

EMPLOYMENT DISCRIMINATION

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Federal, state, and local laws require employers to engage in fair employment practices. When employees feel they are experiencing discrimination or harassment in the workplace, they often are unsure about what their rights are. This memo is intended to be a road map to job discrimination laws. It outlines the laws that prohibit employment discrimination, what legal remedies exist, and where to go if you feel you have experienced job discrimination.

One important note: If your workplace has a procedure for dealing with employment discrimination, including sexual harassment, you should follow your company policy for reporting the discrimination or harassment. You may be able to obtain satisfactory resolution of your concern by doing so. Also, importantly, your claim for discrimination may fail if you do not follow your workplace discrimination reporting procedures as quickly as possible after you have experienced the harassing or discriminatory behavior. Among other places, your employer's reporting policy may be found in an employment handbook or policy manual.

THE BASIC SCHEME: How to Use This Memo

There are three types of laws that prohibit job discrimination: federal laws (passed by Congress); state laws (passed by the state legislature in Olympia); and local laws (passed by cities or counties). Although these laws overlap to a great extent, they also have differences. The laws differ in the types of discrimination they prohibit, the agency that enforces them, time limits for filing complaints and the remedies available to victims of discrimination. It is important to choose the law or laws that apply to your situation.

The chart at the end of this memo sets out how some of the most commonly used discrimination laws work at each level of government. It tells what agency enforces the law, what each agency's jurisdiction is, what types of discrimination are prohibited, and 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 to go if you have a complaint.**

The following sections explain in more detail the information set out in the chart and provide additional information on employment discrimination laws and anti-retaliation provisions.

LAWS PROHIBITING DISCRIMINATION

Federal Laws

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, national origin, and sex. Both sexual harassment and discrimination against pregnant women are considered forms of sex discrimination. (There is more information about sexual harassment at work in a separate NWLC memo). This law applies to employers with 15 or more employees. There are special provisions for employees of the federal government.

Title VII prohibits two types of discrimination: disparate treatment discrimination and disparate impact discrimination. “Disparate” means different. Disparate treatment discrimination occurs when (1) the employer treats one employee in a less favorable manner than another employee because of the first employee’s race, color, religion, national origin, or sex; and (2) the disparate treatment affects the employee’s terms or conditions of employment (e.g., pay, hours, advancement).

Examples of **disparate treatment** on the basis of sex are situations in which the employer fails to hire or promote a woman because of her gender or punishes (e.g., fires) her for something that a man would not be punished for. Employers usually defend such cases by arguing that the woman’s (or man’s) gender had nothing to do with the action they took; rather, there were other legitimate reasons for the action. The same principles apply in cases involving discrimination on the basis of race, national origin, or religion.

A claim of **disparate impact** discrimination may exist when an employer’s policy looks neutral, but it negatively affects more women than men and has no relation to the duties of the position. For example, an employer may have a policy that requires employees to be able to lift 80 pounds to hold a particular job. If this lifting requirement is not related to the job and excludes significantly more women than men, it may be a form of sex discrimination based upon disparate impact. Again, the same principles apply in cases involving neutral policies that have a different impact on members of a particular race, color, national origin or religion.

The Equal Pay Act provides that women and men doing “substantially equal work” in the same workplace cannot be paid at different rates on the basis of sex. It applies to employers regardless of the number of employees they employ so long as there are employees of the opposite sex employed at that establishment.

“Substantially equal work” means work requiring substantially similar skill, effort, and responsibility performed under similar working conditions. Wage differentials on the basis of factors other than sex are permitted, and the Act specifically permits wage differentials that are based on a seniority system, a merit system, or a system that measures earnings by quantity or quality of production. Job titles and the employer’s description of the job do not determine if the jobs are “substantially equal work.”

The Age Discrimination in Employment Act (“ADEA”) prohibits discrimination against persons from 40-70 years old because of their age. It applies to hiring, termination,

reductions in force, and other actions relating to the employee's terms and conditions of employment. It applies to employers with at least 20 employees.

The Older Workers Benefit Protection Act ("OWBPA") is part of the ADEA. It places a number of requirements on an employer if the employer wants an employee who is between 40-70 years old to release (give up) any ADEA legal claims the employee may have against the employer. This most often comes up in the context of a severance agreement. Among the requirements are: the employee must be given money or other consideration in addition to that to which the employee is already entitled, 21 days to consider the release before signing it, and 7 days after signing the release to revoke it. If an employee is 40 or over and signed a release that does not meet all of the OWBPA requirements, she may still be able to file a legal claim.

The Americans with Disabilities Act ("ADA") prohibits employers from discriminating against people with disabilities (or who are regarded as having a disability) if they can perform the essential functions (i.e., the fundamental duties) of a job with or without reasonable accommodation. The disability must be a physical or mental impairment that significantly limits a major life activity. The ADA applies to employers with 15 or more employees.

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 (e.g., the accommodation must be within the employer's financial means). Examples of reasonable accommodations include physical modification of the workplace (i.e., to enable wheelchair access), eliminating non-essential job duties, and transferring the disabled employee to a vacant position for which she is qualified. If there is more than one possible accommodation, the employer is entitled to choose which one it wants to try. Before filing a complaint, an employee must inform his or her employer of the disability and give the employer a reasonable opportunity to provide a reasonable accommodation.

Section 1981 (42 U.S.C. Sec. 1981) prohibits discrimination in contracts on the basis of race, color, and national origin. Because employment relationships are contractual (even if they're not in writing) Sec. 1981 applies to the making and enforcement of employment contracts and the terms and conditions of those contracts. It applies to all public and private employers, including those with fewer than 15 employees.

The Immigration Reform and Control Act ("IRCA") prohibits employment discrimination on the basis of national origin and citizenship in the hiring and firing of employees. The IRCA applies to employers with at least four employees, but expressly does not apply if the individual is covered by Title VII.

State Law

The Washington State Law Against Discrimination (RCW 49.60) prohibits discrimination and harassment on the basis of race, color, creed, national origin, sex, marital status, age (for persons from ages 40-70), sexual orientation, or the presence of a physical, mental, or sensory disability (including HIV infection and the use of a trained guide dog or service animal by a person with a disability). “Sexual orientation” includes heterosexuality, homosexuality, bisexuality, and gender identity. The state law definition of disability is broader than the federal law definition and includes abnormal conditions that affect the individual’s ability to do the same job (including some temporary conditions). It covers both disparate treatment and disparate impact discrimination, and both sexual harassment and discrimination against pregnant women are considered forms of sex discrimination. It also requires employers to reasonably accommodate an employee with a disability who needs such accommodation. It generally applies to employers with 8 or more employees.

Employees who are wrongfully terminated in certain specific situations that violate public policy may have a grounds to sue their employer as well. These public policy actions have generally 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; they are not available to employees who experience on-the-job discrimination such as harassment or failure to promote.

Job Applications and Interviews. Regulations issued by the state Human Rights Commission set out the types of questions that are considered discriminatory and that employers therefore cannot ask in job applications or at job interviews. These include questions about age, children, marital status, pregnancy, and disabilities. In addition, the regulation states that employers may not ask about an applicant’s arrests or criminal convictions unless such information is reasonably related to job duties and the arrest or conviction occurred within the last 10 years. For more information, see WAC 162-12.

Local Laws

King County Code Chapter 12.18 prohibits discrimination on the basis of race, color, religion, handicap, age, sex, national origin, ancestry, sexual orientation, and marital status. It applies to employers in unincorporated King County (that is, located in King County but not in a city) with 8 or more employees, to the County as employer, to contractors with King County, and to organizations in County-owned facilities.

The Seattle Fair Employment Practices Ordinance prohibits discrimination in employment on the basis of race, color, sex, age (beginning at age 40), marital status, sexual orientation, gender identity, religion, creed, national origin, ancestry, political ideology, or 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 and to the City of Seattle as an employer.

The Pierce County Affirmative Action Plan prohibits employment discrimination because of race, creed, religion, color, national origin, sex, age, disability, veterans status. This Plan applies only to Pierce County employees.

The City of Tacoma Law Against Discrimination prohibits employment discrimination on the basis of race, color, national origin or ancestry, religion, sex, gender identity, sexual orientation, marital status, familial status, age, (over 40) and the presence of any sensory, mental or physical disability. It applies to employers within the Tacoma city limits that have eight or more employees.

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

The City of Spokane's Human Rights Ordinance prohibits discrimination in employment on the basis of race, religion, color, sex, sexual orientation, national origin, marital status, familial status, age and disability). This protection applies only to employers of eight or more employees within the city limits of Spokane and to the City as an employer.

RETALIATION

Under the above discrimination laws, it is illegal for an employer to retaliate against anyone who (1) files a charge of discrimination, (2) assists in the investigation of such a charge, or (3) opposes discriminatory employment practices. Retaliation occurs when an employee is penalized because she complained (to either the employer or the government) or cooperated. If an employer fires, demotes, fails to promote, or takes other action toward an employee that affects her employment because she has complained or cooperated, that may be illegal retaliation. It is also illegal retaliation if the employer allows co-workers to retaliate against a complainant.

OTHER FORMS OF DISCRIMINATION

Many of these laws also prohibit discrimination in housing, insurance, credit transaction, and public accommodations (such as hotels and resorts).

WHERE & WHEN TO FILE AN ADMINISTRATIVE COMPLAINT

Administrative complaints are filed with government agencies, not with the courts.

Federal Law. If you believe that your rights have been violated under Title VII, the ADEA, or the ADA, you must file a complaint with the Equal Employment Opportunity Commission (EEOC) within 300 days of the act of discrimination. If you do not go to the

agency or if you miss the 300-day deadline, you may be unable to sue your employer under these federal laws or have the assistance of the EEOC in pursuing your federal claim. If you think your rights have been violated under one of these laws, you should contact the EEOC as soon as possible to determine the complaint deadline. There is no requirement of filing with the EEOC under the Equal Pay Act, IRCA, or Section 1981.

State Law. If you believe that your rights have been violated under the Washington State Law Against Discrimination (“LAD”), you can file a complaint with the State Human Rights Commission. Any claim of discrimination must be filed within 6 months of the act of discrimination. An employee may file a complaint with the Human Rights Commission only if his or her employer has at least 8 employees. Unlike the rule under federal law, if you do not want to go to the Human Rights Commission, miss the deadline, or believe you have a wrongful termination claim not covered by the LAD, you can still sue your employer under state law so long as you bring the suit within three years of the discrimination or harassment.

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 can file a complaint with the King County Office of Civil Rights Enforcement; it must be filed within 180 days of the act of discrimination or within 180 days of when you should have been aware of the discrimination. ***Pierce County:*** In Pierce County, you may need to refer to your employment handbook or collective bargaining agreement to determine the appropriate grievance procedure for filing a complaint. ***Tacoma:*** In Tacoma, complaints are handled by the Tacoma Human Rights Department and complaints must be filed within 6 months of the act of discrimination. ***Snohomish County:*** In Snohomish County, complaints are generally handled according to grievance procedures otherwise available by law or collective bargaining agreement, but the director of personnel has a grievance procedure for county employees for whom such alternative options are not available. ***Spokane:*** In Spokane, complaints are handled by the Spokane Human Rights Commission and must be filed within a year of the act.

Administrative Process. Each agency discussed above has its own procedure for handling cases, but there are many similarities among them. After you file a complaint, the agency will request information from both you and the employer, and may also conduct further investigation, such as having you or your employer give a sworn statement. At an early point in the process, the agency will determine if there is reason to believe that discrimination occurred. If so, it will attempt to help the parties conciliate (voluntarily settle) the case or set up a mediation to try to resolve the issues by use of a trained mediator. If conciliation or mediation fails, the agency might continue to help you with your case or you may need to go to court if you wish to pursue your case further.

If the agency finds that no discrimination occurred, it will notify you of its finding. Generally, particularly under federal and state laws, you will still be able to file a lawsuit in court if you believe the agency was wrong.

What if your complaint comes under the jurisdiction of two or more agencies? If you file a complaint with more than one agency, usually only one agency will investigate your case. Before filing a complaint, you may want to check with the agencies to see how long their case backlogs are and what remedies they can provide. Remember that not all of the agencies provide the same remedies. That may help you determine which agency better suits your needs. A consultation with an attorney can also be helpful in this regard.

GOING TO COURT

What about going to court? The laws differ as to whether and when you can sue an employer in court.

Federal laws. If you want to bring a discrimination suit under Title VII, the ADEA, or the ADA, you must first go to the EEOC and file a “charge.” You may also need to wait to receive a “right to sue” letter. The EEOC will notify you of how much time you have after that to go to court; generally it is 90 days. If you want to sue under the Equal Pay Act, you must do so within 2 or 3 years (depending on if the employer acted in a “willful” manner). If you want to sue under Section 1981, you have 3 or 4 years depending on the type of case you are bringing.

State law. If you want to sue under the state Law Against Discrimination, however, you can go to state court at any time within three years of the discrimination. In serious cases of discrimination, it is wise to consult an attorney who practices in the area of employment law as soon as practicable before deciding what action to take. The attorney can help you sort out your options and avoid mistakes, such as missing the deadline to file your claim.

One final note: Government agencies and courts do not act quickly and often it takes at least one or two years for a case to be resolved. Even an arbitration can take several months. If you are prepared for delays, the process will be far less frustrating. You should also attempt to find other employment while you are waiting for the outcome of your case.

REMEDIES AND ARBITRATION

Remedies. A number of remedies are available under the anti-discrimination laws discussed above. These can include hiring, promotion, back pay, money damages, reinstatement, punitive damages, and attorney's fees. The exact remedies available will depend on the law used and the facts of your case.

Arbitration. Some employers require employees to sign agreements stating that if the employee has a discrimination claim against the employer, the claim must be handled through arbitration rather than in court. Arbitration is a method in which legal disputes are settled privately outside court with a private attorney acting as the “judge.” The courts generally allow employers to require arbitration instead of court unless the employer has set up an unfair arbitration process. An attorney can advise you about this.

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Related legal information memos by Legal Voice:

“Damages and Contingency Fees in Personal Injury and Discrimination Cases”
"Sexual Harassment in the Workplace"
“Termination of Employment”

For further information, you can contact the Legal Voice legal information & referral line at (206) 621-7691, or contact one of the government enforcement agencies listed in the attached chart.

**Summary of Equal Employment Opportunity Laws
(for use in Washington State)**

<u>LAW</u>	<u>AGENCY</u>	<u>JURISDICTION</u>	<u>PROTECTED CLASS</u>	<u>DEADLINE **</u>
<ul style="list-style-type: none"> •Title VII Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991 42 U.S.C. Sec. 2000e 42 U.S.C. Sec. 1981a •Age Discrimination in Employment Act Pub. L. 90-202 •Americans with Disabilities Act Pub. L. 101-336 	US Equal Employment Opportunity Commission 909 First Avenue, Suite 400 Seattle, WA 98104 (206) 220-6883 (206) 220-6882 (TTY) Toll Free: 1-800-669-4000 http://www.eeoc.gov/	<ul style="list-style-type: none"> •Employers in All States •State and Local Governments •Employers of 15 or more (Title VII) •Employment Agencies •Labor Organizations •Federal Government 	Race•Color•Religion Sex•National Origin Age•Disability Retaliation	300 days*
<ul style="list-style-type: none"> •Equal Pay Act 20 U.S.C. §206(d) 	EEOC (above)(optional)	<ul style="list-style-type: none"> •Employers in All States •Employers regardless of number of employees 	Sex	2 or 3 years
<ul style="list-style-type: none"> •Section 1981 42 U.S.C. § 1981 	N/A	<ul style="list-style-type: none"> •Employers in All States •State and Local Governments •Employers regardless of number of employees 	Race•Color National Origin	3 or 4 years
<ul style="list-style-type: none"> •Immigration Reform and Control Act ("IRCA") 8 U.S.C. § 1324b 	Office of Special Counsel U.S. Department of Justice Civil Rights Division 950 Pennsylvania Ave. N.W. Washington, D.C., 20530 (202) 616-5594 Toll Free: 1-800-255-7688 TDD: 1-800-237-2515 http://www.usdoj.gov/crt/activity.html#osc	Employers in All States <ul style="list-style-type: none"> •State and Local Governments •Employers of 4 or more who are not covered by Title VII 	National Origin Citizenship	180 days

<u>LAW</u>	<u>AGENCY</u>	<u>JURISDICTION</u>	<u>PROTECTED CLASS</u>	<u>DEADLINE **</u>
•Washington State Law Against Discrimination, Revised Code of Wash., Chapter 49.60	(Optional) Washington State Human Rights Commission Seattle, Spokane, Olympia and Yakima offices (206) 464-6500/587-5168 TTY (Seattle) 1-800-233-3247 (statewide toll free) http://www.hum.wa.gov/	•Employers Within the State •State and Local Governments •Employers of 8 or more •Employment Agencies •Labor Organizations	Race•Color•Creed Handicap•Sex•Age Marital Status National Origin Sexual Orientation, Gender Identity, Disability, Retaliation	6 months (HRC) 3 years (court)
•King County Code Chapter 12.18	King County Office of Civil Rights Enforcement King County Courthouse, Rm. E224, 516 3rd Ave. Seattle, WA 98104 (206) 296-7592/296-7596 TTY http://www.metrokc.gov/dias/ocre/	•King County (as employer) •Unincorporated King County: •Employers of 8 or more •Employ. Agencies, Labor Orgs. •King County contractors, lessees	Race•Color•Religion Handicap•Age•Sex National Origin•Ancestry Sexual Orientation Marital Status Retaliation	180 days
•Seattle Fair Employment Practices Ordinance, Seattle Municipal Code Chapter 14.04	(Optional) Seattle Office for Civil Rights. 700 3rd Ave., Suite 250 Seattle, WA 98104 (206) 684-4500 (206) 684-4503 (TTY) http://www.cityofseattle.net/civilrights/	•Within City of Seattle limits •City of Seattle (as employer) •Employers of 1 or more •Employment Agencies •Labor Organizations •Printers, Publishers and Broadcasters •National Origin	Race•Color•Religion Ancestry•Disability Age•Sex•Creed Political Ideology Sexual Orientation Gender Identity Marital Status Use of Section 8 Certificate Retaliation	180 days (OCR) 3 years (court)
•Pierce County Affirmative Action Plan Pierce County Code Chapter 3.16	N/A (check your employment handbook or collective bargaining agreement for grievance procedures)	Applies only to employees of Pierce County	Race•Color•Religion National origin Sex•Age•Disability Veterans Status	Check handbook or CBA

<u>LAW</u>	<u>AGENCY</u>	<u>JURISDICTION</u>	<u>PROTECTED CLASS</u>	<u>DEADLINE **</u>
•Tacoma Law Against Discrimination Tacoma Munic. Code Chapter 1.29	Tacoma Human Rights Dept. 747 Market Street, Room 836 Tacoma, WA 98402 (253) 591-5151/591-5153 TTY http://www.cityoftacoma.org/	Within Tacoma city limits •City of Tacoma (as employer) •Employers of 1 or more • Employment Agencies • Labor Organizations • Advertising	Race•Color•Religion National origin•Ancestry Sex•Age•Marital Status Familial Status•Handicap Retaliation•Gender identity Sexual orientation	6 months
Washington Common Law: Wrongful Discharge	N/A	Employers within the State	Reason For Discharge Violates Public Policy	3 years
•Snohomish County Code Chapter 3.57	N/A (check your employment handbook or collective bargaining agreement for grievance procedures)	Applies only to employees of Snohomish County	Race•Color•Sex•Religion Marital Status National Origin•Age• Sexual Orientation Citizenship•Veterans Status Disability	Check handbook or CBA
Spokane Ord. C32232, Spokane Municipal Code, Chapter 1.06	Spokane Human Rights Commission 808 W. Spokane Falls Blvd., 5th Floor Spokane, WA 99201 (509) 625-6263/625-6689 TTY http://www.spokanehumanrights.org/	Within City of Spokane Employers of 8 or more	Race • Color • Religion Disability • Sex Marital Status • Familial Status Age • Sexual Orientation National Origin	One Year

* Federal employees must contact an EEO counselor within their Agency within 45 days of the discriminatory act.

** When given in days or months, this is the deadline for filing a complaint with the administrative agency. When given in years, there is no administrative filing requirement and this is the deadline for filing in court. The time period begins to run when the discriminatory act occurs.