-passed protections for independent contractors. While there were some protections for independent contractors before passage of Intro No. 136-A, the language in Intro No. 136-A is arguably broader, and might be interpreted to cover all independent contractors, including those who are or are employed through corporations or are themselves employers.

Before Intro No. 136-A was enacted, the NYCHRL included “natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers shall be counted as persons in the employ of such employer” in the definition of “employer,” for purposes of the employee threshold determination. The City Commission on Human Rights regarded the previous law as extending protections to independent contractors. Under the prior law, both the Commission’s and courts’ prior interpretation of the law limited independent contractor coverage to those independent contractors who are “natural persons” who “carry out work in furtherance of an employer’s business enterprise and who are not themselves employers.”<sup>248</sup>

---

<sup>245</sup> Int. No. 136-A.

<sup>246</sup> N.Y.C. Admin. Code 8-102 (2019).

<sup>247</sup> Int. No. 136-A.

<sup>248</sup> See, e.g., N.Y.C. Commission on Human Rights & the Sexuality and Gender law Clinic at Columbia School of Law, *Combatting Sexual Harassment in the Workplace: Trends and Recommendations Based on 2017 Public*



North Carolina  
**Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions:** [North Carolina's Equal Employment Practices Act \(NCEEPA\)](#) does not define any relevant terms

**Statutory Language:**

NCEEPA provides that “[i]t is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.”<sup>249</sup> The statute does not create a private right of action, but is applicable “to common law wrongful discharge claims or in connection with other specific statutory remedies.”<sup>250</sup> The use of the term “persons,” is similar to federal law’s use of the term “individual.”

**Case Law:**

The North Carolina Supreme Court has held that state courts “look to federal decisions [in employment discrimination cases] for guidance in establishing evidentiary standards and principles of law to be applied in discrimination cases.”<sup>251</sup> A federal court has held that independent contractors are not protected under NCEEPA. In *Chamberlain v. Securian Fin. Grp., Inc.*, the district court held that the plaintiff’s state law claims rise and fall with his federal claims, and that therefore independent contractors were not protected.<sup>252</sup>

North Dakota  
**Unclear Whether Independent Contractors Are Protected**

---

*Hearing Testimony* (2017), [https://www1.nyc.gov/assets/cchr/downloads/pdf/SexHarass\\_Report.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/SexHarass_Report.pdf); *O’Neill v. Atl. Sec. Guards, Inc.*, 250 A.D.2d 493, 494 (1st Dep’t 1998) (“[S]ince dispositive documentary evidence showed [the plaintiff] to have been an independent contractor and to have acted as such *through a corporation*, and an independent contractor can only be an ‘employee’ for purposes of the City employment discrimination ban if a natural person.”); *Banks v. Correctional Services Corp.*, 475 F.Supp.2d 189 (E.D.N.Y. 2007); ([I]ndependent contractors fall within the protections of NYCHRL if they are ‘natural persons’ who ‘carry out work in furtherance of an employer’s business enterprise.’”).

<sup>249</sup> N.C. Gen.Stat. § 143–422.2.

<sup>250</sup> *McLean v. Patten Communities, Inc.*, 332 F.3d 714, 720 (4th Cir. 2003).

<sup>251</sup> *N.C. Dept. of Correction v. Gibson*, 308 N.C. 131, 136, 301 S.E.2d 78, 82 (1983).

<sup>252</sup> 180 F. Supp. 3d 381, 405 (W.D.N.C. 2016); *see also, e.g., Alexander v. Carolina Fire Control, Inc.*, 112 F.Supp.3d 340, 350 (M.D.N.C. 2015) (“Because the North Carolina Supreme Court has explicitly adopted the Title VII evidentiary standards in evaluating a state wrongful discharge claim under N.C. Gen.Stat. § 143–422.2, the viability of Plaintiff’s North Carolina wrongful discharge claim can be considered simultaneously with her Title VII claim.” (internal quotations omitted)).

**Explicitly protected in the statute? No.**

**Definitions: The [North Dakota Human Rights Act](#) (NDHRA) defines the following relevant terms**

- “‘Employee’ means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. “Employee” does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. Provided, ‘employee’ does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.”<sup>253</sup>
- “‘Employer’ means a person within the state who employs one or more employees for more than one quarter of the year and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.”<sup>254</sup>
- “‘Person’ means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public corporation, and the state and a political subdivision and agency thereof.”<sup>255</sup>

### **Statutory Language:**

The NDHRA provides that “[i]t is a discriminatory practice for an employer to fail or refuse to hire an individual; to discharge an employee; or to accord adverse or unequal treatment to an individual or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of [membership in a protected class].”<sup>256</sup> The statute’s use of the broad term “individual” could potentially extend protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors. It should also be noted that the statute’s definition of the term “employee” is broad and could be interpreted to include independent contractors.

### **Case Law:**

In *Birchem v. Knights of Columbus*, the 8<sup>th</sup> Circuit reasoned the state anti-discrimination law generally follows federal court decisions,<sup>257</sup> and because the plaintiff had not cited any authority suggesting why the NDHRA should be interpreted as protecting independent contractors, the plaintiff’s claim of discrimination failed under state law.<sup>258</sup> That said, the Supreme Court of North Dakota has noted that the NDHRA “is broader in scope and more generous in the protection it affords than federal civil rights statutes,” and “given the obvious parallels between

---

<sup>253</sup> N.D. Cent. Code Ann. § 14-02.4-02(7).

<sup>254</sup> N.D. Cent. Code Ann. § 14-02.4-02(8).

<sup>255</sup> N.D. Cent. Code Ann. § 14-02.4-02(13).

<sup>256</sup> N.D. Cent. Code Ann. § 14-02.4-03.

<sup>257</sup> *Schuhmacher v. North Dakota Hosp. Ass’n*, 528 N.W.2d 374 (N.D.1995)

<sup>258</sup> *Birchem v. Knights of Columbus*, 116 F.3d 310, 314 (8th Cir. 1997).

our state law and federal law, we will rely on federal law when it is helpful and sensible to do so, rather than indiscriminately.”<sup>259</sup> This leaves open the possibility that North Dakota courts would depart from federal law in determining whether the NDHRA covers independent contractors.

## Ohio

### Independent Contractors Are Likely Not Protected

**Explicitly protected in the statute? No.**

**Definitions:** [Ohio’s civil rights law](#) defines the following relevant terms

- “‘Person’ includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons. ‘Person’ also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesperson, appraiser, agent, employee, lending institution, and the state and all political subdivisions, authorities, agencies, boards, and commissions of the state.”<sup>260</sup>
- “‘Employer’ includes the state, any political subdivision of the state, any person employing four or more persons within the state, and any person acting directly or indirectly in the interest of an employer.”<sup>261</sup>
- “‘Employee’ means an individual employed by any employer but does not include any individual employed in the domestic service of any person.”<sup>262</sup>

#### **Statutory Language:**

Ohio’s civil rights law provides that “It shall be an unlawful discriminatory practice:

- (A) (A) For any employer, because of the [protected class status] of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.”<sup>263</sup> The use of the term “person,” is similar to federal law’s use of the term “individual.”

#### **Case Law:**

Ohio courts look to federal law to interpret *O.R.C. § 4112.02(A)*.<sup>264</sup> Accordingly, *O.R.C. § 4112.02(A)*, like federal law, presumably doesn’t protect independent contractors from employment discrimination.<sup>265</sup>

---

<sup>259</sup> *Schweigert v. Provident Life Ins. Co.*, 503 N.W.2d 225, 227 (N.D. 1993) (internal quotations omitted).

<sup>260</sup> *O.R.C. § 4112.01(A)(1)*.

<sup>261</sup> *O.R.C. § 4112.01(A)(2)*.

<sup>262</sup> *O.R.C. § 4112.01(A)(3)*.

<sup>263</sup> *O.R.C. § 4112.02*.

<sup>264</sup> *Paranthaman v. State Auto Property & Cas. Ins. Co.*, No. 14AP-221, 2014 WL 5768699 at \*7 (Ohio App., Nov. 6, 2014) (citing *Coryell v. Bank One Trust Co. N.A.*, 803 N.E.2d 781 (Ohio 2004)).

<sup>265</sup> *Williams v. Richland Cty. Children Servs.*, 861 F. Supp. 2d 874, 884 (N.D. Ohio 2011), *aff’d*, 489 F. App’x 848 (6th Cir. 2012); *Bower v. Henry Cty. Hosp.*, No. 13-12-46, 2013 WL 3379358 \*8 (Ohio App., July 1, 2013) (noting that, in a *§ 4112.02(A)* case, the “proper issue” is whether the plaintiff is an employee or independent contractor, because “it is well settled that under R.C. § 4112.02(A) a plaintiff must establish that she is an employee of the defendant,” (internal quotations omitted), and collecting cases).

Oklahoma  
**Independent Contractors Are Likely Not Protected**

**Explicitly protected in the statute? No (explicitly excluded).**

**Definitions:** [Oklahoma's discrimination in employment law](#) defines the following relevant terms

- “Employer” means: a. a legal entity, institution or organization that pays one or more individuals a salary or wages for work performance, or b. a legal entity, institution or organization which contracts or subcontracts with the state, a governmental entity or a state agency to furnish material or perform work. Employer does not include a Native American tribe or a bona fide membership club, other than a labor organization, that is exempt from taxation under Title 26, Section 501(c) of the United States Code.”<sup>266</sup>
- “Employee” means an individual who receives a salary or wages from an employer. **Employee shall not include independent contractors.**<sup>267</sup>
- The law does not define “individual,”<sup>268</sup> “person,” or other similar terms.

**Statutory Language:**

Oklahoma explicitly excludes independent contractors from their definition of an “employee” in their anti-discrimination statute.<sup>269</sup> That said, some protections of the anti-discrimination law apply to “individual[s]” rather than “employee[s],” namely that it is an unlawful practice for employers to “fail or refuse to hire, to discharge, or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, privileges or responsibilities of employment, because of race, color, religion, sex, national origin, age, genetic information or disability, unless the employer can demonstrate that accommodation for the disability would impose an undue hardship on the operation of the business of such employer.”<sup>270</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

**Case Law:**

“Claims under OADA are evaluated using the same standards as claims under Title VII of the Civil Rights Act of 1964, and a claim that fails under Title VII will also fail under the OADA.”<sup>271</sup> Accordingly, since independent contractors are not covered by Title VII, they will presumably not be covered by OADA. No cases directly addressing this question were found.

---

<sup>266</sup> Okla. Stat. Ann. tit. 25, § 1301(1).

<sup>267</sup> Okla. Stat. Ann. tit. 25, § 1301(8).

<sup>268</sup> The law does define “Individual with a disability” as “a person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment or is regarded as having such an impairment.” Okla. Stat. Ann. tit. 25, § 1301(4).

<sup>269</sup> Okla. Stat. Ann. tit. 25, § 1301(8).

<sup>270</sup> Okla. Stat. Ann. tit. 25, § 1302(A)(1).

<sup>271</sup> *Van Doren v. Trinity Containers, LLC*, No. 17–CV–0053–CVE–FHM, 2017 WL 1987240 at \*2 (N.D. Okla. 2017).

Oregon  
**Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The [Oregon Fair Employment Practices Act \(OFEPA\)](#) defines the following relevant terms**

- “‘Employee’ does not include any individual employed by the individual's parents, spouse or child or in the domestic service of any person.”<sup>272</sup>
  - o The law does not include a positive definition of “employee.”
- “‘Employer’ means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed. (b) For the purposes of employee protections described in ORS 659A.350, ‘employer’ means any person who, in this state, is in an employment relationship with an intern as described in ORS 659A.350.”<sup>273</sup>
- “‘Person’ includes: (a) One or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers. (b) A public body as defined in ORS 30.260. (c) For purposes of ORS 659A.145 and 659A.421 and the application of any federal housing law, a fiduciary, mutual company, trust or unincorporated organization.”<sup>274</sup>

**Statutory Language:**

Some of OFEPA’s protections apply to employers’ actions vis-à-vis “individual[s],” namely that “It is an unlawful employment practice: (a) For an employer, because of an individual's [membership in a protected class] to refuse to hire or employ the individual or to bar or discharge the individual from employment.”<sup>275</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

The law also incorporates a “right to control” test for the definition of “employer,” defining “employer” to mean “any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.”<sup>276</sup> This strongly suggests an independent contractor exclusion, since the “right to control” test separates employees from independent contractors.

---

<sup>272</sup> RS § 659A.001(3).

<sup>273</sup> ORS § 659A.001(4).

<sup>274</sup> ORS § 659A.001(9).

<sup>275</sup> ORS § 659A.030.

<sup>276</sup> ORS § 659A.001(4)(1); *see Wickliff v. La Quinta Worldwite, LLC*, No. 6:16-cv-01818-AA, 2017 WL 1483447 at \*3 (D. Or. Apr. 21, 2017) (describing this statutory language as “a codification of Oregon's common law on agent versus independent contractor status”).

## Case Law:

The Supreme Court of Oregon has noted that “[a]lthough federal precedent has no binding authority on this court’s interpretation of state law, this court has looked to Title VII precedent for guidance in analyzing claims brought under analogous provisions of ORS chapter 659A.”<sup>277</sup> It is likely, then, that independent contractors would not be covered under OFEPA since they are not covered by Title VII. Consistent with that interpretation, federal district courts have held that OFEPA “requires that a plaintiff have an employment relationship with a defendant in order to establish liability.”<sup>278</sup>

## Pennsylvania

### Some Independent Contractors Are Protected; Otherwise, Independent Contractors Are Not Protected

**Explicitly protected in the statute? Some independent contractors are explicitly protected.**

**Definitions: The [Pennsylvania Human Relations Act](#) defines the following relevant terms**

- “The term ‘**person**’ includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employe [sic], independent contractor, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions thereof.”<sup>279</sup>
- “The term ‘**employer**’ includes the Commonwealth or any political subdivision or board, department, commission or school district thereof and any person employing four or more persons within the Commonwealth, but except as hereinafter provided, does not include religious, fraternal, charitable or sectarian corporations or associations, except such corporations or associations supported, in whole or in part, by governmental appropriations. The term “employer” with respect to discriminatory practices based on race, color, age, sex, national origin or non-job related handicap or disability, includes religious, fraternal, charitable and sectarian corporations and associations employing four or more persons within the Commonwealth.”<sup>280</sup>
- “The term ‘**employe**’ [sic] does not include (1) any individual employed in agriculture or in the domestic service of any person, (2) any individuals who, as a part of their employment, reside in the personal residence of the employer, (3) any individual employed by said individual's parents, spouse or child.”<sup>281</sup>
- “The term ‘**independent contractor**’ includes any person who is subject to the provisions governing any of the professions and occupations regulated by State licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department

---

<sup>277</sup> *Ossanna v. Nike, Inc.*, 365 Or. 196, 204-05 (2019).

<sup>278</sup> *Arifi v. FedEx Ground Package System, Inc.*, No. 3:13-cv-01870-HA, 2014 WL 4924884 at \*4 (D. Or. 2014); see also *Foster v. Flaherty*, No. 11-6115-HO, 2011 WL 5057072, \*7 (D.Or. Oct. 24, 2011).

<sup>279</sup> 43 Pa. Stat. Ann. § 954(a).

<sup>280</sup> 43 Pa. Stat. Ann. § 954(b).

<sup>281</sup> 43 Pa. Stat. Ann. § 954(c).

of State, or is included in the Fair Housing Act (Public Law 90-284, 42 U.S.C. § 3601 et seq.).”<sup>282</sup>

### **Statutory Language:**

The PHRA provides that “It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or in the case of a fraternal corporation or association, unless based upon membership in such association or corporation, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania: (a) For any employer because of the [protected class status] of any individual or independent contractor, to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required.”<sup>283</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

Those independent contractors who are not explicitly protected by the statute are likely not protected. In general, “while Pennsylvania courts are not bound in their interpretations of Pennsylvania law by federal interpretations of parallel provisions in Title VII, the ADA, or the ADEA, its courts nevertheless generally interpret the PHRA in accord with its federal counterparts.”<sup>284</sup> Accordingly, if a person would be considered an independent contractor and therefore not protected by Title VII, they should be considered an independent contractor and therefore not protected by the PHRA.<sup>285</sup>

More specifically, in *Velocity Express v. Pennsylvania Human Relations Comm'n*, Pennsylvania’s intermediate court declined to extend that Section 954(x)’s definition to include delivery persons and held that (x)’s protections are *limited* to those contractors whose profession

---

<sup>282</sup> 43 Pa. Stat. Ann. § 954(x). The protected independent contractors are listed in 49 Pa. Code and are: auctioneers (49 Pa.Code, ch. 1); barbers (49 Pa.Code, ch. 3); chiropractors (49 Pa.Code, ch. 5); cosmetology (49 Pa.Code, ch. 7); architects (49 Pa.Code, ch. 9); accountancy (49 Pa.Code, ch. 11); funeral directors (49 Pa.Code, ch. 13); landscape architects (49 Pa.Code, ch. 15); medical doctors and practitioners other than medical doctors (49 Pa.Code, chs. 17 & 18); vehicle manufacturers, dealers and salespersons (49 Pa.Code, ch. 19); nursing (49 Pa.Code, ch. 21); optometry (49 Pa.Code, ch. 23); osteopathic medicine (49 Pa.Code, ch. 25); pharmacy (49 Pa.Code, ch. 27); podiatry (49 Pa.Code, ch. 29); veterinary medicine (49 Pa.Code, ch. 31); dentistry (49 Pa.Code, ch. 33); real estate professionals (49 Pa.Code, chs. 35 & 36); engineers, land surveyors and geologists (49 Pa.Code, ch. 37); nursing home administrators (49 Pa.Code, ch. 39); physical therapy (49 Pa.Code, ch. 40); psychology (49 Pa.Code, ch. 41); occupational therapy (49 Pa.Code, ch. 42); speech-language and hearing (49 Pa.Code, ch. 45); and social workers and marriage and family therapists (49 Pa.Code, chs. 47–49).

<sup>283</sup> 43 Pa. Stat. Ann. § 955.

<sup>284</sup> *Kelly v. Drexel University*, 94 F.3d 105 (3d Cir. 1996); *see also Brown v. J. Kaz, Inc.*, 581 F.3d 175, 179 n.1 (3d Cir. 2009); *Atkinson v. LaFayette College*, 460 F.3d 447, 454 n.6 (3d Cir. 2006).

<sup>285</sup> *Brown v. J. Kaz, Inc.*, 581 F.3d 175, 179 n.1 (3d Cir. 2009) (“We have previously held that claims under the PHRA are interpreted coextensively with Title VII claims, and it follows that Brown is an employee of Craftmatic under the PHRA only if she is one under Title VII.” (internal quotations and citations omitted)).

is listed in the Fair Housing Act and those whose occupations are regulated by the Bureau of Professional and Occupational Affairs.<sup>286</sup> The Third Circuit has held the same.<sup>287</sup>

## Rhode Island Independent Contractors Are Protected

**Explicitly protected in the statute? No.**

### **Definitions:**

The [Rhode Island Fair Employment Practices Act](#) (RFEPA) does not include any relevant definitions.

The [Rhode Island Civil Rights Act](#) (RICRA) defines the following relevant terms

- “The right to ‘make and enforce contracts, to inherit, purchase, to lease, sell, hold, and convey real and personal property’ includes the making, performance, modification and termination of contracts and rights concerning real or personal property, and the enjoyment of all benefits, terms, and conditions of the contractual and other relationships.”<sup>288</sup>
- The law does not define “persons.”

The [Rhode Island Civil Rights of People with Disabilities Act](#) (RICRPDA) does not include any relevant definitions.

- Note that all of these laws apply to both public and private employers.

### **Statutory Language:**

The protections of RFEPA apply to “applicant[s]” and “employee[s].”<sup>289</sup>

RICRA provides that “All persons within the state, regardless of [protected class status], have, except as is otherwise provided or permitted by law, the same rights to make and enforce contracts, to inherit, purchase, to lease, sell, hold, and convey real and personal property, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, and are subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”<sup>290</sup>

RICRPDA provides that “No otherwise qualified person with a disability shall, solely by reason of his or her disability, be subject to discrimination by any person or entity doing business in the state,”<sup>291</sup> and that “Notwithstanding any inconsistent terms of any collective bargaining agreement, no otherwise qualified person with a disability shall, solely on the basis of disability, who with reasonable accommodation and with no major cost can perform the essential functions of the job in question, be subjected to discrimination in employment by any person or entity receiving financial assistance from the state, or doing business within the state.”<sup>292</sup> This language, applying to the behavior of “any person or entity doing business in the state,” towards

---

<sup>286</sup> *Velocity Express v. Pennsylvania Human Relations Comm'n*, 853 A.2d 1182, 1186 (Pa. Commw. Ct. 2004).

<sup>287</sup> *Brown v. J. Kaz, Inc.*, 581 F.3d 175, 179 n.1 (3d Cir. 2009) (“[T]he PHRA only applies to independent contractors who are in professions or occupations regulated by the [Pennsylvania] Bureau of Professional and Occupational Affairs or those who are included in the Fair Housing Act.” (internal quotations omitted)).

<sup>288</sup> RS ST § 42-112-1.

<sup>289</sup> RS ST § 28-5-7.

<sup>290</sup> RS ST § 42-112-1.

<sup>291</sup> RS ST § 42-87-2.

<sup>292</sup> RS ST § 42-87-3.



any “person” with a disability, seems by its terms to be broad enough to cover independent contractors.

### **Case Law:**

The Rhode Island Supreme Court analyzes state statutory claims using federal caselaw when there is an analogous federal statute.<sup>293</sup> Accordingly, independent contractors are likely not protected by RFEPA or RICRPDA, the state analogues of Title VII and the ADA. However, the District Court of Rhode Island has interpreted the Rhode Island Civil Rights Act (RICRA) to apply to independent contractors, citing a Rhode Island Supreme Court Decision that “RICRA has been described as providing ‘broad protection against all forms of discrimination in all phases of employment.’”<sup>294</sup> The district court noted that there was no Rhode Island caselaw limiting application of the statute to employees as opposed to independent contractors.<sup>295</sup> No cases applying RFEPA or RICRPDA to independent contractors were found.

## South Carolina Independent Contractors Are Likely Not Protected

**Explicitly protected in the statute? No.**

**Definitions: The [South Carolina Human Rights Law](#) (SCHRL) defines the following relevant terms**

- “‘Person’ means individuals, labor unions and organizations, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, other legal or commercial entities located in part or in whole in the State or doing business in the State, the State and any of its agencies and departments or local subdivisions of state agencies and departments; and municipalities, counties, special purpose districts, school districts and other local governments.”<sup>296</sup>
- (e) “‘Employer’ means any person who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include an Indian tribe or a bona fide private membership club other than a labor organization.”<sup>297</sup>
- (h) “‘Employee’ means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in this State, or any person chosen by such officer to be on such officer's personal staff, or an appointee on

---

<sup>293</sup> See *Colman v. Faucher*, 128 F.Supp. 3d 487, 491 n.8 (D.R.I 2015).

<sup>294</sup> *Morrisette v. Honeywell Bldg. Sols. SES Corp.*, No. CA 10-12-ML, 2011 WL 3652428, at \*3 n.3 (D.R.I. Aug. 17, 2011) (quoting *Ward v. City of Pawtucket Police Dept.*, 639 A.2d 1379, 1381 (R.I.1994) (citing R.I. Gen. Laws Ann. § 42-112-1(West))).

<sup>295</sup> The *Morrisette* court here argued that “42 U.S.C. § 1981, the federal analog to [RICRA], see *Moran v. GTech Corp.*, 989 F.Supp. 84, 91 (D.R.I.1997), [] has been held to apply to independent contractors since it does not limit itself to employment contracts. See *PowerComm, LLC v. Holyoke Gas & Elec. Dept.*, 746 F.Supp.2d 325, 331 n.9 (D.Mass 2010) (quoting *Danco, Inc. v. Wal-Mart Stores, Inc.*, 178 F.3d 8, 14 (1st Cir.1999)).” *Morrisette*, 2011 WL 3652428, at \*3 n.3.

<sup>296</sup> S.C. Code Ann. § 1-13-30(d).

<sup>297</sup> S.C. Code Ann. § 1-13-30(e).

the policy-making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of the State or any of its agencies, departments, local subdivisions, or political subdivisions of the State, local government, or local governmental agencies.”<sup>298</sup>

### **Statutory Language:**

Some provisions of the antidiscrimination law detail practices an employer is prohibited from doing with regard to an individual, namely that “It is an unlawful employment practice for an employer: [] to fail or refuse to hire, bar, discharge from employment, or otherwise discriminate against an individual with respect to the individual's compensation or terms, conditions, or privileges of employment because of [the individual’s membership in a protected class].”<sup>299</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

In general, federal caselaw is “certainly persuasive if not controlling in construing the [SCHAL].”<sup>300</sup> Accordingly, independent contractors are likely not protected. There is no caselaw determining if this statute protects independent contractors.

## **South Dakota**

### **Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The [South Dakota Human Rights Law](#) (SDHRL) defines the following relevant terms**

- “Employee,’ any person who performs services for any employer for compensation, whether in the form of wages, salary, commission, or otherwise.”<sup>301</sup>
- “Employer,’ any person within the State of South Dakota who hires or employs any employee, and any person wherever situated who hires or employs any employee whose services are to be partially or wholly performed in the State of South Dakota.”<sup>302</sup>
- “Person,’ includes one or more individuals, partnerships, associations, limited liability companies, corporations, unincorporated organizations, mutual companies, joint stock companies, trusts, agents, legal representatives, trustees, trustees in bankruptcy, receivers, labor organizations, public bodies, public corporations, and the State of South Dakota, and all political subdivisions and agencies thereof.”<sup>303</sup>

---

<sup>298</sup> S.C. Code Ann. § 1-13-30(h).

<sup>299</sup> S.C. Code Ann. § 1-13-30(A)(1).

<sup>300</sup> *Orr v. Clyburn*, S.E.2d 804, 806 (1982); see also *Taylor v. Cummins Atlantic, Inc.*, 852 F.Supp. 1279, 1283 n. 2 (D.S.C.1994) (extending *Orr* to the age discrimination context).

<sup>301</sup> SDCL § 20-13-1(6).

<sup>302</sup> SDCL § 20-13-1(7).

<sup>303</sup> SDCL § 20-13-1(11).

### **Statutory Language:**

The SDHRL provides that “[i]t is an unfair or discriminatory practice for any person, because of [protected class status], to fail or refuse to hire, to discharge an employee, or to accord adverse or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or any term or condition of employment.”<sup>304</sup> While this limits protections to “employee[s],” the definition of “employee” as “any person who performs services for any employer for compensation” could potentially be read as broad enough to encompass independent contractors.

### **Case Law:**

The South Dakota Supreme Court has held that “SDCL 20–13–10 is comparable to the corresponding provision in Title VII.”<sup>305</sup> This suggests that independent contractors are not covered under the SDHRL, since they are not covered under federal law. The 8<sup>th</sup> Circuit has come to the same conclusion. Citing *McCain Foods*, the 8<sup>th</sup> Circuit predicted in *Alexander v. Avera St. Luke's Hosp.* that the SDHRL would not apply to independent contractors because the standards for claims brought under state law are identical to those applied to federal statutes, though the plaintiff had not argued on appeal that the law protects independent contractors and so the court was not required to determine this question.<sup>306</sup>

## Tennessee

### **Independent Contractors Are Not Protected**

**Explicitly protected in the statute? No.**

**Definitions: The [Tennessee Human Rights Act](#) (THRA) does not define any relevant terms**

### **Statutory Language:**

Some of the THRA’s provisions apply to employers’ behavior towards “individual[s],” namely that “(a) It is a discriminatory practice for an employer to: (1) Fail or refuse to hire or discharge any person or otherwise to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of [membership in a protected class].”<sup>307</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

The THRA has been held to be co-extensive with Title VII.<sup>308</sup> This suggests that it, like its federal counterpart, does not apply to independent contractors. A district court in Tennessee

---

<sup>304</sup> SDCL § 20–13–10.

<sup>305</sup> *Huck v. McCain Foods*, 479 N.W.2d 167, 169 (S.D. 1991) (declaring that the SDHRA included sexual harassment prohibitions).

<sup>306</sup> 768 F.3d 756, 765 (8th Cir. 2014).

<sup>307</sup> Tenn. Code Ann. § 4–21–401(a).

<sup>308</sup> *Allen v. McPhee*, 240 S.W.3d 803, 812 (Tenn. 2007).

noted that while “the THRA does not use the term ‘employee,’ its provisions do speak of ‘employers,’ and the Tennessee Supreme Court has looked to Title VII’s definition of ‘employee’ to define the reach of the THRA.”<sup>309</sup> Therefore the THRA should be understood, like Title VII, not to protect independent contractors.

## Texas

### Independent Contractors Are Not Protected

**Explicitly protected in the statute? No.**

**Definitions: The [Texas Commission on Human Rights Act](#) defines the following relevant terms**

- “‘Employee’ means an individual employed by an employer, including an individual subject to the civil service laws of this state or a political subdivision of this state, except that the term does not include an individual elected to public office in this state or a political subdivision of this state.”<sup>310</sup>
- “‘Employer’ means: (A) a person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; (B) an agent of a person described by Paragraph (A); (C) an individual elected to public office in this state or a political subdivision of this state; or (D) a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.”<sup>311</sup>
- The law does not define “individual,” “person,” “independent contractor,” or other similar terms.

### **Statutory Language:**

Some of the Texas law’s prohibition relate to employers’ treatment of “individual[s],” namely that “An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer: (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment.”<sup>312</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

The Texas law “purports to correlate state law with federal law in the area of discrimination in employment” and courts look to federal law to interpret the state law.<sup>313</sup>

---

<sup>309</sup> *Allen v. Cumberland Med. Ctr., Inc.*, No. 2:10-CV-0045, 2010 WL 3825667, at \*3–4 (M.D. Tenn. Sept. 24, 2010) (citing *Bredesen v. Tenn. Judicial Selection Comm’n*, 214 S.W.3d 419, 430, 432 (Tenn. 2007)).

<sup>310</sup> Tex. Labor Code Ann. § 21.002(7).

<sup>311</sup> Tex. Labor Code Ann. § 21.002(8).

<sup>312</sup> Tex. Labor Code Ann. § 21.051.

<sup>313</sup> *NME Hospitals, Inc. v. Rennels*, 994 S.W.2d 142, 146 (Tex. 1999).

Accordingly, Texas courts have held that the Texas Commission on Human Rights Act, like Title VII, protects employees, not independent contractors.<sup>314</sup> The Texas Supreme Court has not squarely addressed this issue, but has held that, to bring an action under the Texas law, “a plaintiff must show: (1) that the defendant is an employer within the statutory definition of the Act; (2) that some sort of employment relationship exists between the plaintiff and a third party; and (3) that the defendant controlled access to the plaintiff’s employment opportunities and denied or interfered with that access based on unlawful criteria.”<sup>315</sup> Lower courts have understood this language to exclude independent contractors from coverage.<sup>316</sup>

## Utah

### Unclear Whether Independent Contractors Are Protected

**Explicitly protected in the statute? No.**

**Definitions: The Utah Antidiscrimination Act (UAA) defines the following relevant terms**

- “‘Employee’ means a person applying with or employed by an employer.”<sup>317</sup>
- “‘Employer’ means: (A) the state; (B) a political subdivision; (C) a board, commission, department, institution, school district, trust, or agent of the state or a political subdivision of the state; or (D) a person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.”<sup>318</sup>
- “‘Person’ means: (i) one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, or receivers; (ii) the state; and (iii) a political subdivision of the state.”<sup>319</sup>

### **Statutory Language:**

Some provisions of the UAA detail practices an “employer” is prohibited from doing with regard to a “person,” namely that “[a]n employer may not refuse to hire, promote, discharge, demote, or terminate a person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against a person otherwise qualified” because of protected class status.<sup>320</sup> The use of the term “person,” is similar to federal law’s use of the term “individual.”

### **Case Law:**

---

<sup>314</sup> *Johnson v. Scott Fetzer Co.*, 124 S.W.3d 257, 263 (Tex. App. 2003); *see also, e.g., University of Texas at El Paso v. Ochoa*, 410 S.W.3d 327, 331-32 (Tex. App. 2013); *De Santiago v. West Texas Community Supervision & Corrections Dept.*, 203 S.W. 3d 387, 395 (Tex. App.—El Paso 2006).

<sup>315</sup> *NME Hospitals, Inc.*, 994 S.W.2d at 147 (Tex. 1999).

<sup>316</sup> *See, e.g., Johnson v. Scott Fetzer Co.*, 124 S.W.3d 257 (Tex. App. 2003) (acknowledging that *NME Hospitals, Inc.* indicates that the TCHRA may apply in the absence of a “direct employer-employee relationship” and then noting that the TCHRA does not apply to independent contracts, and appearing to treat the language from *NME Hospitals, Inc.* as relating to employee classification).

<sup>317</sup> Utah Code Ann. § 34A-5-102(h).

<sup>318</sup> Utah Code Ann. § 34A-5-102(i)(i).

<sup>319</sup> Utah Code Ann. § 34A-5-102(t).

<sup>320</sup> Utah Code Ann. § 34A-5-106(1)(a)(i).

One federal district court has noted that “[c]laims of sexual harassment under the Utah Act would have to be established by proof of conduct satisfying essential elements of a prima facie case such as is recognized under analogous federal law.”<sup>321</sup> If this can be extended more broadly to mean that the Utah law more broadly should be analyzed in accordance with analogous federal law, this would suggest that independent contractors are not covered by the UAA just as they are not covered by Title VII. No further cases shedding light on the extent to which courts should look to federal law to interpret the UAA were found. There has not been any case law establishing whether any protections of the Utah Antidiscrimination Act apply to independent contractors.

## Vermont

### Unclear Whether Independent Contractors Are Protected

**Explicitly protected in the statute? No.**

**Definitions: The [Vermont Fair Employment Practices Act](#) (VFEPa) defines the following relevant terms**

- “‘Employer’ means any individual, organization, or governmental body including any partnership, association, trustee, estate, corporation, joint stock company, insurance company, or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor thereof, and any common carrier by mail, motor, water, air, or express company doing business in or operating within this State, and any agent of such employer, which has one or more individuals performing services for it within this State.”<sup>322</sup>
- “‘Employee’ means every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to perform services.”<sup>323</sup>

#### **Statutory Language:**

Several provisions of VFEPa apply to employers’ behavior towards “individual[s],” namely that it is an unlawful employment practice “any employer, employment agency, or labor organization to discriminate against any individual because of [membership in a protected class].”<sup>324</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

#### **Case Law:**

The Supreme Court of Vermont has noted that “although Vermont has patterned FEPA on Title VII, we are not bound by federal court interpretations of Title VII in construing FEPA. . . [F]ederal decisions represent persuasive authority on the proper interpretation of FEPA. They

---

<sup>321</sup> *Sauers v. Salt Lake County*, 735 F. Supp.381, 386 n.8 (D. Utah, 1990).

<sup>322</sup> 21 V.S.A. §495(d)(1).

<sup>323</sup> 21 V.S.A. §495(d)(2).

<sup>324</sup> 21 V.S.A. §495.

are not, however, the only sources of persuasive authority. . . . We make these points to emphasize that we will not adopt an interpretation of FEPA solely because the federal courts, including the United States Supreme Court, have so interpreted Title VII. Nor do we believe that the Vermont Legislature must react to every federal decision interpreting Title VII or risk that its inaction will be interpreted as an endorsement of the federal decision.”<sup>325</sup> The Vermont Supreme Court reaffirmed that holding more recently, and also noted that “we have no duty to interpret the VFEPA’s definition of ‘employer’ identically to how the federal courts have interpreted Title VII’s definition.”<sup>326</sup> Therefore, it is possible, though by no means clear, that Vermont courts would interpret VFEPA to cover independent contractors. No caselaw specifically discussing VFEPA’s application to independent contractors was found.

## Virginia

### Independent Contractors Are Not Protected

**Explicitly protected in the statute? No.**

**Definitions:** [Virginia’s Human Rights Act](#) (VHRA) does not define any relevant terms.

#### **Statutory Language:**

The VHRA defines as unlawful discrimination “[c]onduct that violates any Virginia or federal statute or regulation governing discrimination [based on protected class status].”<sup>327</sup> It also specifies that “[n]o employer employing more than five but less than 15 persons shall discharge *any such employee* on the basis of [membership in a protected class]. No employer employing more than five but less than 20 persons shall discharge *any such employee* on the basis of age if the employee is 40 years of age or older.”<sup>328</sup> The use of the term “employee” suggests that these protections do not extend to independent contractors.

#### **Case Law:**

A federal district court has noted, in a case where an employee alleged state and federal claims but her federal claims all failed, “[b]ecause she has not stated any viable claim under federal law, she cannot claim an unlawful discriminatory practice under the VHRA.”<sup>329</sup> This suggests that state and federal law are analogous, which in turn suggests that independent contractors are not protected by state law. Furthermore, in *Derthick v. Bassett-Walker, Inc.*, the 4<sup>th</sup> Circuit affirmed a district court decision that while actions by employees for wrongful termination are available, as an exception to the general rule of employment at will, where a termination violates public policy, “independent contractors fall outside of the court’s narrow exception to the employment at will doctrine.” *Derthick v. Bassett-Walker, Inc.*, 904 F. Supp. 510, 521–22 (W.D. Va. 1995), *aff’d sub nom. Derthick Assocs., Inc. v. Bassett-Walker, Inc.*, 106 F.3d 390 (4th Cir. 1997) rendering them unprotected by the law.

---

<sup>325</sup> *Lavalley v. E.B. & A.C. Whiting Co.*, 692 A.2d 367, 369-70 (Vt. 1997); *see also*

<sup>326</sup> *Payne v. U.S. Airways, Inc.*, 987 A.2d 944, 949 (Vt. 2009) (citing *Lavalley*, 692 A.2d at 369-70 (Vt. 1997) and finding that supervisors can be individually liable under VFEPA).

<sup>327</sup> VA ST § 2.2-3901.

<sup>328</sup> VA ST § 2.2-3903 (emphasis added).

<sup>329</sup> *Rose-Stanley v. Virginia*, No. 2:15CV00007, 2015 WL 6756910 at \*4 (W.D. Va. 2015).

## Washington

### Independent Contractors Are Protected From Discrimination Based on Enumerated Categories Only

Explicitly protected in the statute? No.

**Definitions:** [Washington's Law Against Discrimination](#) (WLAD) defines the following relevant terms

- “‘Employee’ does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.”<sup>330</sup>
- “‘Employer’ includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.”<sup>331</sup>
- “‘Person’ includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.”<sup>332</sup>

#### Statutory Language:

WLAD provides, in relevant part, that “(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, *but not be limited to*: (a) The right to obtain and hold employment without discrimination.”<sup>333</sup> This language is intended to be read broadly.<sup>334</sup>

#### Case Law:

The Washington Supreme Court has held that “[f]ederal cases interpreting Title VII are thus not helpful in determining the scope of [WLAD], but where WLAD does not provide criteria for how a claim might be established, the court may look to interpretations of analogous federal law.”<sup>335</sup> The Washington Supreme Court has further held that WLAD’s protections are not limited to discrimination in employment, and that therefore an independent contractor can bring an action for discrimination under the broad protections of WLAD, “an independent contractor may bring an action for discrimination in the making or performance of a contract for personal services where the alleged discrimination is based on sex, race, creed, color, national origin or disability.”<sup>336</sup>

---

<sup>330</sup> RCW 49.60.040(10).

<sup>331</sup> RCW 49.60.040(11).

<sup>332</sup> RCW 49.60.040(19).

<sup>333</sup> RCW 49.60.030 (emphasis added).

<sup>334</sup> See *Marquis v. City of Spokane*, 130 Wash. 2d 97, 108 (1996).

<sup>335</sup> *Marquis v. City of Spokane*, 130 Wash. 2d 97, 111, 113 (1996).

<sup>336</sup> *Id.* at 101. The court appears to use the term “contract for personal services,” as a way of distinguishing between employees and independent contractors (the court refers, for instance, to “the City’s view the statute should be read



However, in *Killian v. Atkinson*, the Washington Supreme Court held that independent contractors could not bring claims for age discrimination under this statute, since “[b]y its clear language, RCW 49.60.030(1) [the section of WLAD held to protect independent contractors in *Marquis*] does not include discrimination based upon “age” within the classifications of persons discriminated against. Because the class (“age”) is not included, there are no rights to be free of age discrimination within the inclusive language of section .030(1) and, therefore, no relevant ambiguity to resolve under principles of statutory construction, as there was in *Marquis*. Accordingly, there is no cause of action in this case arising from RCW 49.60.030(1), unlike in *Marquis*.”<sup>337</sup>

In 2014, the Washington Court of Appeals held in *Currier v. Northland Services* that independent contractors can’t enforce the civil rights guaranteed by WLAD by filing an employment discrimination claim with the state agency, but can do so through a private right of action.<sup>338</sup>

## West Virginia Independent Contractors Are Not Protected

**Explicitly protected in the statute? No.**

**Definitions: The [West Virginia Human Rights Act](#) (WVHRA) defines the following relevant terms**

- “The term ‘person’ means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.”<sup>339</sup>
- “The term ‘employer’ means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: Provided, That such terms shall not be taken, understood or construed to include a private club.”<sup>340</sup>
- “The term ‘employee’ shall not include any individual employed by his or her parents, spouse or child.”<sup>341</sup>

### **Statutory Language:**

Several provisions of WVHRA apply to employers’ behavior towards “individual[s],” namely that “It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions: (1) For any

---

to prohibit discrimination in ‘employment’ and would apply to protect ‘employees,’ but not ‘independent contractors’ hired to perform services”). *Id.* at 107.

<sup>337</sup> 147 Wash.2d 16, 31 (2002).

<sup>338</sup> *Currier v. Northland Servs., Inc.*, 182 Wash. App. 733 (2014).

<sup>339</sup> W. Va. Code § 5–11–3(a).

<sup>340</sup> W. Va. Code § 5–11–3(d).

<sup>341</sup> W. Va. Code § 5–11–3(e).

employer to discriminate<sup>342</sup> against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or disabled.”<sup>343</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

### **Case Law:**

In *Hanlon v. Chambers*, the West Virginia Supreme court held that state courts, “construe the [WVHRA] to coincide with the prevailing federal application of Title VII unless there are variations in the statutory language that call for divergent applications or there are some other compelling reasons justifying a different result.”<sup>344</sup> Accordingly, the WVHRA likely does not cover independent contractors, consistent with its federal counterpart. This is supported by the district court’s ruling in *Jackson v. W. Virginia Univ. Hosps., Inc.*<sup>345</sup> In that case, the district court analyzed Title VII and WVHRA claims together, and held that summary judgement for the defendant-employer could not be granted because there was a triable issue of fact as to the plaintiff’s status as an employee or independent contractor.<sup>346</sup> The court noted that Title VII does not cover independent contractors and proceeded on both the state and federal claim accordingly, apparently assuming without discussing that WVHRA employed the same standard.<sup>347</sup>

## Wisconsin

### **Unclear Whether Independent Contractors Are Protected**

**Explicitly protected in the statute? No (real estate agents who are independent contractors explicitly excluded).**

**Definitions: The [Wisconsin Fair Employment Act](#) (WEFA) defines the following relevant terms**

- “‘Employee’ does not include any individual employed by his or her parents, spouse, or child or any individual excluded under s. 452.38.”<sup>348</sup>
  - o s. 452.38 sets out requirements for a real estate agent to be considered an independent contractor, rather than an employee of a real estate firm.<sup>349</sup> Accordingly, the reference to this provision in the WEFA should be understood as explicitly excluding real estate agents who are independent contractors.

---

<sup>342</sup> Note that “discriminate” is defined as “The term “to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status and includes to separate or segregate.” W. Va. Code § 5–11–3(h).

<sup>343</sup> W. Va. Code § 5–11–9.

<sup>344</sup> 464 S.E.2d 741, 754 (W.Va.1995).

<sup>345</sup> No. 1:10-CV-107, 2011 WL 1485991, at \*5 (N.D.W. Va. Apr. 19, 2011).

<sup>346</sup> *Id.*

<sup>347</sup> *Id.*

<sup>348</sup> W.S.A. 111.32(5).

<sup>349</sup> W.S.A. 452.38.

- “‘Employer’ means the state and each agency of the state and, except as provided in par. (b), any other person engaging in any activity, enterprise or business employing at least one individual. In this subsection, ‘agency’ means an office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts. (b) ‘Employer’ does not include a social club or fraternal society under ch. 188 with respect to a particular job for which the club or society seeks to employ or employs a member, if the particular job is advertised only within the membership.”<sup>350</sup>
- The law does not define “person,” “individual,” “independent contractor,” or other similar terms.

**Statutory Language:**

WEFA specifies that “it is an act of unlawful employment discrimination” to take certain actions against an “individual” on the basis of protected class status.<sup>351</sup> The statute’s use of the broad term “individual” could potentially extend those protections to independent contractors, but it mirrors the federal law’s use of the same term, and the federal law does not cover independent contractors.

**Case Law:**

The district court has held that “it is appropriate to look to federal case law interpreting Title VII for guidance in interpreting the Wisconsin Fair Employment Act” and therefore WEFA, like Title VII, likely does not apply to independent contractors.<sup>352</sup> However, the Wisconsin Court of Appeals has noted that while “it is appropriate to look to federal decisions interpreting Title VII for guidance in interpreting the WFEA . . . Title VII is not automatically incorporated into the WFEA.”<sup>353</sup> This leaves open the possibility that Wisconsin courts would depart from federal law in interpreting WFEA’s coverage of independent contractors. No cases addressing the application of WEFA to independent contractors were found.

Wyoming

**Independent Contractors Are Likely Not Protected**

**Explicitly protected in the statute? No.**

**Definitions:** [Wyoming’s Fair Employment Practices Act](#) (WFEPA) defines the following relevant term

- “‘Employer’ shall mean the state of Wyoming or any political subdivision or board, commission, department, institution or school district thereof, and every other person

---

<sup>350</sup> W.S.A. 111.32(6).

<sup>351</sup> W.S.A. 111.322 (West).

<sup>352</sup> *Kolpien v. Family Dollar Stores of Wisconsin, Inc.*, 402 F.Supp.2d 971, 980 (W.D. Wis. 2005) (collecting supporting state cases)

<sup>353</sup> *Jim Walter Color Separations v. Labor and Industry Review Com’n*, 595 N.W.2d 68, 74 (Wis. Ct. App. 1999).

employing two (2) or more employees within the state; but it does not mean religious organizations or associations.”<sup>354</sup>

- The law does not define “employee,” “individual,” “person,” “independent contractor,” or other relevant terms.

**Statutory Language:**

Several provisions of Wyoming’s antidiscrimination law apply to employers’ treatment of a “person,” or to a “person[‘s]” treatment of others in matters of employment—specifically, “(a) It is a discriminatory or unfair employment practice: (i) For an employer to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation or the terms, conditions or privileges of employment against, a qualified disabled person or any person otherwise qualified, because of age, sex, race, creed, color, national origin, ancestry or pregnancy; (ii) For a person, an employment agency, a labor organization, or its employees or members, to discriminate in matters of employment or membership against any person, otherwise qualified, because of age, sex, race, creed, color, national origin, ancestry or pregnancy, or a qualified disabled person.”<sup>355</sup> The use of the term “person” is similar to federal law’s use of the term “individual.”

**Case Law:**

In *Rollins v. Wyoming Tribune-Eagle*, the Wyoming Supreme Court used federal case law in analyzing an age discrimination claim brought under state law.<sup>356</sup> That was specifically based on a determination that Wyoming law prohibiting age discrimination is similar to the ADEA.<sup>357</sup> It is likely that Wyoming courts would likewise turn to federal law in determining whether independent contractors are meant to be protected by Wyoming’s state law, which is comparably similar to Title VII, and would, accordingly, conclude that they are not protected. There is no case law discussing if the protections of Wyoming antidiscrimination law extend to independent contractors.

---

<sup>354</sup> WY ST 27-9-102(b).

<sup>355</sup> WY ST 27-9-105.

<sup>356</sup> 152 P.3d 367 (2007).

<sup>357</sup> *Id.* at 370.