

# Employment Discrimination



[www.legalvoice.org](http://www.legalvoice.org)

This memo begins by answering basic questions about employment discrimination, how to assess your claim, and the steps you may be able to take. What follows are details about specific laws and a quick reference chart giving basic information. Finally, source for more information and legal help are listed.

If you are a victim of employment discrimination, you may find it helpful to talk to an employment lawyer. Employment law is complex. A lawyer will be able to answer questions and help you assess your situation based on knowledge of the law. See “What Should I Know about Working with a Lawyer?” later in this memo.

Also see the Legal Voice publications *How to Find a Lawyer and Other Legal Resources in Washington State* as well as *Working with a Lawyer*, listed in Resources at the end of this memo.

## What Is Employment Discrimination?

Employment discrimination means that you are being treated unfairly by your employer in a way that violates a federal, state, or local law. The unfair treatment must be based on characteristics like your age, gender, race, religion, etc. The unfair treatment can include things like hiring, firing, pay, job assignments, promotions, training opportunities, etc.

Some examples of employment discrimination:

- A hotel refuses to hire a qualified job applicant because of the applicant’s perceived race or national origin.
- A department store manager offers training and mentorship opportunities to a younger employee but doesn’t offer these opportunities to an older employee because the manager thinks the older employee is “too old.”
- An employee of a coffee shop is fired because she is pregnant.
- A bank’s dress code requires female tellers to wear short skirts and high heels, while the male tellers must wear long pants, collared shirts, ties, and low shoes.
- A black employee subjected to negative racial remarks and jokes in the workplace. The employee reports the racial remarks and jokes to the employer, but the harassment continues.
- An employer fires a Latino employee for an error in his work performance, but does not fire non-Latino employee who make the same error.

For more information specifically about sexual harassment, see the Legal Voice memo *Sexual Harassment in the Workplace*, listed in Resources at the end of this memo.

## **How Do I Know If My Employer Is Breaking the Law?**

To find out whether the unfair treatment you are experiencing is against the law, you will need to know:

1. Are you a member of a “protected class”?
2. Is there a state, federal, or local law that protects against discrimination against your protected class?

The information in this publication will help you answer these questions.

## **What Can I Do If My Employer IS Breaking the Law?**

To find out what steps you can take against employment discrimination, you will need to know:

1. Key facts about your employer, such as who they are, what they do, how many employees are in your workplace, etc.;
2. Any agreements, rules, or policies specific to your employer that might affect your options – an employment contract, for example; and
3. Any deadlines that might affect your claim. (The information in this memo will help you answer this question.)

## **What If I Am an Undocumented Worker?**

Most labor and employment laws apply to undocumented workers, including laws against workplace sexual harassment. Undocumented workers, however, sometimes cannot get lost wages for claims of employment discrimination.

If you work with a lawyer, your lawyer should keep your immigration status confidential. The “attorney-client privilege” means that your lawyer must not tell others anything about your case, including your immigration status, unless you give the lawyer permission. There are a few narrow exceptions to this rule. You should also talk to your lawyer about legal ways to keep others from finding out about your immigration status. A lawyer will probably be able to make sure people involved in your employment discrimination case do not find out about your immigration status.

In a few situations, you might qualify for a “U visa” if you are a victim of workplace sexual harassment. U visas are for victims of crime who help with law enforcement investigations. With a U visa, you would be able to stay in the U.S. legally.

The Northwest Immigrant Rights Project (NWIRP) answers questions about immigration. The website is [www.nwirp.org](http://www.nwirp.org). Click on “Get Help” for a list of phone numbers.

## **Assessing Your Claim**

### **What Is a Protected Class?**

A “protected class” is a group of people with a specific characteristic like age, gender, race, religion, veteran status, disability, sexual orientation, etc., that cannot be targeted for discrimination because of that characteristic.

Most discrimination laws include a list of the protected classes they cover. See the chart on page 17 for a summary of federal and state anti-discrimination laws, including which classes are protected. You may be protected by more than one law (what to do in this situation is discussed below).

If you file an employment discrimination complaint, many laws automatically protect you from retaliation by your employer. See “What If My Employer Retaliates Against Me?” below.

### **How Do I Know Which Laws Apply to Me?**

The chart beginning on page 17 of this memo summarizes how some discrimination laws work, including:

- a. What agency or agencies enforce the law;
- b. Which workplaces are covered by the law;
- c. What classes are protected; and
- d. What the deadlines are for filing a complaint with each agency.

You can use this chart to help figure out which laws cover your situation and where you can go from there.

### **What If More than One Law Applies to Me?**

Some situations are covered under both state and federal law and some are only covered by one. If your situation falls under more than one law, in most cases, a work sharing agreement between the state and federal agency allow one agency to investigate your claims. When you contact the agency to file a charge, let the agency representative know that you believe your situation is covered by more than one law.

### **How Does the Complaint Process Begin?**

A discrimination complaint (also known as “charge”) is typically filed with a government agency. The federal agency is the U.S. Equal Employment Opportunity Commission (EEOC), and they handle federal law charges. Washington’s agency is called the Human Rights Commission (HRC), and it handles state charges.

In Washington, the HRC can help get your complaint to the right place under its work-sharing agreement with the EEOC. For instance, if you file your complaint under federal law at the EEOC but it is also covered by state or local law, the EEOC may also contact a state or local agency that is capable of handling your complaint. If you file a complaint under state law with the HRC and the complaint is also covered under a federal law, the HRC might refer it to the

EEOC. If you file a complaint with a local agency, that agency can investigate any state and federal violations as well.

You may want to file a complaint with the agency that has the shortest wait time. Call each agency and ask them how long you will have to wait for your complaint to be reviewed. You may have other factors to consider when deciding which law and agency to use. If possible, talk to a lawyer. A lawyer will work with you to create the best legal strategy depending on your particular situation.

### **What If My Employer Has Policies about Reporting Discrimination?**

If your employer has personnel policies that include a procedure for reporting discrimination or harassment, you should follow that procedure. You may be able to solve the problem within your company without filing a formal discrimination complaint with the government.

Even if you don't believe it will solve your problem, you should follow your employer's procedure as soon as possible after the harassment or discrimination occurred. If you don't, it can create problems later. For example, if you end up in court, you might have to show that you tried to follow your company's policies and procedures before filing a lawsuit.

Your employer's reporting policy can usually be found in an employment handbook or policy manual. If you do not have a copy, ask your employer for one. Even if your employer does not have an official policy about filing a complaint in writing, you should still give a brief written summary of your complaint to your employer (i.e., your boss, supervisor, or human resources department).

### **What If I Am a Union Member?**

If you are a member of a union, you may have rights and protections under your union contract that are even stronger than those under the law. If you believe you have been discriminated or retaliated against, contact your union representative to find out if your union can help you. Time limitations vary and are often short, so contact your union as soon as possible.

### **What If I Have a Written Contract with My Employer?**

Some non-union employees have individual, written employment contracts with their employers which give them more rights. For example, some employment contracts say that an employee can only be terminated for specific reasons and that, in the event of a termination, certain procedures must be followed. If you think you might be a party to such an agreement, make sure to mention that when you talk to a lawyer or when you write your complaint.

### **What If I Have an Arbitration Agreement with My Employer?**

Some employers make employees sign agreements stating that if the employee has any legal claim against the employer, including discrimination, the employee may not sue the employer in court. Instead, the employee must use the employer's arbitration process. Arbitration is a way to resolve legal disputes outside of court. A private lawyer acts as the arbitrator (similar to a judge in court). The arbitrator will make the final decision about how to resolve the dispute. Arbitration

agreements are allowed unless the employer has set up an arbitration process in a way that is biased toward the employer or in some way attempts to change the law.

If you think you have been illegally discriminated against at work, it is important to figure out if you signed an arbitration agreement. Your employer can ask you to sign an arbitration agreement at any time. But usually they are signed along with other employment documents when an employee is first hired. The arbitration agreement might even be included in your employee handbook. Often, arbitration agreements have their own unique procedures and timelines, which should be outlined in the agreement. If you signed an arbitration agreement, talk to a lawyer as soon as possible. A lawyer will help you find out if you have to go through with arbitration and, if you do, help you follow the required procedures.

### **What If My Employer Retaliates Against Me?**

If your employer fires or disciplines you at work because you make a claim for employment discrimination, you can also bring a claim for retaliation. Under most federal, state, and local discrimination laws, it is illegal for an employer to retaliate against anyone who

- a. Files a charge of discrimination;
- b. Assists in the investigation of such a charge; or
- c. Opposes discriminatory employment practices.

To prove a retaliation claim, you will need to prove that your complaint was a major reason why your employer treated you unfairly at work. Called “adverse employment actions,” unfair treatment can include taking away job responsibilities or privileges; taking favorable work assignments or preferred customers away from you and giving them to another employee; excluding you from staff meetings; assignment to a less favorable office environment; reassignment that requires a longer commute; hostility by co-workers; preventing your access to necessary work information; downgrading job status or performance evaluations; denial of job promotion; denial of overtime hours or a full work week; assignment to an undesirable work schedule; frequent staff or shift changes; refusal to assign meaningful work; unwarranted and unsubstantiated letters of reprimand or discipline; reduction in pay; suspension; termination (being fired).

If you have been retaliated against, contact the EEOC, the HRC, and/or your local city or county agency.

## **Filing Your Claim**

### **How Does the Claim Process Work?**

It depends on which law and agency you are using, but here are the steps you may encounter:

1. You file a formal administrative complaint with an agency.
2. The agency decides whether to investigate.
  - a. The agency investigates and decides whether there is “reasonable cause” to believe the employer has violated the law (the decision is called a “determination”). If the agency makes determination in your favor, the agency may offer mediation.
  - b. The agency declines to investigate.
3. Whether or not the agency makes a “reasonable cause” finding, you may file a lawsuit.
4. After you file a lawsuit, the parties to the lawsuit (you and your employer) exchange requests for information and documents, and each party can gather sworn testimony from witnesses.
5. Your case is either:
  - a. Decided by a judge or jury;
  - b. Dismissed by the court; or
  - c. Resolved through a settlement.

The losing party usually has an opportunity to appeal the court decision (but not a settlement).

### **What Is an Administrative Complaint?**

An administrative complaint is a formal, written complaint to an anti-discrimination law enforcement agency. There are both federal and state agencies set up to process employment discrimination complaints. These agencies are the first stop for most employment discrimination cases.

### **Why Should I File an Administrative Complaint?**

In some situations, you have to file an administrative complaint first in order to file a claim in court. For example, you *must* first file an administrative complaint with the EEOC if you want to file a Title VII claim in court.

In other situations, it is not necessary but can be helpful to begin with an administrative complaint. For example, if you want to file a claim in court using the Washington State Law Against Discrimination, you may want to start with an administrative complaint to the HRC because they can, for instance, help you with your EEOC complaint if you want to use both state and federal laws. Another reason to consider starting with an administrative complaint is you might be able to resolve your employment claim through agency mediation. Through agency mediation, you may be able to avoid filing a lawsuit.

However, if the agency’s investigation and mediation process will take too long, they may skip ahead and give you a “Right to Sue” letter or otherwise give you the permission you need to file a claim in court.

## How Does an Administrative Complaint Work?

Review the appropriate agency's website for information about filing a complaint. (See the chart at the end of this memo for web addresses.) Then contact the appropriate federal, state, or local agency and speak to an intake officer or counselor. The intake officer will speak with you in person or over the phone to determine if that agency can help. The intake officer will explain the law, listen to your issues, and help you understand whether or not there is a legal basis for filing a formal complaint. Intake officers will return voice mail messages if you leave your name and a phone number where they can reach you.

Remember, if both federal and state laws apply to you, you get to choose which agency to use. You may want to find out which agency has the shortest wait time. When you call the intake officer, ask them how long you may have to wait for your complaint to be reviewed.

If you decide to file an administrative complaint, be sure to include the following information:

1. Your contact information including your name, address, and telephone number;
2. The name, address, and telephone number of the offending employer, employment agency, or union;
3. The number of persons your employer employs;
4. The basis of discrimination (the protected class(es) relevant to your situation);
5. A short description of what happened that made you feel you were being discriminated against;
6. How you were affected; and
7. The dates when the discrimination occurred.

Also:

- **Gather evidence** of the discrimination such as copies of all documents, letters, answering machine messages, and emails that may relate to the discrimination. **WARNING:** Be mindful of your employer's confidentiality policies. Check your company handbook or manual to be sure you are allowed to print documents or emails, or forward email to be printed later. If that is against company policy, those documents might be inadmissible as evidence.
- **Keep notes and records** of any related incidents, the dates, times, words used, and the actions or conduct that you believe is discriminatory. Do this on your own time, **NOT** while you are "on the clock" at work.
- **Make a list of people** involved and all witnesses to the incidents. Do this on your own time, **NOT** while you are "on the clock" at work.

While you do not need to gather all of your evidence for nor include it all with your administrative complaint, be sure to give the agency all the evidence when it begins its investigation.

## What Happens During the Investigation?

After receiving your complaint, the agency will begin an investigation. The agency will ask the employer for a statement in response to your complaint. You will usually be interviewed. Cooperate with the investigator and provide all the evidence you have. Tell the investigator where to go, which people to talk to, and where to look for relevant documents. The investigator



may get sworn statements from your employer and may interview witnesses. If the investigator leaves you a voicemail or writes you a letter, respond promptly. If your phone number or address changes, notify the agency right away.

### **What Happens after My Complaint Is Investigated?**

Once the investigation is complete, the investigator will decide whether or not you have “reasonable cause” to believe discrimination occurred. If the investigator decided that you DO have reasonable cause, the agency will help you and your employer try to settle the case. In some rare cases, the agency will go to court on your behalf. But usually the agency will simply notify you of its decision and of your right to file a lawsuit. If the investigator decides that you DO NOT have “reasonable cause,” the agency will notify you in writing of your right to file a lawsuit. Carefully read the notice right away because you may be able to appeal the agency’s decision, and you may only have a short time to appeal.

For EEOC charges, you will be notified in writing of your right to file a lawsuit with what is called a “90-Day Right to Sue” letter. To preserve your federal claim, you must file a lawsuit within 90 days of the Right to Sue letter. If you do not already have a lawyer, you should talk to an employment lawyer immediately so that he or she has time to evaluate your case before the deadline. A lawyer can help evaluate your claim, identify settlement options, and determine whether to go to court. For employment discrimination cases, a lawyer may agree to work with you on a contingency fee basis (the lawyer’s fee is taken out of any money you get from the lawsuit). See the Legal Voice publications listed under “Legal Help” in Resources at the end of this memo for more information about contingency fees.

At the time the agency’s investigation ends and you are issued the Right to Sue, you have the right to request the agency’s investigation file, which should include your employer’s responses to the investigators questions. You should request the agency’s file right away; attorneys who evaluate your case will want to look at the agency’s file.

### **What Can I Expect If I File a Lawsuit in Court?**

The laws differ as to whether and when you can sue an employer in court. For this reason, it is important to talk to an employment lawyer as soon as possible before deciding what action to take. The lawyer can help you understand the pros and cons of filing a lawsuit versus taking a settlement. The lawyer can also help you avoid mistakes such as missing the deadline to file your claim.

Note that government agencies and courts do not act quickly. It often takes at least one or two years for a case to be resolved. Even arbitration may take many months. If you are prepared for delays, the process will be far less frustrating. In general, you have an obligation to search for other employment while you are waiting for the outcome of your case.

### **When and Where Do I File My Lawsuit?**

It depends on which law you use. Below is a brief description of where to start with federal, state, and local laws.



### Federal Laws

If you believe that your rights have been violated under Title VII (seven), the ADEA, or the ADA, you must first file a complaint with the EEOC within 300 days of the act of discrimination. If you think your rights have been violated under one of these laws, you should contact the EEOC as soon as possible to confirm how much time you have to file your complaint.

You can file a complaint and start working with the EEOC even if you are also trying to resolve the dispute in other ways, such as through your employer's internal dispute resolution process. That way you will not miss the EEOC deadline if the other dispute resolution methods ultimately fail. If you miss the 300-day deadline, you may not be able to sue your employer under these federal laws nor get help from the EEOC.

### State Law

If you believe that your rights have been violated under the WLAD, you can file a complaint with the Human Rights Commission (HRC). A claim of discrimination must be filed within 6 months of the act of discrimination, and an employee may only file a complaint with the HRC if his or her employer has at least 8 employees. Unlike under federal law, if you miss the deadline or believe you have a wrongful termination claim not covered by the WLAD, you can still sue your employer under state law as long as you bring the suit within three years of the act of discrimination or harassment.

To file a charge of discrimination with the HRC, contact the agency by mail, online, or in person. The HRC's offices and telephone numbers, along with more information about how to file a complaint, can be found on the chart in this memo and at [www.hum.wa.gov/](http://www.hum.wa.gov/).

### Local Laws

- **Seattle:** If you believe that your rights have been violated under the Seattle Employment Practices Ordinance, you may file a complaint with the Office of Civil Rights in the Seattle Human Rights Department. Your claim must be filed within 6 months of the act of discrimination. You may also file a complaint directly with the Superior Court within three years of the act of discrimination.
- **King County:** Under the King County Ordinance, you may file a complaint with the King County Office of Civil Rights Enforcement within 180 days of the act of discrimination or within 180 days of when you should have been aware of the discrimination.
- **Pierce County:** Refer to your employment handbook or collective bargaining agreement to determine the appropriate grievance procedure for filing a complaint.
- **Tacoma:** Complaints are handled by the Tacoma Human Rights Department and must be filed within 6 months of the act of discrimination.

- **Snohomish County:** Complaints are generally handled according to grievance procedures otherwise available by law or in a collective bargaining agreement. The director of personnel has a grievance procedure for county employees for whom such alternative options are not available.
- **Spokane:** Complaints are handled by the Spokane Office of our state’s Human Rights Commission and must be filed within one year of the act of discrimination.
- **Other Local Anti-Discrimination Laws:** Other local laws may exist that provide you with additional rights. Contact your county or city offices to find out if it has a human rights office. If so, contact them for information.

### **What Will I Get If I Win in Court?**

A number of things could happen if the court agrees that your employer illegally discriminated against you. The court can order your employer to re-hire, reinstate, or promote you; pay you the dollar value of lost wages and benefits; pay you for damages, economic loss, and emotional distress; pay you punitive damages (federal claims only); and pay your attorney's fees and costs. The court calls these “remedies.” The exact remedies available will depend on the law used and the facts of your case.

### **What Should I Know about Working with a Lawyer?**

If you decide to talk to a lawyer at any point, there are several things you can do to help your lawyer serve you best.

Come to meetings prepared. Do your research and write down specific questions so your lawyer can help you understand your situation better.

Also, gather evidence such as emails, letters, contracts, or other documents related to the situation. Depending on your situation, you might also choose to create a list (often called a “log”) of all the dates and times when discrimination occurred. Also, try to write down facts you remember from each occurrence of discrimination. If the discrimination is still happening, write down facts and details like the date, time, who was there, and what was said and done after work while details are still fresh in your mind. Do not do this while you are “on the clock” at work.

Finally, be very honest with your lawyer, even if certain detail might make you feel embarrassed or ashamed. Your lawyer can help you best when she or he knows everything there is to know – the good and the bad – because every detail will be important to the legal strategy you and your lawyer create together.

For more information about working with a lawyer, see the Legal Voice publication *Working with a Lawyer*, listed in Resources below.

## Overview of Laws

The information in this section will help you figure out which employment discrimination law or regulation might apply to your situation. This information is presented in two ways: first are written descriptions; second is a quick-reference table that includes contact information for enforcement agencies (regulations not included in the reference table; each law is numbered the same in both lists).



### FEDERAL

#### 1. Title VII of the Civil Rights Act of 1964 (Title VII)

This federal law applies to private employers with 15 or more employees and also to federal employees. It prohibits these employers from discriminating against employees or job applicants on the basis of race, color, religion, national origin, sex, or gender identity. Sex discrimination includes sexual harassment, discrimination against pregnant women, and may include discrimination on the basis of caregiver or family responsibilities. (For more information about sexual harassment in the workplace, see the Legal Voice memo titled, “Sexual Harassment in the Workplace” listed in Resources at the end of this memo). According to a growing body of court cases and EEOC decisions, LGBT individuals are protected from discriminatory action by the terms “sex” and “gender identity.” For more information, see

[www.eeoc.gov/eeoc/newsroom/wysk/enforcement\\_protections\\_lgbt\\_workers.cfm](http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm).

Title VII also makes it illegal to retaliate against an employee if the employee complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Title VII also requires that employers reasonably accommodate applicants’ and employees’ sincerely held religious practices provided it does not impose an undue hardship on the employer. For more information, see

[www.alliancealert.org/2014/05/23/washington-supreme-court-says-anti-discrimination-law-requires-reasonable-accommodation-of-religious-beliefs/](http://www.alliancealert.org/2014/05/23/washington-supreme-court-says-anti-discrimination-law-requires-reasonable-accommodation-of-religious-beliefs/).

Title VII prohibits two types of discrimination:

1. Discrimination when an employer treats an employee less favorably than other employees due to the employee’s race, color, religion, national origin, sex, or gender identity (“disparate treatment”), and
2. Discrimination when an employer uses a neutral test or selection procedure that effectively excludes an employee due to the employee’s race, color, religion, national origin, sex, or gender identity (“disparate impact”).

The EEOC recently issued a notice providing guidance regarding discrimination based on caregiver responsibilities, which is prohibited by Title VII if the discrimination is based on sex or another protected characteristic. This type of sex discrimination can be proven using any of the types of evidence used in other sex discrimination cases. EEOC investigators who face a charge alleging this claim are instructed to examine all evidence to determine whether

the particular action was unlawfully discriminatory. For more information, see [www.eeoc.gov/policy/docs/caregiving.html](http://www.eeoc.gov/policy/docs/caregiving.html).

In order to preserve your rights under Title VII, you must file an administrative complaint (a “Charge of Discrimination”) with the EEOC within 300 days of the last discriminatory act (if you live or work in Washington State). To learn how to file a Charge with the EEOC, visit [www.eeoc.gov/employees/howtofile.cfm](http://www.eeoc.gov/employees/howtofile.cfm).

Note that to file a claim for discriminatory pay practices, the limitations period resets with each new discriminatory compensation decision. Even so, you should file a complaint as soon as possible so that you are in the best position to recover all of your damages (see [www.eeoc.gov/laws/statutes/epa\\_ledbetter.cfm](http://www.eeoc.gov/laws/statutes/epa_ledbetter.cfm)).

For more information regarding Title VII, see [www.aauw.org/what-we-do/legal-resources/know-your-rights-at-work/title-vii/](http://www.aauw.org/what-we-do/legal-resources/know-your-rights-at-work/title-vii/).

## 2. The Age Discrimination in Employment Act (ADEA)

The ADEA applies to employers with at least 20 employees, and it prohibits age discrimination against persons over the age of 40. This law applies to hiring, termination, reductions in force, and other actions relating to the employee’s terms and conditions of employment. Note that in order to prove a claim under the ADEA, you must be able to prove that your employer would not have taken negative employment action in the absence of age considerations.

For more information, see: [www.eeoc.gov/laws/types/age.cfm](http://www.eeoc.gov/laws/types/age.cfm) and [www.eeoc.gov/facts/age.html](http://www.eeoc.gov/facts/age.html).

## 3. The Americans with Disabilities Act (ADA)

The ADA applies to employers with 15 or more employees, and it prohibits employers from discriminating against employees on the basis of a disability. This law applies to job application procedures; the hiring, advancement, discipline or discharge of employees; employee compensation; job training; and other terms and conditions of employment. Note that ADA protection extends to a disabled employee only if the employee can perform the essential functions (i.e., the fundamental duties of his or her job) with or without reasonable accommodation.

Under the ADA, an individual has a “disability” if he or she:

1. Has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing or learning);
2. Has a history of a disability (such as cancer that is in remission); or
3. If an employer believes the individual has a physical or mental impairment that is not transitory or minor.

Under the ADA, an employer is required to make reasonable accommodations for an individual with a disability as long as the reasonable accommodation can be provided

without “undue hardship” to the employer, meaning that the accommodation does not require significant difficulty or expense.

If you have a disability and require accommodation, you must inform your employer of your disability and your need for accommodation, give your employer a reasonable opportunity to reasonably accommodate you, cooperate with your employer by providing information regarding your disability, and discuss and try proposed accommodations. Your employer is required to work with you (in an “interactive process”) to determine what accommodations are available and to try alternate accommodations if the first accommodation does not work. Although not required, it is recommended that you inform your employer of your disability and need for accommodation in writing.

A good resource for possible ways to accommodate a disability (and to help provide suggestions to your employer) can be found here: [www.askjan.org](http://www.askjan.org)

#### **a. The Older Workers Benefit Protection Act (OWBPA)**

The OWBPA is a division of the ADEA that prohibits discriminatory employee benefit plans, specifies requirements for early retirement plans, and imposes requirements on an employer if the employee who is over the age of 40 and is asked to release (or give up) ADEA legal claims the employee may have against the employer. This often comes up in the context of severance or settlement agreements. Among other requirements, this law requires that the employer give the employee money or other consideration in addition to that which the employee is already entitled, 21 days to consider the release before signing, and 7 days after signing to revoke it. If an employee is at least 40 years old and signed a release that does not meet all OWBPA requirements, he or she may be able to file a claim (as to any possible age discrimination—other claims may still be waived).

For more information on older workers benefits and severance agreements, see [www.eeoc.gov/policy/docs/qanda\\_severance-agreements.html](http://www.eeoc.gov/policy/docs/qanda_severance-agreements.html).

#### **4. The Equal Pay Act**

The Equal Pay Act is a federal law that makes it illegal for an employer to pay women and men who perform “substantially equal work” at different pay rates on the basis of sex. This law applies to all employers.

“Substantially equal work” means work requiring substantially similar skill, effort, and responsibility performed under similar working conditions in the same workplace. Different pay rates for reasons other than sex – for example, a seniority or merit system, or a system that measures earnings by quantity or quality of production – are allowed.

For more information, see [www.eeoc.gov/eeoc/publications/fs-epa.cfm](http://www.eeoc.gov/eeoc/publications/fs-epa.cfm).

#### **5. Section 1981 (42 U.S.C. 1981)**

This federal law prohibits discrimination in contracts on the basis of race. It applies to all public and private employers, including those with fewer than 15 employees. Since employment relationships are contractual (even if there is no written contract) this law

applies to the making and enforcement of contracts and the terms and conditions of those contracts. There is no agency that enforces this law. You must file a lawsuit in court.

## 6. The Immigration Reform & Control Act of 1986 (IRCA)

The IRCA prohibits employment discrimination on the basis of national origin and citizenship in the hiring and firing of employees. It applies to employers with at least four employees, but it does *not* apply if the employee is covered by Title VII or if the discriminatory act is required in order for the employer to comply with the law, regulation, or government contract.

For more information, see [www.eeoc.gov/laws/types/nationalorigin.cfm](http://www.eeoc.gov/laws/types/nationalorigin.cfm).

## 7. The National Labor Relations Act (NLRA)

The NLRA protects workers who form, join, support, or assist unions, or those who act to decertify a union that has lost the support of employees. It also protects groups of 2 or more workers who engage in protected “concerted activities” (like seeking to modify wages or terms and conditions of employment), even without a union. Note that a single employee may engage in protected activity if he or she is acting on the authority of other employees, bringing group complaints to employer’s attention, trying to induce group action, or seeking to prepare for group action.

The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of their rights as protected by the NLRA. Note that while workers who are not represented by a union have rights under the NLRA, not all workers are covered by the NLRA. For more information, see [www.nlr.gov/rights-we-protect/employee-rights](http://www.nlr.gov/rights-we-protect/employee-rights).

For questions about your work situation or to file a charge under the NLRA, contact your local National Labor Relations Board (NLRB) Information Officer. Your charge must be filed and served within 6 months of the event or conduct constituting the violation. For more information, see [www.nlr.gov/who-we-are/regional-offices](http://www.nlr.gov/who-we-are/regional-offices).



## STATE & LOCAL

Below is a summary of state-wide laws and regulations and *some* local anti-discrimination laws in Washington State (regulations are not included in the quick-reference table). This is not an exhaustive list of local laws. For information about all of your rights and for an evaluation of your claims, talk to an employment lawyer as soon as possible. See the Legal Voice publication *How to Find a Lawyer and Other Legal Resources in Washington State*, listed in Resources at the end of this memo.

### State-wide Regulations

- **Discrimination for Reporting Unsafe Conditions at Work or for Filing a Workers’ Compensation Claim**



It is illegal for an employer to discriminate against an employee for reporting unsafe conditions at work. It is also illegal for an employer to discriminate against an employee for filing a workers' compensation claim or stating that he or she plans to do so.

If you have been discriminated against for reporting unsafe conditions at work, you must file a complaint with the Washington Department of Labor & Industries (L&I) within 30 days of the discriminatory act. Call 1-800-423-7233 for help with filing a complaint or fill out the complaint form: [www.lni.wa.gov/forms/pdf/F416-011-000.pdf](http://www.lni.wa.gov/forms/pdf/F416-011-000.pdf).

If you have been discriminated against for disclosing that you have filed a workers' compensation claim or that you plan to file a claim, you must file a complaint with L&I within 90 days of the discriminatory act. Call (360) 902-6568 for help with filing a complaint or fill out the complaint form: [www.lni.wa.gov/Forms/pdf/F262-009-000.pdf](http://www.lni.wa.gov/Forms/pdf/F262-009-000.pdf).

- **Wrongful Termination**

Employees who are wrongfully terminated (fired) in certain specific situations that violate public policy *may* have grounds to sue their employer. These public policy actions have historically been allowed in four different situations:

1. Where employees are fired for refusing to commit an illegal act;
2. Where employees are fired for performing a public duty or obligation, such as serving on a jury;
3. Where employees are fired for exercising a legal right or privilege, such as filing workers' compensation claims or complaining about discrimination (even if the employer has fewer than eight employees); and
4. Where employees are fired in retaliation for reporting employer misconduct (i.e., whistle-blowing).

These grounds are only available upon termination; in other words, they are not available to employees who experience on-the-job discrimination such as harassment or failure to promote. Note that this type of claim only applies in extremely limited circumstances. Talk to an employment lawyer if you have questions about your claim. Also see Resources at the end of this memo for information about your rights as an employee, termination (begin fired), and legal help.

- **Job Application and Interview Regulations**

Regulations issued by our state's Human Rights Commission (HRC) specify types of questions that are considered discriminatory, which employers cannot ask in job applications or during job interviews. These include questions about age, children, marital status, pregnancy, and disabilities. These regulations also state that employers may not ask about an applicant's arrests or criminal convictions unless it is reasonably related to job duties and the arrest or conviction occurred within the last 10 years. For more information, see <http://apps.leg.wa.gov/wac/default.aspx?cite=162-12-140>.



## State-wide Law

### **1. The Washington State Law Against Discrimination (WLAD)**

The WLAD applies to employers with 8 or more employees. It prohibits discrimination and harassment on the basis of race; creed; color; national origin; sex; honorably discharged veteran or military status; sexual orientation; age (40+); marital status; 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. Note that “creed” has been interpreted by Washington courts to include religious beliefs. For more information regarding the WLAD, see [www.hum.wa.gov/employment](http://www.hum.wa.gov/employment).

Under the WLAD, “disability” is broadly defined; it exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated. An employee must be able to perform the essential functions of their job with or without reasonable accommodation. For more information, see [www.hum.wa.gov/media/dynamic/files/206\\_Disability%20Q%20and%20A.pdf](http://www.hum.wa.gov/media/dynamic/files/206_Disability%20Q%20and%20A.pdf).

Similar to the ADA, the WLAD requires employers to reasonably accommodate an employee with a disability who requires accommodation. To determine if you qualify for accommodation in employment, see [www.disabilityrightswa.org/reasonable-accommodations-employment](http://www.disabilityrightswa.org/reasonable-accommodations-employment). As with the ADA, you must tell your employer about your disability and your need for accommodation.

## Local Laws

### **2. King County Code Chapter 12.18**

Chapter 12.18 prohibits retaliation and discrimination on the basis of race, color, religion, age, gender, national origin, ancestry, sexual orientation (and gender identity), marital status, and disability, or the use of a service or assistive animal by an individual with a disability. It applies to employers with 8 or more employees, employment agencies, and labor organizations that are located in unincorporated King County (in King County but not in a city). It also applies to the County as an employer.

### **3. Seattle Fair Employment Practices Ordinance**

Chapter 14.04 of the Seattle Municipal Code prohibits discrimination in employment on the basis of race, color, sex, marital status, sexual orientation, gender identity, genetic information, political ideology, age, creed, religion, ancestry, national origin, honorably discharged veteran or military status, or on the presence of any sensory, mental, or physical disability. Pregnancy is protected as a temporary disability. It applies to employers in Seattle with one or more employees, including the City of Seattle as an employer, employment agencies, labor organizations, printers, publishers, and broadcasters.

### **4. Pierce County Affirmative Action Plan**

Chapter 3.16 of the Pierce County Code prohibits employment discrimination on the basis of race, creed, religion, color, national origin, sex, sexual orientation, marital status, age,

disability, veteran status; on the presence of any sensory, mental, or physical disability; or on the use of a trained guide dog or service animal by a disabled person. This ordinance applies to Pierce County employees only.

### **5. City of Tacoma Law Against Discrimination**

Chapter 1.29 of the City of Tacoma Code prohibits employment discrimination on the basis of race, religion, color, national origin, ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, honorably discharged veteran or military status, or disability. This law applies to employers within the Tacoma city limits that have eight or more employees, City of Tacoma employees, employment agencies, and labor organizations.


### **6. Snohomish County Code Chapter 3.57**

Chapter 3.57 prohibits discrimination on the basis of race, color, national origin, sex, religion, marital status, age, sexual orientation, citizenship, veteran status, or on the presence of any sensory, mental, or physical disability. These protections apply to Snohomish County employees only.


### **7. City of Spokane's Human Rights Ordinance**

Chapter 1.06 prohibits discrimination in employment on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, marital status, familial status, age, and disability. This protection applies to employers of eight or more employees within the city limits of Spokane, labor organizations, and employment agencies.


**Summary of Equal Employment Opportunity Laws for Workers in Washington State**

	Law	Enforcement Agency	Employers Covered	Protected Classes	Deadline
<b>FEDERAL</b> 	1. Title VII (seven) of the Civil Rights Act of 1964  2. Age Discrimination in Employment Act (ADEA)  3. Americans with Disabilities Act (ADA) a. The Older Workers Benefit Protection Act (OWBPA)	EEOC 909 First Ave., Ste. 400 Seattle, WA 98104 (206) 220-6884 TTY: (206) 220-6882 Toll Free: 1-800-669-4000 <a href="http://www.eeoc.gov">www.eeoc.gov</a>	<ul style="list-style-type: none"> <li>• employers in all states</li> <li>• state and local governments</li> <li>• employers of 15 or more (Title VII)</li> <li>• employment agencies</li> <li>• labor organizations</li> <li>• federal government</li> </ul>	<ul style="list-style-type: none"> <li>• race</li> <li>• color</li> <li>• religion</li> <li>• sex</li> <li>• national origin</li> <li>• age</li> <li>• disability</li> <li>• gender identity</li> </ul>	300 days* to file with EEOC  <i>* Federal employees must contact an EEOC counselor within 45 days of the discriminatory act.</i>
	4. Equal Pay Act	EEOC  <i>Filing a complaint with the EEOC is optional. See above for contact information.</i>	<ul style="list-style-type: none"> <li>• employers in all states</li> <li>• employers regardless of number of employees</li> </ul>	<ul style="list-style-type: none"> <li>• sex</li> </ul>	2 or 3 years
	5. Section 1981 (42 U.S.C. 1981)	N/A  <i>See description on page 20.</i>	<ul style="list-style-type: none"> <li>• employers in all states</li> <li>• state and local governments</li> <li>• employers regardless of number of employees</li> </ul>	<ul style="list-style-type: none"> <li>• race</li> <li>• color</li> <li>• national origin</li> </ul>	3 or 4 years


**Summary of Equal Employment Opportunity Laws for Workers in Washington State**

	<b>Law</b>	<b>Enforcement Agency</b>	<b>Employers Covered</b>	<b>Protected Classes</b>	<b>Deadline</b>
	6. Immigration Reform and Control Act	Office of Special Counsel U.S. Dept. of Justice Civil Rights Division 950 Pennsylvania Ave. NW Washington, D.C. 20530 (202) 616-5594 TTY: 1-800-237-2515 Toll Free: 1-800-255-7688 <a href="http://www.usdoj.gov/crt/">www.usdoj.gov/crt/</a>	<ul style="list-style-type: none"> <li>• employers in all states</li> <li>• state and local governments</li> <li>• employers of 4 or more employees who are not covered by Title VII</li> </ul>	<ul style="list-style-type: none"> <li>• national origin citizenship</li> </ul>	180 days
	7. The National Labor Relations Act (NLRA)	Contact your local National Labor Relations Board (NLRB)	<i>See description on page 20</i>	N/A  <i>See description on page 20</i>	<i>See description on page 20.</i>


**Summary of Equal Employment Opportunity Laws for Workers in Washington State**

	<b>Law</b>	<b>Enforcement Agency</b>	<b>Employers Covered</b>	<b>Protected Classes</b>	<b>Deadline</b>
 <b>STATE &amp; LOCAL</b>	1. Washington State Law Against Discrimination RCW Chapter 49.60	Washington State Human Rights Commission Olympia Headquarters: 711 S. Capitol Way, Ste. 402 Olympia, WA 98504 (360) 753-6770 TTY: 1-800-300-7525 Toll Free: 1-800-233-3247 <a href="http://www.hum.wa.gov">www.hum.wa.gov</a>  <i>Filing a complaint with the WA HRC is optional.</i>	<ul style="list-style-type: none"> <li>• Washington employers</li> <li>• state and local governments</li> <li>• employers of 8 or more</li> <li>• employment agencies</li> <li>• labor organizations</li> </ul>	<ul style="list-style-type: none"> <li>• race/color</li> <li>• national origin</li> <li>• sex/pregnancy disability</li> <li>• use of service animal</li> <li>• honorably discharged veteran/military status</li> <li>• sexual orientation/gender identity (which includes transgender people)</li> <li>• creed</li> <li>• age (40+)</li> <li>• marital status</li> </ul>	<i>Via HRC:</i> 6 months  <i>Via court:</i> 3 years
	2. King County Code Chapter 12.18	King County Office of Civil Rights Enforcement 401 Fifth Ave., Ste. 215 Seattle, WA 98104 (206) 263-2446 TTY: 7-1-1 <a href="http://www.kingcounty.gov">www.kingcounty.gov</a>	<i>Employees of King County:</i> <ul style="list-style-type: none"> <li>• contractors doing business in King County</li> </ul> <i>In unincorporated King County:</i> <ul style="list-style-type: none"> <li>• employers of 8 or more</li> <li>• employment agencies</li> <li>• labor organizations</li> </ul>	<ul style="list-style-type: none"> <li>• race/color</li> <li>• national origin</li> <li>• disability/use of service animal</li> <li>• age</li> <li>• ancestry</li> <li>• gender</li> <li>• marital status</li> <li>• sexual orientation (includes gender identity)</li> <li>• religion</li> </ul>	180 days

**Summary of Equal Employment Opportunity Laws for Workers in Washington State**

	Law	Enforcement Agency	Employers Covered	Protected Classes	Deadline
<b>STATE &amp; LOCAL</b> 	3. Seattle Fair Employment Practices Ordinance	Seattle Office for Civil Rights 810 3rd Ave., Ste. 750 Seattle, WA 98104 (206) 684-4500 TTY: (206) 684-4503 <a href="http://www.seattle.gov/civilrights">www.seattle.gov/civilrights</a>	<i>Within City of Seattle limits:</i> <ul style="list-style-type: none"> <li>• employees of City of Seattle</li> <li>• employers of 1 or more employees</li> <li>• employment agencies</li> <li>• labor organizations</li> <li>• printers, publishers, and broadcasters</li> </ul>	<ul style="list-style-type: none"> <li>• race/color</li> <li>• national origin</li> <li>• religion</li> <li>• creed</li> <li>• age</li> <li>• ancestry</li> <li>• sex</li> <li>• sexual orientation</li> <li>• gender identity</li> <li>• disability</li> <li>• genetic information</li> <li>• marital status</li> <li>• political ideology</li> <li>• honorably discharged veteran/military status</li> </ul>	<p><i>Via Seattle Office for Civil Rights:</i> 180 days</p> <p><i>Via court:</i> 3 years</p>
	4. Pierce County Affirmative Action Plan	N/A  <i>Refer to your employment handbook or Collective Bargaining Agreement</i>	Employees of Pierce County	<ul style="list-style-type: none"> <li>• race/color</li> <li>• national origin</li> <li>• sex</li> <li>• sexual orientation</li> <li>• age</li> <li>• disability</li> <li>• marital status</li> <li>• religion</li> <li>• creed</li> </ul>	<p><i>Refer to your handbook or Collective Bargaining Agreement.</i></p> <p><i>NOTE: Notify your supervisor, manager, department director, EEOC/ADA specialist, or HR Director within 180 days after act of discrimination.</i></p>

**Summary of Equal Employment Opportunity Laws for Workers in Washington State**

	Law	Enforcement Agency	Employers Covered	Protected Classes	Deadline
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>STATE &amp; LOCAL</b></p> 	<p>5. Tacoma Law Against Discrimination Chapter 1.29</p>	<p>Tacoma Human Rights Dept. 747 Market St., Rm 836 Tacoma, WA 98402 (253) 591-5151 TTY: (253) 591-5153 Email: <a href="mailto:hrhs@cityoftacoma.org">hrhs@cityoftacoma.org</a></p>	<p><i>Within Tacoma city limits:</i></p> <ul style="list-style-type: none"> <li>• employees of City of Tacoma</li> <li>• employers of 8 or more</li> <li>• employment agencies</li> <li>• labor organizations</li> </ul>	<ul style="list-style-type: none"> <li>• race/color</li> <li>• national origin</li> <li>• ancestry</li> <li>• religion</li> <li>• sex</li> <li>• age</li> <li>• disability</li> <li>• family or marital status</li> <li>• sexual orientation</li> <li>• gender identity</li> <li>• honorably discharged veteran/military status</li> </ul>	<p>6 months</p>
	<p>6. Snohomish County Code Chapter 3.57</p>	<p>N/A</p> <p><i>Refer to your employment handbook or Collective Bargaining Agreement.</i></p>	<p>Applicants and employees of Snohomish County</p>	<ul style="list-style-type: none"> <li>• race/color</li> <li>• national origin</li> <li>• marital status</li> <li>• age</li> <li>• disability</li> <li>• religion</li> <li>• sex</li> <li>• sexual orientation</li> <li>• citizenship</li> <li>• military status</li> </ul>	<p><i>Refer to your employment handbook or Collective Bargaining Agreement.</i></p>
	<p>7. Spokane Human Rights Ordinance C32232</p>	<p>Spokane Human Rights Commission 1330 N. Washington St. Spokane, WA 99201 (509) 568-3169</p>	<p><i>Within City of Spokane limits:</i></p> <ul style="list-style-type: none"> <li>• employers of 8 or more employees</li> <li>• employment agencies</li> <li>• labor organizations</li> </ul>	<ul style="list-style-type: none"> <li>• race/color</li> <li>• national origin</li> <li>• disability</li> <li>• age</li> <li>• familial or marital status</li> <li>• sex</li> <li>• sexual orientation</li> <li>• religion</li> </ul>	<p>1 year</p>



## Resources

### Complaints/Enforcement

- Government enforcement agencies: See the chart starting beginning on page 18 of this memo for contact information for government enforcement agencies.

### General Information about Employment Law

- Legal Voice: Offers free and low-cost publications on a range of legal issues.  
Online: [www.legalvoice.org/tools/](http://www.legalvoice.org/tools/)  
Click on “Employment & Economic Security” for:
  - *Family Leave Laws*
  - *Know Your Rights: Domestic Workers*
  - *Leave from Work for Survivors of Domestic Violence, Sexual Assault, or Stalking*
  - *Sexual Harassment at Work*
- Washington Law Help: Free legal information and self-help forms on a range of legal issues in Washington State, including employment.  
Online: [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org); click on “Employment / Farm Worker Rights,” then:  
Click on “Termination” for:
  - *I Lost My Job. Do I Have Rights?*
  - *Your Rights and Responsibilities as an Employee in Washington State*Click on “Discrimination for:
  - *Job Discrimination*
- WorkplaceFairness.org: A comprehensive online resource for information about worker’s rights.  
Online: [www.workplacefairness.org](http://www.workplacefairness.org)

### Legal Help

- King County Bar Association: For information about free consultation with a lawyer in King County.  
Online: [www.kcba.org/pbs/NLC.aspx](http://www.kcba.org/pbs/NLC.aspx)
- Legal Voice: Offers free and low-cost publications on a range of legal issues.  
Online: [www.legalvoice.org/tools/](http://www.legalvoice.org/tools/); click on “Lawyers & the Legal System”:
  - *Damages and Contingency Fees in Personal Injury and Discrimination Cases*
  - *How to Find a Lawyer and Other Legal Resources in Washington State*
  - *Working with a Lawyer*

- Northwest Justice Project: For information about free and low-cost legal services, contact the CLEAR hotline.  
By phone:
    - Low-income people *outside* King County: 1-888-201-1014
    - Low-income people *in* King County: 2-1-1
    - Seniors age 60 and over can *also* call CLEAR\*Sr at 1-888-387-7111
    - Veterans: 1-855-657-8387
    - TTY: 7-1-1Online: [www.nwjustice.org/apply-online](http://www.nwjustice.org/apply-online)
  
  - Tacoma-Pierce County Bar Association Volunteer Legal Services: Offers free legal help for certain legal issues, including federal discrimination law cases.  
By phone: Please leave *one* message and you will be contacted by an intake specialist within 48 hours: (253) 572-5134; 1-888-822-5134 (toll-free)  
By email: [vls@tacomaprobono.org](mailto:vls@tacomaprobono.org)  
Online: [www.tacomaprobono.org/2015%20program%20brochure.pdf](http://www.tacomaprobono.org/2015%20program%20brochure.pdf)
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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of March 2016. Resources updated July 2016.

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