Holland & Hart

Bradley Cave

Partner
307.778.4210
Cheyenne
bcave@hollandhart.com

New Rules for Public Employers, Courtesy of the Wyoming Legislature

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The Wyoming Legislature has wrapped up its 2025 session, but not before adopting several new laws governing public employers. Three of these laws were not specifically drafted as employment laws, but will have significant impacts on public employers. You can click on the enrolled act links to go directly to the legislation. These new laws are effective July 1, 2025.

No Compelled Pronouns! Through a bill entitled “Compelled Speech is not Free Speech,” (Enrolled Act 23) the Legislature has prohibited the state and all political subdivisions from compelling or requiring employees to refer to another employee using that employee's preferred pronouns. The new law prohibits a public employer from threatening any adverse employment action for employees who fail or refuse to use another's personal pronouns. The act also suggests that a public employer cannot require the recipient of any public contract, grant, loan, permit, license or other benefit to use preferred personal pronouns. Any person harmed by violations of this law can file a civil lawsuit against the public employer for injunction against such conduct. Governor Gordon allowed this bill to become law without his signature, recognizing that the bill was “a solution in search of a problem.”

Free Exercise of Religion. The Religious Freedom Restoration Act (Enrolled Act 66) creates a broad new protection for public employees' exercise of religion, even though it was not drafted as an employment measure. The new law prohibits state action that substantially burdens a person's right to the exercise of the person's religion unless the state action is essential to furthering a compelling governmental interest and is the least restrictive means of furthering that interest. The exercise of religion includes the practice or observance of religion, as well as any act or refusal to ac that is substantially motivated by a sincerely held religious belief, whether it is compelled by or central to a system of religious belief. An action can burden the exercise of religion directly or indirectly if it constrains, curtails, inhibits or denies the exercise of religion in any way, including through withholding of benefits, imposing criminal, civil or administrative penalties, excluding the person from governmental programs or denying access to governmental facilities.

The law is intended to apply to a wide variety of governmental actions, including state and local laws, ordinances, rules, regulations and policies, or any other governmental actions taken by the state, local governments and municipalities, political subdivisions or instrumentalities and public

officials. Obviously, the breadth of this definition includes a wide variety of employment matters, ranging from formal employer actions like rules and policies to more informal actions a public official might direct, like deciding among competing time off requests or deciding what an employee can display in his cubicle.

People whose exercise of religion is burdened can bring a lawsuit against the public entity responsible for the state action for “appropriate relief, including injunctive relief and declaratory relief.” Appropriate relief is not defined, so the types of remedies available may expand beyond the specific terms of the statute. Also, interestingly, this new law can be asserted as a defense in a judicial or administrative proceeding, even if no governmental entity is a party to the proceeding.

Intentionally or otherwise, this law may create a right for Wyoming public employees that is significantly broader than the similar right held by private sector employers. The free exercise of religious belief by public employees is protected by the First Amendment of the US Constitution and Title VII of the Civil Rights Act, and private sector employees' free exercise rights are also protected by Title VII. The United States Supreme Court has historically held that the First Amendment does not relieve a person from complying with neutral laws of general applicability because his religious beliefs require what the law prohibits. However, this new Wyoming statute applies “even if the burden results from a rule of general applicability.” This phrase, by itself, creates greater rights for Wyoming public sector employees compared to all other employees in Wyoming, and creates significant new burdens for Wyoming public sector employers to be sure religiously-neutral rules and policies do not indirectly burden an employee's free exercise of religion, or otherwise attempt to prove that the rule is essential to a compelling governmental interest and the least restrictive means to fulfill that interest.

It will be fascinating to watch how this law is invoked by public employees and how public employers respond to those challenges. The text of the law leaves many unanswered questions, and answers will come only from court decisions.

Carrying Concealed Weapons at Work Now Protected by Law. The Wyoming Repeal Gun Free Zones Act (Enrolled Act 24) is a new law that may significantly impact Wyoming public employers. Prior to the adoption of this law, Wyoming law prohibited the carrying of concealed firearms into meetings of governmental entities or the legislature and legislative committees, and all types of public educational institutions and facilities, among several other areas. With some exceptions, the new law now permits anyone who can otherwise carry a concealed firearm under Wyoming law - which includes everyone at least 21 years of age who has not been disqualified by criminal conviction, substance abuse history, or mental illness - to carry a concealed weapon into any public building; to meetings of governmental entities, including the legislature and its committees; and, in all areas of public airports where doing so is not prohibited by federal law. The law does not distinguish between members of the public generally and employees of public entities, meaning that employees of public entities now have the right to carry concealed

weapons at work, defined by the right created by this law for any member of the public to carry a concealed weapon into a public building.

The law also authorizes those who hold concealed carry permits to carry weapons at public elementary and secondary schools, colleges and the university, including at athletic events on school property. School districts are permitted to adopt rules regarding employees and volunteers carrying concealed weapons on elementary and secondary school property.

The law carves out some locations where restrictions on concealed carry will remain in force:

- Any public school, college or university athletic event where alcoholic beverages are sold;
- Any portion of an establishment licensed to dispense alcohol or malt beverages for consumption on the premises which is primarily devoted to that purpose;
- Law enforcement operations and administration facilities, jails and prisons, and courtrooms (but not the courthouse generally);
- “State agency operated health and human services settings;”
- Health and human services facilities that are exempt from licensure;
- Health and human services facilities that are licensed by the Department of Family Services or Department of Corrections;
- Health and human services facilities that are certified by the Behavioral Health Division of the Department of Health to provide residential services;
- Locations where explosive or volatile materials are present in sufficient amounts to cause serious bodily harm.

Public employers who will soon be subject to this law should promptly adopt rules regarding the concealed carry of weapons by employees and visitors. Employers subject to this law can prohibit an employee from openly carrying, displaying or wearing firearms in its facilities, and enforce restrictions on carrying of concealed weapons in areas otherwise prohibited by law. Employers can require employees to keep concealed weapons in their control at all times or otherwise stored in a concealed biometric container or lock box, but cannot require that the firearm be stored unloaded or separate from its ammunition. And nothing in this law prohibits employers from adopting disciplinary measures for the violation of those rules and for the improper discharge or use of a firearm on the employer's property.

No DEI Programs for Public Employers. Enrolled Act 67, which has been signed by the Governor and will go into effect on July 1, 2025, prohibits all public entities in Wyoming from (a) engaging or requiring any employee to attend or participate in any diversity, equity or inclusion training, program, activity or policy, and (b) engaging in or requiring instruction in institutional discrimination.

The law defines “diversity, equity or inclusion” to mean any program,

activity or policy that promotes differential or preferential treatment of individuals or classifies individuals on the basis of race, color, religion, sex, ethnicity or national origin. The bill also prohibits "institutional discrimination" which it defines as a series of concepts, summarized as follows:

- That any race, color, religion, sex, ethnicity or national origin is inherently superior or inferior;
- That a person should be discriminated against or adversely treated because of the person's protected class;
- That moral character is determined by protected class;
- That a person is inherently racist, sexist or oppressive, whether consciously or subconsciously, because of the person's protected class;
- That a person is inherently responsible for actions committed in the past by other members of the person's protected class;
- That fault, blame or bias should be assigned based on protected class;
- That a person should accept, acknowledge, affirm or assent to guilt or complicity or a need to apologize because of the person's protected class;
- That meritocracy or other traits like hard work ethic are racist or sexist.

The law requires all Wyoming public sector employers to take any actions necessary to implement the law, including the promulgation of rules, if necessary, no later than July 1, 2025.

This law does not authorize discrimination against individuals on the basis of protected class and should not be interpreted as contradicting prohibitions against discrimination under the federal civil rights laws or the Wyoming Fair Employment Practices Act. As a result, public employers should continue to enforce equal employment opportunity policies to the extent those policies do not contradict this law, and train employees on topics such as discrimination, workplace harassment and other types of inappropriate conduct such as bullying. However, employers should carefully review all policies, training materials and external presentations or materials that are referenced or adopted for any suggestion that one protected class should be favored or treated more preferably than another. Also, it is very important for public sector employers to be aware that public employees have a First Amendment right to speak on matters of public concern, including criticizing their employers DEI programs or policies, and this law may very well generate additional discussion of the topic which may be subject to such protection.

Sex-Designated Facilities. Enrolled Act 48 requires public employers in Wyoming to designate multi-occupancy restrooms, changing areas and sleeping quarters by biological sex, either biological male or female, and require employees to use the restroom, changing area, or sleeping quarter designated for their biological sex. Employers are permitted to provide reasonable accommodations for employees but such accommodations

may not include access to multi-occupancy areas designated for the opposite sex. The new law applies to every public entity in Wyoming, and to all public facilities that are not used as a private residence or commercial lodging, and creates a series of more detailed requirements for educational facilities.

Employers are effectively required to enforce a prohibition against employees using facilities designated for the sex opposite to the employees' biological sex at birth. If a person is in a facility designated for use by people of that person's sex encounters a person of the opposite sex in that facility, the person shall have a cause of action against the employer if the employer gave permission to the person to use a facility designated for the opposite sex or failed to take reasonable steps, such as signage and policies, to prohibit people from using facilities designated for the opposite sex. A person who prevails in such a lawsuit can recover actual damages and reasonable attorneys' fees and costs from the employer.

The law carves out some exceptions:

- Single-occupancy facilities that are conspicuously designated for unisex use;
- Employees who enter the facilities when not occupied for cleaning;
- Employees who enter the facilities to render medical or caregiving assistance, to perform official duties, during an ongoing natural disaster or emergency, or when necessary to prevent a serious threat to public health or safety;
- Facilities that are temporarily designated for that person's sex;
- Coaches and members of athletic teams under certain circumstances.

While the circumstances this law addresses may not have been a frequent concern of Wyoming public employers, it makes sense for those employers to adopt a policy explaining the requirements of this law, and prohibiting the use of facilities designated for the opposite sex.

Sex is Biological Sex at Birth. The House and Senate adopted Enrolled Act 73 by significant margins, and Governor Gordon allowed it to become law without his signature. Now, for all purposes under Wyoming law, sex will be defined as a person's biological sex, either male or female, at birth. Most significantly for employers, because the law applies to “a person's biological sex under any law or rule or regulation in this state,” the act may call into question whether the Wyoming Fair Employment Practices Act can be interpreted to prohibit discrimination on the basis of transgender status or gender identity.

The law also directs that any law, rule or regulation that distinguishes between sexes shall be subject to intermediate constitutional scrutiny, which would forbid discrimination against similarly situated male and female persons unless the distinctions are substantially related to important governmental objectives. Distinctions between sexes with respect to athletics, prisons, domestic violence shelters, rape crisis

centers, locker rooms, restrooms and other areas where safety or privacy are implicated are, by the terms of the law, substantially related to "important governmental objectives" of protecting the health, safety and privacy of persons. Finally, the law requires that any public employer who collects vital statistics (including sex) to comply with anti-discrimination laws or for most any other purpose, shall identify each person who is part of the collected data set by sex at birth.

Importantly, this law will apply to matters arising under Wyoming law, not under federal law. As a result, Wyoming employers may find themselves in the difficult position of classifying employees according to biological sex to comply with this law, while possibly violating federal constitutional rights of public employees.

Bottom Line for Wyoming Public Employers. Governmental employers in Wyoming have some work to do before July 1 to get ahead of the requirements of these laws. In particular, most public employers should consider the following steps:

- Confirming the sex designation of restrooms, changing areas and sleeping facilities by signage and adopting policies about access by employees of the opposite sex;
- Adopting policies addressing employees carrying concealed weapons;
- Reversing any prior policies, training or other employee guidance requiring the use of preferred pronouns; and,
- Reviewing all "DEI" or equal employment and anti-harassment training materials to remove content that would constitute "institutional discrimination" or require or promote differential or preferential treatment of employees on the basis of protected class.
