

C.R.S. 24-50.5-105.5

Statutes current through Chapter 52 of the 2024 Regular Session, effective as of April 4, 2024. The 2024 legislative changes are not final until compared and reconciled to the 2024 work product of the Colorado Office of Legislative Services later in 2024.

Colorado Revised Statutes Annotated > Title 24 . Government - State (§§ 24-1-101 — 24-116-102) > State Personnel System and State Employees (Arts. 50 — 50.5) > Article 50.5 .State Employee Protection (§§ 24-50.5-101 — 24-50.5-108)

24-50.5-105.5. Nondisclosure agreements - protection of state employees - definitions.

(1)

(a) Neither the state nor any department, institution, or agency of the state shall make it a condition of employment that an employee executes a contract or other form of agreement that prohibits, prevents, or otherwise restricts the employee from disclosing factual circumstances concerning the employee's employment with the state or any of its departments, institutions, or agencies unless the prohibition or restriction in the contract or agreement is necessary to prevent disclosure of:

(I) The employee's identity, facts that might lead to the discovery of the employee's identity, or factual circumstances relating to the employment that reasonably implicate legitimate privacy interests of the employee who is a party to the agreement if the employee elects in the employee's sole discretion to restrict disclosure of the employee's identity or such facts and circumstances;

(II) Data; information, including personal identifying information, as defined in section 24-74-102 (1); or matters that are required to be kept confidential by federal law or regulations, the state constitution, state law, state regulations, or state rules, or a court of law or as attorney-client privileged communications, as privileged work product, as communications related to a threatened or pending legal or administrative action, or as materials related to personnel or regulatory investigations by the employer;

(III) Nonpublic and confidential labor relations positions and strategies;

(IV) Attorney work product;

(V) Vendor lists and vendor preferences;

(VI) State business-related information received from a third party that the third party has designated confidential;

(VII) Information and matters related to state active duty orders of national guard soldiers and airmen and personnel disputes subject to the jurisdiction of the United States department of defense;

(VIII) Trade secrets or other confidential or sensitive information provided to or made accessible to the employee by a current or prospective contractor, vendor, grantee or as part of a public-private partnership, or entity working with the state as part of an economic development activity;

(IX) Information bearing on the specialized details of security arrangements or investigations including for elected officials or other individuals, physical infrastructure, or cybersecurity;

(X) Information derived from communications of the employer related to threatened or pending legal or administrative action;

(XI) Discussions that occur in an executive session authorized by section 24-6-402;

(XII) Trade secrets or information derived from trade secrets or proprietary information of the employer;

(XIII) Information and records not subject to disclosure under the “Colorado Open Records Act”, part 2 of article 72 of this title 24; or

(XIV) Trade secrets owned by the employer.

(b) Any provision in any contract or agreement that violates subsection (1)(a) of this section is deemed to be against public policy and is unenforceable against an employee unless the provision is intended to prevent disclosure of:

(I) The employee’s identity, facts that might lead to the discovery of the employee’s identity, or factual circumstances relating to the employment that reasonably implicate legitimate privacy interests of the employee who is a party to the agreement if the employee elects in the employee’s sole discretion to restrict disclosure of the employee’s identity or such facts and circumstances;

(II) Data; information, including personal identifying information, as defined in section 24-74-102 (1); or matters that are required to be kept confidential by federal law or regulations, the state constitution, state law, state regulations, or state rules, or a court of law or as attorney-client privileged communications, as privileged work product, as communications related to a threatened or pending legal or administrative action, or as materials related to personnel or regulatory investigations by the employer;

(III) Nonpublic and confidential labor relations positions and strategies;

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(VI) State business-related information received from a third party that the third party has designated confidential;

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of a public-private partnership, or entity working with the state as part of an economic development activity;

(IX) Information bearing on the specialized details of security arrangements or investigations including for elected officials or other individuals, physical infrastructure, or cybersecurity;

(X) Information derived from communications of the employer related to threatened or pending legal or administrative action;

(XI) Discussions that occur in an executive session authorized by section 24-6-402;

(XII) Trade secrets or information derived from trade secrets or proprietary information of the employer;

(XIII) Information and records not subject to disclosure under the “Colorado Open Records Act”, part 2 of article 72 of this title 24; or

(XIV) Trade secrets owned by the employer.

(2)

(a) Neither the state nor any of its departments, institutions, or agencies shall take any materially adverse employment-related action, including, without limitation, withdrawal of an offer of employment, discharge, suspension, demotion, discrimination in the terms, conditions, or privileges of employment, or other adverse action against an employee on the grounds that the employee does not enter into a contract or agreement deemed to be against public policy and unenforceable under subsection (1)(b) of this section. The taking of such a materially adverse employment-related action after an employee has refused to enter into such a contract or agreement is prima facie evidence of retaliation.

(b) Any employer who enforces or attempts to enforce a provision deemed by a court to be against public policy and unenforceable pursuant to subsection (1) of this section is liable for the employee’s reasonable attorney fees and costs in defending against the action.

(c) An action to enforce a provision of this section must be brought in the district court for the district in which the employee is primarily employed.

(3) A settlement agreement between an employer that is the state or a department, institution, or agency of the state and an employee of the state or the department, institution, or agency of the state must be signed by both the employer and the employee.

(4) A nondisclosure agreement must state that state employees are protected from retaliation for disclosure of information about state agencies that are working outside the public interest in accordance with the provisions of this article 50.5.

(5) A nondisclosure agreement may not prohibit the release of information required to be released under the “Colorado Open Records Act”, part 2 of article 72 of this title 24.

(6) Nothing in this section prevents an employer from requiring an employee to enter into a nondisclosure agreement with a third party in the employee’s official capacity and on behalf of the employer.

(7) As used in this section:

- (a) “Condition of employment” means an employment-related policy, practice, requirement, or restriction dictated by an employer that an individual must agree to abide by in order to be hired by or retain employment with the employer.
- (b) “Employee” means an applicant for employment with or a current or past employee of the state or a department, institution, or agency of the state.
- (c) “The state” includes without limitation each of the state officers listed in section 1 of article IV of the state constitution as well as the executive, legislative, and judicial departments of the government of the state.

History

Source:L. 2023:Entire section added,(SB 23-053), ch. 230, p. 1932, § 3, effective August 7.

Colorado Revised Statutes Annotated
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