

EMPLOYMENT LAW SUMMARY

Washington Fair Employment Laws – Overview



Because You're Different

In addition to the workplace discrimination protections provided to workers under federal laws, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act, state law provides broad workplace discrimination protections to employees in Washington under the **Washington Law Against Discrimination** (WLAD). The **Washington State Human Rights Commission** (WSHRC) enforces and monitors employers' compliance with the WLAD.

This Employment Law Summary provides an overview of the WLAD and highlights its impact on employers.

COVERED EMPLOYERS

The WLAD applies to employers with **eight or more employees**. Consequently, many employers that are not covered by federal anti-discrimination laws (which typically apply to employers with 15 or more employees) must comply with the WLAD. Limited exemptions apply for nonprofit organizations.

PROHIBITED ACTIONS

The WLAD prohibits unfair or discriminatory employment practices based on a person's protected status. Protected statuses include **age, sex, marital status, sexual orientation, race (including hairstyles associated with race), creed, color, national origin, honorable discharge veteran or military status, HIV and Hepatitis C status, mental or physical disability, the use of a service animal by a person with a disability** and, except under certain circumstances, **citizenship or immigration status**.

In particular, it is illegal for employers, on the basis of a protected status, to:

- Refuse to hire an individual for a job;
- Discharge or bar an individual from a job;
- Discriminate in compensation or other terms or conditions of employment against an individual; or
- Print, circulate or use any discriminatory statement, advertisement, publication or job application form, or make any discriminatory inquiry in connection with prospective employment.

In addition, the law prohibits employers from:

- Retaliating against any person who has opposed unlawful discrimination, filed a charge of discrimination, or testified, assisted or participated in any investigation, proceeding or hearing regarding a claim of discrimination;
- Aiding, abetting, encouraging or inciting a person to commit an unfair employment practice; and
- Attempting to obstruct or preventing a person from complying with the WLAD.

PRE-EMPLOYMENT INQUIRIES

Employers should be aware of the WLAD’s restrictions on pre-employment inquiries during the recruiting process. Any pre-employment inquiries, whether written or verbal, that unnecessarily elicit information about an applicant’s protected status are prohibited.

Examples of prohibited pre-employment inquiries include:

- Questions that imply a preference for individuals under 40 years of age;
- Questions regarding an applicant’s lineage, ancestry, national origin, descent or birthplace;
- Questions regarding an applicant’s gender;
- Questions concerning an applicant’s religious preference, denomination, religious affiliations, church, parish, pastor or religious holidays observed;
- Requests for applicants to submit a photograph prior to hire;
- Questions regarding an applicant’s race or color of skin, hair or eyes; and
- Questions regarding pregnancy or medical conditions related to pregnancy.

JOB ADVERTISEMENTS AND JOB TITLES

The WLAD bans employers from using job advertisements that discriminate on the basis of a protected status. Rules adopted by the WSHRC provide guidance on which terms are discriminatory and which terms may be used in their place. The WSHRC’s suggestions are included in the table below.

Discriminatory Terms	Suggested Substitutes
Man, woman, girl, boy, lady, etc.	Person, applicant, hiree, one, trainee or a sex-neutral job title
Cute, handsome, pretty, clean-cut, attractive	Neat, well-groomed, personable, professional appearance
Married, single	No substitute
Recent graduate, college student (implies preference for youth)	Degree required, internship
Mother, housewife	Part-time, short hours
Young	Entry-level, beginner, trainee
Christian, Jewish, etc.	No substitute
Interracial, segregated, black, white, colored, oriental, Asian, Mexican, minority	Person, applicant, etc.

In addition, it is unlawful for employers to use discriminatory job titles in any help-wanted advertisement, job description, job announcement or any other notice, statement or publication. The term “discriminatory job title” includes, but is not limited to, any job title that contains a gender noun or suffix, such as waitress, foreman, salesman, maid or counter girl.

If the use of a gender-neutral job title is not possible, employers may use the following alternatives:

- Include the counterpart to the sex-specific job title (for example, waiter/waitress);
- Include the designation “man or woman,” “male or female” or “M-F” with the sex-specific (for example, foreman, man or woman; tailor, male or female; lineman, M-F).

PAY DISCLOSURE REQUIREMENTS FOR JOB POSTINGS

As of **Jan. 1, 2023**, state law requires employers with 15 or more employees in Washington to include the following in all job postings:

- The wage scale or salary range for the position; and
- A general description of all benefits and other compensation to be offered for the position.

This rule applies to any solicitation that is intended to recruit applicants and sets forth qualifications for desired applicants, including any:

- Direct recruitment by an employer;
- Indirect recruitment through a third party;
- Electronic postings; and
- Hard-copy postings.

BONA FIDE OCCUPATIONAL QUALIFICATIONS

It may be lawful for an employer to make an employment decision on the basis of a protected status if a **bona fide occupational qualification** (BFOQ) applies to the job. A BFOQ is a qualification or characteristic that is absolutely essential to or contributes to the accomplishment of a job's purpose. The WSHRC has provided the following examples to illustrate how BFOQs apply.

The WSHRC may consider a protected status to be a BFOQ where:

- It is necessary for the purpose of authenticity or genuineness (for example, model, actor, actress) or maintaining conventional standards of sexual privacy (for example, locker room attendant, intimate apparel fitter); or
- A 911 emergency response service needs operators who are bilingual in English and Spanish, as long as the job qualification is spoken language competency rather than national origin;

The WSHRC will **not** consider a protected status to be a BFOQ where:

- An employer refuses to consider a person with a disability for a receptionist position on the basis that the person's disability "would make customers and other co-workers uncomfortable";
- A person with a disability applies for promotion to a position at a different site within the firm, and the firm does not promote the person because doing so would compel it to install an assistive device on equipment in order to enable the person to properly perform the job in that location.

As these examples illustrate, BFOQ exceptions are permissible only under very limited circumstances. Thus, employers should be very cautious when considering policies that may have a discriminatory effect.

DISABILITY

Under the WLAD, the term "disability" is defined as the presence of a sensory, mental or physical disability. This definition includes, but is not limited to:

- Conditions that are medically recognizable or diagnosable;
- A record of having a disability; and
- Being perceived as having a disability, regardless of whether the disability exists.

In some cases, an individual's disability will be obvious, such as where a person uses a wheelchair. In many cases, however, an individual will need to inform the employer of his or her disability, either verbally or through a doctor's note.

REASONABLE ACCOMMODATIONS

Employers must provide reasonable accommodations to individuals with known disabilities, unless it can be demonstrated that the accommodation would impose an undue hardship on the employer's operations.

Reasonable accommodations are actions taken by an employer that enable:

- Equal opportunity in the application process;

- The proper performance of the particular job held or desired by a disabled individual; or
- The enjoyment of equal benefits, privileges or terms and conditions of employment.

Reasonable accommodations include, but are not limited to, adjustments in job duties, work schedules or scope of work, changes in the job setting or conditions of work, or informing the employee of vacant positions and considering the employee for different positions for which the employee is qualified.

An accommodation is considered an **undue hardship** if the cost or difficulty of providing it is found to be unreasonable. In determining whether an accommodation imposes an undue hardship, the WSHRC considers a number of factors, including:

- The size of the employer and the resources available to it;
- Whether the cost can be included in planned remodeling or maintenance;
- The requirements of other laws and contracts; and
- Other appropriate considerations.

Employers are not required to offer any specific accommodation requested by an employee, as long as the accommodation that the employer does provide is an effective one.

USE OF SERVICE ANIMALS

Washington employers may not request that a trained service animal be removed from the workplace unless the employer can show that the presence, behavior or actions of the animal constitutes an unreasonable risk to property or people. In situations where the risk justifies the removal of a service animal from a workplace, however, employers must make efforts to reasonably accommodate the disabled person.

As of Jan. 1, 2019, the term “service animal” is defined as any dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability.

HIV AND HEPATITIS C

The WLAD carves out specific protections for individuals who have HIV or Hepatitis C. Employers may not discriminate against these individuals, and they may not require anyone to take an HIV or Hepatitis C test as a condition employment. However, the absence of HIV or Hepatitis C may qualify as a BFOQ in circumstances where:

- The performance of a particular job presents a significant risk of transmitting the conditions; and
- There are no means of eliminating the risk through job restructuring.

PREGNANCY, CHILDBIRTH AND RELATED MEDICAL CONDITIONS

The WLAD’s prohibition against gender discrimination includes protections that cover pregnancy, the potential to become pregnant and pregnancy-related conditions. In Washington, it is an unfair employment practice for an employer to refuse to hire or promote, terminate, demote, or impose different terms or conditions of employment on a woman because of pregnancy or childbirth. In addition, employers are prohibited from basing employment decisions or actions on any negative assumption about pregnant women, such as:

- Pregnant women do not return to work after childbirth;
- The time away from work required for childbearing will increase the employer’s costs;
- The disability period required for childbirth will be unreasonably long;
- Pregnant women are frequently absent from work due to illness;
- Clients, co-workers or customers object to pregnant women on the job; or
- The terms or conditions of the job may expose an unborn fetus to risk of harm.

ACCOMMODATION OF RELIGIOUS BELIEFS

In 2014, the Washington Supreme Court [ruled](#) that employers have a duty to provide reasonable accommodations for an employee’s bona fide religious beliefs. The court reasoned that, although the WLAD does not explicitly mention any requirement for reasonable accommodation of religious beliefs, it does imply one. Accordingly, employers that fail to accommodate an employee’s religious beliefs violate the WLAD.

In order to establish a failure-to-accommodate claim for religious beliefs under the WLAD, an employee must show that:

- They had a bone fide religious belief that conflicted with their employment duties;
- They informed the employer of the belief and the conflict that their employment duties created; and

- The employer responded by subjecting the employee to threatened or actual discriminatory treatment.

Employers may defend themselves from failure-to-accommodate claims by demonstrating that they offered an employee a reasonable accommodation or that an accommodation of an employee's religious beliefs would impose an undue hardship.

SEXUAL ORIENTATION

Unlike federal anti-discrimination laws, the WLAD bars employers from discriminating on the basis of sexual orientation. Under Washington law, "sexual orientation" is defined as heterosexuality, homosexuality, bisexuality and gender expression or identity. The WLAD defines "gender expression or identity" as having or being perceived as having a gender identity, self-image, appearance, behavior or expression that may or may not be different from those characteristics traditionally associated with the sex assigned to an individual at birth. Accordingly, Washington employers must take precautions to prevent discriminating against individuals based on their sexual orientations.

ENFORCEMENT

Individuals who believe they have been discriminated against may file a formal complaint with the WSHRC **within six months** of the alleged discrimination. The WSHRC reviews all complaints and determines whether sufficient evidence exists to merit a full investigation. Whenever appropriate, the WSHRC will meet with the disputing parties to explore solutions to the issues in question. These solutions often include settlement agreements.

If the WSHRC conducts a full investigation, it will issue a finding once the investigation is complete. If the WSHRC finds reasonable cause to believe discrimination occurred, it will seek a conciliation agreement from the employer to end the discriminatory employment practice. If that conciliation fails, the complaint may be turned over to the Washington State Office of the Attorney General for a hearing before an Administrative Law Judge.

Employers that are found liable for discrimination under the WLAD may be ordered to:

- Hire, reinstate or promote a person who has been unfairly terminated, downgraded or reclassified;
- Pay back pay or an amount equal to the difference in pay between the job the person had and the job he or she would have had if not for the discriminatory practice;
- Pay interest on money that should have been paid at an earlier time;
- Restore employment benefits, such as insurance benefits, retirement contributions, sick leave, vacation benefits or seniority standing that were lost or not gained because of a discriminatory employment practice;
- Institute programs, practices or procedures aimed at eliminating and preventing recurrences of the discriminatory practice; and
- Pay up to \$20,000 in compensation to aggrieved individuals for humiliation and mental suffering caused by a discriminatory policy.

In addition, employees and job applicants who believe they have experienced discrimination have the right to file a civil lawsuit against an employer. Individuals who file civil lawsuits may be awarded damages equal to those they sustained, costs of the lawsuit, attorneys' fees and other appropriate remedies.

WORKPLACE POSTER

Although the WLAD does not include any posting requirement, employers are encouraged to display the various employment discrimination posters published by the WSHRC. These posters may be obtained through the WSHRC's [website](#).

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