

# **Your Rights and Responsibilities as an Employee in Washington State**



Northwest Justice Project

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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 July 2019.**

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## Intro

This has general info about employment rights in Washington State. It does not give details. It should not replace legal advice from a lawyer.

For more info, read the resources listed in “Where to Get Help” at the end.

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- ❖ This focuses on private employment. **Public employees** (working for a local, county, state or federal agency) have other rights. “Where to Get Help,” at the end, lists some agencies that help public employees.
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The following generously helped to create this resource: [Columbia Legal Services](#), the [Northwest Justice Project](#), the [Legal Voice](#), the [Unemployment Law Project](#) and the [Thurston County Dispute Resolution Center](#).

## 1. Hiring

Your first step towards working may be a job application or job interview. This is your chance to show the employer you have the skills to work for them. This section explains what the employer can **legally** ask in the interview or application.

Generally, discrimination means treating some people differently than others. Discrimination is illegal when people are treated differently because of their age, sex, race, marital status, national origin, disability, or because they might want to join a union. No employer can legally ask questions that might show a bias or discriminate against you based on these things. An employer **can** ask questions to help evaluate how you will do at a job.

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- ❖ In some places in Washington State, employers cannot legally ask about your politics or sexual orientation.
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Here are some examples.

NOT LEGAL: UNLAWFUL TO ASK	LEGAL: OKAY TO ASK
<b>Sex discrimination:</b> Specific questions about your marital status, spouse, children, childcare arrangements, if you are pregnant or plan to become pregnant, or about your dependents.	It is okay to ask if you can meet the work schedule or have other commitments that might keep you from coming to work.
<b>Disability-based discrimination:</b> Questions about the nature, severity, or extent of a disability, or if you need accommodation.	It is okay to ask if you can perform the job’s functions with or without accommodation. In some cases, the employer can ask you to perform physical tasks such as lifting boxes.

<b>National origin discrimination:</b> Questions about your race, ancestry, birthplace, first language, clubs.	It is okay to ask if you can speak a foreign language.
Starting July 28, 2019, the employer cannot ask you, your current employer, or former employer about your wage or salary history.	The employer can ask you about your wage or salary history if you bring it up yourself or if the employer offers you a job.

**Is drug testing legal?** A private employer can require drug testing, unless the employer uses the test to discriminate against certain people. **Example:** it would be against the law if the employer only gave women or African Americans a drug test.

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❖ Public employers are more restricted in their ability to require drug testing.

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**What is an I-9 form?** Your employer must get info from all you showing you may lawfully work in the United States. You must sign an "I-9" form. It lists the types of identification allowed. An employer must accept any form of ID on the list. If you believe your employer has treated you unfairly because of the documents they asked you to provide, call the U.S. Justice Department, Office of Special Counsel at 1-800-255-7688, (202) 616-5525 or 1-800-237-2515 (TDD for hearing impaired).

**At Will Employment v. Employment Contracts:** Most employment is "at will." The employer can fire you for any or no reason, as long as not for one of the illegal reasons discussed below.

You can lose your job after spending money to move, or after giving up another job to take this one. Usually you will have no legal claim against your employer.

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❖ "At will" employment also means you can quit your job for any reason, any time.

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Union contracts give you more rights. Union employees are not "at will" employees. Some employment contracts and personnel manuals make promises an employer must keep, such as promising to fire you only for some reasons or after going through certain procedures.

**Example:** A new manager wants to hire new staff. She fires you. Your work has been satisfactory. You have no union contract or other binding agreement restricting the employer's right to fire you at will. The firing is legal unless it meets one of the exceptions in section 5, below.

Here is a list of what an employer expects of you. Violating these things can often lead to dismissal:

- ✓ Be on time for work.
- ✓ Do not leave the work site without notifying someone.
- ✓ Do not miss work without permission.
- ✓ Be courteous to other employees and the public.
- ✓ Follow the employer's health and safety rules.

Most employers will ask you to sign a job application. The info you give on it must be accurate. An employer may fire you for giving false info on your job application.

## 2. On the Job

### ***Wage and Hour Laws***

**What is minimum wage?** In 2019, the state minimum wage for most workers in Washington is \$12 an hour (\$ 10.20/hour for workers under 16). The state adjusts the minimum wage every January. An employer who does not pay you minimum wage may be liable for twice the amount of wages owed you.

**What is piece rate?** You must be paid minimum wage even if your work is by piece rate.

**Example:** Samuel works for a janitorial service that pays its workers \$200 for each floor of an office building they clean. Samuel recently spent a 40-hour workweek cleaning a single floor. If he is paid \$400 for the week, he has earned less than the minimum wage, \$12 x 40, or \$480. Samuel's employer underpaid him by \$80.

You count minimum wage for piece rate by the week, not the day. If some days you earn less than minimum wage, and others you earn more, it is legal as long as you earn at least the minimum wage by the end of the week. If you perform other tasks besides the piece rate work, your employer must also pay you at least the hourly minimum wage for each hour you work in these other tasks.

**Working Time:** The employer must pay you for the time you spend at activities benefiting the employer, even if it is not part of your regular workday. **Examples:** the employer must pay you for travel time between work locations, and for training and meeting time directly related to the job, especially if you must attend. The employer does not have to pay you for time spent going to and from work at the start and end of the day, or for "on call" time if you carry a beeper and can use the time for your own activities.

**What is overtime pay?** Most employers must pay overtime pay of 1-1/2 times your regular rate of pay for hours worked above 40 hours per week. The overtime law does not cover agricultural employees, administrative, executive or professional employees, or outside salespersons.

Employers may use a "fluctuating work week" that cuts into overtime pay. Contact the Washington Department of Labor & Industries to find out if this is legal in your case.

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❖ An employer who does not pay you overtime may be liable for twice the amount of overtime wages you are owed.

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**Wage Claims:** The employer must pay you at least once a month. If you quit or are fired, you must be paid at the regular payday. You have no right to payment before then.

**Pay Stubs:** The employer must give you a statement showing hours or days worked, rate of pay, gross wages, and all deductions from wages.

**Wage Deductions:** Your employer can deduct from your wages only deductions required by law (**example:** Social Security) or those you give permission for. The employer may not deduct for breakage or lost equipment unless they can show that your dishonesty or willful acts caused the loss.

If there is a cash register shortage, the employer may deduct from your paycheck only if they can show that you had sole access to the cash register and took part in counting the money both before and after the shift.

**Uniforms:** If you must wear a uniform, and buying it reduces your income below minimum wage, the employer must pay for it. **Example:** John must wear a white lab coat costing \$50. John only makes \$25 above minimum wage per week. His employer must pay the extra \$25 toward the uniform.

**Do I get meal and rest breaks?** You must get a 30-minute meal break if you work more than five hours. The break must come between two and five hours from the start of your shift. The employer does not have to pay for your meal break unless they require you to stay at your workstation.

You must get a ten-minute paid rest break about midway through each four hours on the job.

**Can I inspect my personnel files?** You have the right to look at your personnel records any time during your employment and for two years after it ends. You have the right to put rebuttals into your personnel file during that period.

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❖ **Paid Sick Leave:** Starting January 1, 2018, under the Minimum Wage Act, your employer must now give you paid sick leave. You can use sick leave to take care of sick children.

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**What is Family and Medical Leave?** If your employer has 50 or more employees, and you have worked there at least one year (and at least 1,250 hours during that year), your employer must allow you twelve weeks of unpaid family or medical leave in a twelve-month period. You do not have to take all the leave at once. The employer can require you to use up your paid sick or vacation leave before allowing you to take the rest of the twelve weeks as unpaid leave.

You can take this leave for the birth, adoption, or foster care placement of a child. You can also take it if you or a family member has a “serious health condition.” (The “seriousness” depends on how many days you are out and how many doctor visits you have. For more info, contact the U.S. Department of Labor. Their contact info is in section 8.) If you are suffering from physical or emotional injuries due to domestic violence, you may use your family and medical leave time to get medical care.

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❖ **Paid family and medical leave benefits start** on January 1, 2020! Read more here: [paidleave.wa.gov/workers](http://paidleave.wa.gov/workers).

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**What if I am pregnant?** You have the right to additional accommodations in the workplace. See [lni.wa.gov/WorkplaceRights/LeaveBenefits/PregnancyAccommodations/default.asp](http://lni.wa.gov/WorkplaceRights/LeaveBenefits/PregnancyAccommodations/default.asp).

**Other Benefits:** The only other work-related benefits an employer must provide are workers' compensation (section 4) and unemployment compensation (Section 6). The employer generally does not have to give you a pension, health insurance, or vacation.

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- ❖ Many low-income workers are eligible for food stamps and subsidized medical care from the state. To find out if you are eligible, contact your local office of the Washington Department of Social and Health Services.
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**Firing vs. forcing you to quit-** If you can prove your employer deliberately made working conditions so hard that a reasonable person would have felt compelled to quit, then you were “constructively discharged.” The law treats this as the same as if you were actually fired.

### 3. Income Taxes and Earned Income Tax Credit

Each time you start working for an employer, they should give you a tax form "W-4" to fill out. The employer must take a deduction from your pay based on the info you give on the W-4 about how many dependents you have. If you did not earn enough last year to have to pay taxes, and you do not expect to earn more this year, fill in the "Exempt" box to keep taxes from being withheld from your wages.

At the start of each calendar year, each of your employers should mail you a form "W-2." You should file this form with your income tax return. It shows how much you earned and how much they deducted from your pay for taxes.

**You may be entitled to the Earned Income Tax Credit (EITC), even if you do not owe any federal tax.** The EITC is money the government gives people earning less than \$41,094 (if you have at least one qualifying child) or \$15,570 (no qualifying child) in 2018. Married couples filing jointly qualify if you earned less than \$46,884 (with at least one qualifying child) and \$21,370 (no qualifying child) in 2018. The qualifying amount is based on the number of children, if any, you support. The children you list must have lived with you all year. For more info, call the IRS at 1-800-829-1040 or visit [www.irs.gov/Individuals/Preview--EITC-Income-Limits](http://www.irs.gov/Individuals/Preview--EITC-Income-Limits).

**Am I an “Independent Contractor?”** Your employer might give you a form "1099" showing your earnings instead of a W-2. They are treating you as an “independent contractor” instead of an “employee” for tax and other purposes.

Some employers wrongly call their workers "independent contractors" to try to avoid employment laws. Independent contractors have very few labor rights. If they are treating you as an independent contractor instead of an employee, ask yourself:

- Have they given me instructions about how to do my work, or do I use my own methods?
- Am I just a worker, or do I have any investment in the business?
- Do I simply get a paycheck, or do I have a chance to earn a profit?
- Does my employer cover my business expenses, or do I pay them?

- Do I work for one employer, or do I perform similar services for several?
- Is my work basically unskilled, or do I have a special skill that I use at work?
- Can they fire me, or am I okay as long as I meet the specifications of a contract?
- Is my work an integral part of the business, or do I perform a specialty job that may be short-term?

“Yes” to the first half of each question above means you are probably an employee. “Yes” to the second half means you might be an independent contractor. If you think that an employer is wrongly calling you an independent contractor and you are not getting the rights or benefits you should have as an employee, contact the IRS and some of the resources listed at the end.

If your employer files an incorrect form W-2 or does not file any proof of your employment, it can affect you getting Social Security benefits when you retire. Find out from Social Security if your wages are being reported to them.

#### 4. Workplace Health and Safety

In general, your employer must provide a safe workplace, free from recognizable dangers that can cause injury or death. Your employer must follow the Department of Labor and Industries (L & I)'s rules about safe workplaces. Different kinds of jobs have different standards (**examples:** construction and health care jobs).

Your employer must fix any problem that violates the law and has a direct relationship to health and safety. Your employer may also have to pay a fine.

You can complain to L & I about unsafe conditions at your workplace. You can ask that L & I not give your name to your employer. Complaints must be in writing. You can get a complaint from L & I (see contact info at end) OR write a letter explaining who you are and describing the hazard. Explain why the situation is dangerous and what might happen if there is an accident. L & I schedules its inspections, in part, based on how dangerous the hazard is.

**Inspections:** If L & I reasonably believes there is a violation, it must inspect as soon as it reasonably can. If L & I does not believe there are grounds to inspect, it must tell you in writing.

**Review of L & I Decisions:** You can get an informal review of L & I's decision not to inspect or give the employer a citation. If L & I issues a fine and you think they gave the employer too much time to fix the violation, you can file a notice with L & I asking them to review the decision within fifteen working days of the citation.

**Too Much Overtime:** Generally, your employer can require you to work overtime. The law may require the employer to pay you "time and a half" overtime. (See discussion above.) If mandatory overtime is harmful to your health or safety, ask L & I to investigate.

**Right to Know about Hazardous Substances:** You have a right to know about any hazardous substances used in your workplace. Your employer must give you this info when first assigning you and when introducing a new hazard into the workplace. The info must say how to find a list of hazardous chemicals used in the workplace and "material safety data sheets" providing details about the chemicals.

**If They Ask You to Perform Unsafe Work:** Try to get the hazard fixed by reporting it to your employer, union, and L & I. If there is not enough time (because the situation is urgent) to get rid of the hazard one of these ways, and you have a reasonable, good faith fear of serious injury, you can refuse to do the unsafe work. You must first exhaust all reasonable options for getting your employer to fix the hazard. You must also tell your employer you will refuse to do the work if the hazard is not fixed. If the employer then fires or disciplines you for refusing to do the work, you have a claim of retaliation. You can ask L & I to investigate your claim. See the next paragraph.

**Retaliation for Complaining about Health & Safety:** “Retaliation” is action your employer takes against you because of something you have done. The law protects you from retaliation for making a health and safety complaint. If you want L & I to investigate your retaliation claim, you **must** file it within 30 days of the retaliation. (L & I calls it “discrimination.”) To sue in court on these grounds, you must have been fired, not just disciplined.

**Work Injuries or Illnesses:** You can receive compensation for time missed from work and payment of medical bills due to work-related injuries or illnesses.

If you are hurt or get sick because of your work, you are entitled to workers' compensation benefits, even if the injury or illness was your fault. Usually, your doctor fills out the form and sends it to L & I.

If you have a work injury, you must explain to your doctor that you were hurt or became ill because of your work. Do so as soon as possible after getting hurt. The doctor then fills out an application for Workers' Compensation benefits.

You must file your claim for injuries within one year after the day you were hurt. For occupational diseases, the claim must be filed within two years after you get a doctor's notice that you are suffering from an occupational disease.

**If You Become Sick or Hurt from Your Work, You Should:**

- Tell the boss right away. Make sure they know as soon as possible.
- Get medical help right away, even if it does not seem serious. It is important for you to get treatment and to have a medical record of your injuries in case they bother you later.
- Give all the facts and details of your work injury to the doctors.
- Make sure your doctor sends the application to L & I.

**Workers' Compensation Will Pay:**

- All medical bills connected with treatment for a work injury.
- Money to replace part of your lost wages if you cannot work for more than four days.
- Compensation for a permanent disability.
- In some cases, retraining and rehabilitation benefits.

**Crime Victims' Compensation Act:** If you are the victim of a crime such as assault, domestic violence, or child abuse, you may be eligible for benefits under the state Crime Victims' Compensation Act. It is like workers' compensation, but covers different situations. **Example:** You lost work because you were the victim of a crime. You may be able to get lost wages from this fund. It also pays

- Pension benefits and burial expenses for victims who die from injuries caused by crime.
- A lump sum payment to the spouse and/or children of a victim who died from injuries caused by crime.

For more info, call the [Crime Victims' Compensation Program at L & I](#), 800-762-3716.

## 5. Discrimination and Retaliation

Most employment in Washington State is "at will." Your employer can fire you for any or no reason. The beginning of this handbook listed some exceptions to this. Here are others:

**Discrimination** based on race, color, national origin, disability, religion, sex, marital status, age and (in some cities) sexual orientation. A job rule or policy that has the effect of disproportionately excluding one of these groups is illegal if it is not necessary to the job. The Washington law against discrimination protects both independent contractors and employees.

**Retaliation** (revenge) for exercising your legal rights as an employee, such as:

- making a complaint (to your employer OR an outside agency) that your employer is violating a law that protects employees
- blowing the whistle on your employer for violating some other type of law
- acting to try to improve wages or working conditions for other workers
- engaging in union activities
- complaining about unsafe conditions
- filing a claim for minimum wage or overtime
- filing a claim for workers' compensation or unemployment benefits

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❖ See subsection on Retaliation at page 11.

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If you think your employer fired you due to discrimination or retaliation, keep a written log of your efforts to find other work. You will need this if you sue your employer for lost wages.

**Remember:** if your employer takes action against you, but not because of any of the above reasons, it might not be illegal.

**Q:** Which of these is unlawful discrimination? **Example 1.** Maria's boss fires her from her secretary job. Her new boss wants to hire his teenaged daughter. **Example 2.** Maria's new boss fires her from her secretary job. The new boss does not want a Latina secretary.

**A:** Example 2.

**Q:** Which of these is unlawful retaliation? **Example 1.** Linda, a health care worker at a nursing home, is fired for complaining to the business owner that she needed to work more hours.

**Example 2.** The nursing home fires Linda for complaining to DSHS that residents were being neglected.

**A:** Example 2.

Discrimination laws protect you even if your employer acts against you because of the employer's mistaken belief. **Example:** Greg's employer thinks Greg filed a complaint about health and safety. The employer fires Greg. The law protects Greg, even if he did not actually file the complaint.

An employer will rarely admit publicly they are taking action because of, for example, your race or age. They will probably give a reason related to the quality of your work or violation of a rule. If discrimination or retaliation was a substantial factor, you may win even if the employer had other reasons for acting against you.

### ***Age Discrimination:***

Age discrimination laws protect workers 40 years or older in hiring and firing. The employer also cannot refuse to promote or train you because of your age. They cannot lay you off or lower your pay or benefits because of your age.

**Example:** Paul is 52. His employer tells him he cannot go with his co-workers to a two-day training on a new computer system because he is too old to understand the new system and will be retiring soon anyway. This is illegal.

### ***Race and National Origin Discrimination:***

Your employer cannot deny you employment opportunities because of your race, color, national origin, birthplace, ancestry, culture, or language background. Your employer also cannot discriminate against you for associating with a particular race or ethnic group.

**Q: Discrimination or not?** Hannah is white. Her husband is from Saudi Arabia. Hannah works at an auto parts store. Her employer tells her that her husband should not come in the store to pick her up because his customers feel uncomfortable around Arabs.

**A:** Discrimination. It is illegal for an employer to discriminate based on association with a particular race or ethnic group.

Job rules that have the effect of disproportionately excluding minorities or persons of a particular national origin can be unlawful. **Example:** A rule that workers only speak English on the job or a rule excluding people who speak English with an accent may be unlawful. It depends on if the rule is necessary to the particular job.

**Q: Discrimination or not?** Ignacio recently came to the U.S. from El Salvador. He wants to work as a dispatcher for an ambulance company. His employer tells Ignacio he cannot work dispatch because his English is not good enough. The ambulance drivers would not understand him. There could be safety problems.

**A:** If Ignacio's English is so poor that the drivers cannot understand him, it is probably not discriminatory to deny him the job.

### ***Sex Discrimination and Sexual Harassment:***

An employer cannot refuse to hire women for certain jobs, unless there is some reason only men can perform the job. An employer can have a rule about height, weight, or strength if necessary for the job.

**Q: Discrimination or not?** Sarah wants to be the first female police officer in her town. She is rejected because the police have a rule that an officer must be five foot eight inches tall. She is only five foot four.

**A:** Discrimination. If the height rule is not necessary for the job, it is unlawful.

**Pregnancy discrimination** is a kind of sex discrimination. The employer cannot discriminate against a woman because of pregnancy, childbirth or any related condition, if she can perform the job's essential functions. You have the right to additional accommodations in the workplace. See

[Ini.wa.gov/WorkplaceRights/LeaveBenefits/PregnancyAccommodations/default.asp](http://Ini.wa.gov/WorkplaceRights/LeaveBenefits/PregnancyAccommodations/default.asp).

**Q: Discrimination or not?** Grace is a grocery store clerk. When she is six months pregnant, her employer says she must go on leave until after the baby is born. Grace feels fine. Her doctor says she can keep working. Her employer says no.

**A:** Discrimination.

**Q:** After the birth, Grace wants to return to work when her baby is six weeks old. Her supervisor thinks a mother should stay home longer with a new baby and does not put her on the schedule for months.

**A:** Discrimination.

**Sexual harassment** is a kind of sex discrimination. It includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Unlawful sexual harassment is also if giving in to or rejecting the conduct affects your employment, unreasonably interferes with your work performance, or creates an intimidating, hostile, or offensive work environment.

The harasser can be a man or woman. The victim can be a man or woman.

**Example:** Joe's female supervisor makes unwelcome sexual advances towards him. She says if he goes out with her, she will make sure he goes far in the company. Joe is a victim of sexual harassment.

The harasser can be a supervisor, co-worker, or non-employee (**examples:** client or customer). You should report harassment to appropriate company officials and follow any company procedures. Otherwise, the problem may not get resolved and the company may not be liable for the harassment. If you can, put your report in writing. Keep a copy to prove the company was on notice of the harassment. It will also protect you in case the employer retaliates against you for complaining.

**Example:** Susan's co-workers at the auto parts store constantly show her pictures of naked women and make suggestions of a sexual nature to her. Susan's boss, Joe, sees that this conduct offends Susan. He does nothing to stop it. Susan is a victim of sexual harassment.

Generally, offensive remarks must be common in the work environment, not just occasional, to violate the law. The worse the conduct is, the fewer times it needs to happen to be a hostile working environment.

**Q: Discrimination or not?** Henry brings a cartoon about "dumb blondes" to the office one day and shows it to Jane, without comment. She is offended. She does not say anything to anyone.

**A:** This is not sex discrimination or sexual harassment.

### ***Religious Discrimination:***

Your employer cannot discriminate against you in hiring, firing, or other terms or conditions of employment because of your religion. The employer must accommodate your religious practices, unless doing so would create an undue hardship for the employer.

**Q: Discrimination or not?** Sarah's religion requires that she wear a scarf covering her hair at all times. Her employer repeatedly tells her to "take that thing off." He also tells her that religious beliefs have "no place at work."

**A:** Discrimination.

**Q: Discrimination or not?** Kim is a hotel maid. His religion celebrates its Sabbath on Saturday. He may not work on that day. His employer refuses to let him take Saturday off, even though his co-worker, Samantha, is willing to work for him on Saturdays.

**A:** Probably discrimination unless, for example, Samantha does not have the skills to perform Kim's work.

### ***Disability Discrimination:***

Employers may not discriminate against qualified people with disabilities. They may not discriminate in job application procedures, hiring, firing, advancement, pay, training and other terms, conditions and privileges of employment.

Washington law considers you disabled if you have an abnormal condition that has a substantially limiting effect on your ability to do your job. (The Federal definition is stricter. Under federal law, fewer people are disabled.)

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❖ A disability can be physical or mental.

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The law also protects people with

- A history of disability (who have recovered) and people who are not disabled but their employer *believes* they are.
- Temporary disabilities.

A qualified person is someone who can do the essential functions of the job. If you can do it with reasonable accommodation, you are qualified. The employer must provide accommodation. This can mean many things, such as:

- modifying work schedules
- reassignment
- buying equipment
- having interpreters
- making facilities accessible
- giving you a leave of absence for recovery

Your employer must provide accommodation unless it would cause them undue hardship.

**Q: Discrimination or not?** Lyla is a bookkeeper. She has depression from an experience of domestic violence that kept her from working in the past. She must take a long lunch once a week to see her therapist. She still finishes her workload. She can work as long as she takes her medication.

**A:** The employer must accommodate Lyla unless the modified schedule is an undue hardship for the employer.

The Washington Human Rights Commission (HRC) enforces the Washington law. The Equal Employment Opportunity Commission (EEOC) enforces the federal law (Americans with Disabilities Act - the ADA). Private lawyers can also sue to enforce these laws.

You can sue under the state law without first going through the HRC. To sue under federal law (the ADA), you must first go through the EEOC. Seattle, Tacoma, and King County have human rights offices that enforce their own anti-discrimination ordinances. Unions and mediators can also help.

### ***Retaliation:***

Retaliation is action your employer takes against you because you exercised a legal right.

**Example 1:** You make a complaint about sexual harassment. Your employer fires you for making the complaint. That is retaliation. **Example 2:** You ask for reasonable accommodation of your disability. You are demoted as a result. That is retaliation.

Other examples of illegal retaliation include retaliation because you:

- Complained about unsafe working conditions.
- Complained about discrimination against you or co-workers.
- Complained about not being paid minimum wage or overtime.
- Filed for workers' compensation.
- Complained to DSHS about abuse or neglect of patients in a health care facility.

- Engaged in union activities.
- Took some action to try to improve pay or conditions for workers at your job.

In each of these examples, there is a law against firing and other action against you (**examples:** suspension or demotion).

If there is no specific anti-retaliation law, you can only sue your employer if the employer fires you. It is illegal to fire you for a reason that goes against public policy clearly expressed in state law. **Example:** it is illegal to fire an employee for “whistleblowing” -- reporting that your employer has violated environmental, business, or health laws. If your employer fires you for this, you can sue for “wrongful discharge in violation of public policy.”

Workers have the right to join a union. They have the right to come together to ask the employer to improve conditions without fear of retaliation. **Example:** Six women work together sewing sleeves on jackets. The room where they work is dark. They have trouble seeing their work. They ask the manager to make the lighting system brighter. The manager fires them.

Sometimes an employer gives one reason for taking action against you. You think the real reason is unlawful retaliation. You can win if retaliation was a substantial factor in why the employer acted against you.

**Example:** Henry hurt his back on the job. He was out for two months. His employer pressured him to come back when Henry did not feel ready. He had to leave early one day because he was in so much pain. Henry tried to tell his supervisor. He could not find her. He left a written message on the secretary's desk. The secretary did not find it until the next day. Henry was fired for violating a rule that employees must notify their supervisor before leaving work. Other workers who have left work without notifying their supervisors have just gotten a reprimand.

**Example:** Susan was injured on the job. She filed a workers' compensation claim. Soon after, she was fired. The employer claims it was for some other reason. Susan thinks it may be because she filed for workers' compensation. She should ask herself:

- What has happened to other injured workers in the same situation? (**Example:** Other people hurt on the job were fired soon afterward.)
- Did the employer fire her for something other workers routinely get away with?
- Did the employer violate their own rule? (**Example:** The employer has a rule that they will not fire you until you have gotten three written warnings. Susan had never gotten a warning.)

**Written statement of reasons for discharge:** Under state law, you have a right to a signed, written statement explaining why they discharged you. Your employer must give it to you within ten working days of getting your written request.

## 6. Unemployment Compensation

Unemployment insurance law covers most employees. While you are working, your employer pays into the unemployment insurance fund. If you lose your job, you may be eligible for unemployment compensation.

**To be eligible for unemployment compensation, you must have worked** 680 hours in either the last four completed calendar quarters OR the first four of the last five completed calendar quarters. A calendar quarter is a three-month period. **Examples:** January - March, April - June.

You must also be unemployed through no fault of your own. If you quit your job, you usually cannot get unemployment compensation, unless you have a “good cause” to quit under state law. **Before quitting, talk with** a lawyer, union representative, or the Washington Employment Security Department about whether your reason for quitting might qualify as “good cause.”

### **Q: Which worker probably qualifies for unemployment compensation?**

The employer transfers Monique to night shift. She works that shift for two months, but gets migraine headaches. Her doctor says these are related to the night work. She takes a doctor's note to her employer and asks for day or swing shift work. It would not hurt the business to switch her to days. The employer refuses. She quits.

The employer transfers James to night shift. He quits right away, telling his employer he cannot stand working nights.

**A:** Monique.

**If you are fired or laid off, you will qualify for unemployment compensation unless they fired you for “misconduct.”** Misconduct means you acted in willful disregard of the employer's interest and hurt the business. Your act must be intentional or grossly negligent, or take place after a warning against it. Mere incompetence or a mistake in judgment is not misconduct.

### **Q: Which worker probably qualifies for unemployment compensation?**

Hannah works at a jewelry store. She loses \$5,000 worth of diamonds because she did not log them and put them in the safe. She did not steal them. She did not mean to hurt her employer by not logging and storing the diamonds. She is fired and applies for unemployment compensation.

Karen's employer has a rule that a worker must give 48 hours' notice before taking vacation time. Karen has violated the rule before and gotten written notices that she must follow the rule. She violates it again, is fired and applies for unemployment compensation.

**A:** Hannah.

**To qualify for unemployment compensation, you must be able, available, and willing to work.** You normally fill out a claim form and then submit continued claim forms during the period of unemployment. If you lost your job due to domestic violence, you may still qualify for unemployment compensation.

If they deny your application for unemployment compensation, you should file an appeal at the unemployment office or job service center. In a few weeks, you will have a chance to tell your

side of the story at a hearing before an administrative law judge. Many hearings are done by phone. When you file your appeal at the job service center, ask for a complete copy of your unemployment file. If you are low-income and want help with your hearing, call the [Unemployment Law Project](#) at (206) 441-9178 or 1-888-441-9178. The hearing is the most important part of the appeal process. It is the only time you can tell your side of the story. You should bring witnesses to and present documents.

## 7. Remedies and Resources

If you are in a union, go to the union with your workplace complaint. Your union has a duty of fair representation. They might handle your case. Your union might refer you to a lawyer or an administrative agency that handles your type of claim.

If you are not in a union, you still have options. This section reviews some.

Under state law, if an employer's unlawful action deprives you of wages, you may be able to win twice the amount of those wages in court. The court (even small claims court) can award you twice the amount of your wages if it finds the employer acted willfully -- not just carelessly or because of a good faith dispute.

### ***Informal Negotiation with Your Employer:***

You can present your complaint directly to your employer. Here are some tips:

1. **Keep records.** Write down, for example, what was said during a conversation that bothered you, the true hours you worked, or the names, address, and phone numbers of witnesses to important events.
2. **Bring a friend to take notes.** Your focus should be communicating. Have your friend write down exactly what everyone says.
3. Tell your side of the story as unemotionally as you can. Do not distract your employer with emotions. You want them to focus on the facts.
4. Make sure your facts are straight. Check and recheck beforehand.

### ***Mediation:***

Mediation is a meeting run by a mediator. You and a co-worker or boss talk out problems you have with each other. Mediation is optional.

The mediator

- Runs the meeting.
- Is trained as a neutral facilitator.
- Does not take sides or decide what should happen.
- Makes sure the meeting is safe and everyone is taking part in a straightforward, respectful way.
- Asks for agreement on ground rules about civil behavior and honesty.

- Makes sure no one feels intimidated or threatened by anyone else.

[Mediation: Should I Use It?](#), available at [WashingtonLawHelp.org](#), has more info.

Mediation can help when you have a hard time communicating with a boss or supervisor. It can help if you think your needs are not being considered or your legal rights are being violated.

Mediation may work best before you have filed a formal grievance or taken legal action. You can also use it to settle grievances and lawsuits. Do not miss filing deadlines while waiting for mediation.

**Example:** Jodi had to leave 15 minutes early one day to get her son from daycare. Her supervisor, Annie, told her that Jodi could not do this, and not to ask again for special favors. Jodi felt awful. She felt she let down her daycare provider, who needed the 15 minutes to go to a funeral for her best friend. She also felt Annie was mean, threatening, and unreasonable. Annie felt protective of Jodi and responsible for helping Jodi keep good work habits. She was hurt that Jodi, who had always been very friendly, seemed unfriendly afterwards.

In mediation, Jodi and Annie aired their complaints, explained their needs, and, with the mediator's help, came up with better ways of talking to each other in the future. They left mediation feeling better about themselves and each other. They improved their working relationship.

**Where to find a mediator:** You can call a local [Dispute Resolution Center \(DRC\)](#). DRC's offer a sliding fee scale based on your income. Ask your employer if they will pay for mediation. If there is no DRC in your county, look on the web for "Mediation." If all parties to the dispute agree to mediation, the mediator will schedule a private session at a neutral location in the area, at a time convenient for everyone.

### ***Small Claims Court:***

If you have a small claim worth \$5,000 or less, you can go to small claims court. This is quick, cheap, and informal. Lawyers are not allowed. [How do I Sue in Small Claims Court](#), at [WashingtonLawHelp.org](#), has more info.

### ***Administrative Agency Complaints:***

You can file some complaints with state and federal administrative agencies. You should know the time limits for filing and the process.

You will probably need to supply a description of the facts and witnesses' names and addresses. You must document your claim and keep copies of everything you file with an agency. This will help the agency investigate your claim.

Some important time limits for filing administrative agency complaints:

**Complaints of discrimination or retaliation to the federal [Equal Employment Opportunity Commission \(EEOC\)](#)** - you must file within 300 days.

**Complaints of discrimination or retaliation to the [Washington Human Rights Commission \(HRC\)](#)** - you must file within six months. HRC can take your case only if your employer has eight

employees or more. If you miss the deadline, or your employer has fewer than eight employees, talk with a lawyer.

**Complaints of discrimination or retaliation to the [Washington Department of Labor & Industries](#)** based on you complaining about **unsafe working conditions** - you must file within 30 days. If you miss that deadline, talk with a lawyer.

**Complaints of discrimination or retaliation to the [Washington Department of Labor & Industries](#)** based on **exercising your right to workers' compensation** - you must file within 90 days. If you miss that deadline, talk with a lawyer.

**Complaints that you were discriminated against for acting to get better wages or working conditions for workers at your job, or for union activities** - you must file with the [National Labor Relations Board](#) within six months. Different laws cover agricultural workers and public employees. See “Where to Get Help,” below.

### ***Remedies:***

If you are found to be a victim of employment discrimination or retaliation, you may be entitled to a promotion, lost wages, reinstatement to your job (or future wages), payment of attorney's fees, and other damages to pay you for emotional harm, inconvenience, and/or monetary and non-monetary losses. In some cases under federal law, punitive damages are available.

## **8. Where to Get Help**

**Violations of overtime, child labor and Family & Medical Leave Act** - contact the [U.S. Department of Labor](#):

Seattle Office  
300 Fifth Avenue S, Suite 1130  
Seattle, WA 98104  
206-398-8039, 1-866-487-9243

Portland, OR Office  
(Wahkiakum, Cowlitz,  
Clark, Skamania and  
Klickitat counties)  
620 SW Main Street  
Room 423  
Portland, OR 97205  
(503) 326-3057  
(1-866-487-9243)

**Violations of federal discrimination laws** - contact the Equal Employment Opportunity Commission (EEOC):

Seattle District Office:  
 Federal Office Building, 909 First Avenue South, Suite 400  
 Seattle, WA 98104-1061  
 800-669-4000

**Violation of union rights or your right to act with other workers for better pay or working conditions** - contact the National Labor Relations Board (unless you are a public employee or agricultural worker):

2948 Jackson Federal Bldg.  
 915 Second Ave.  
 Seattle, WA 98174  
 (206) 220-6300

**Violations of state discrimination laws** - call the Washington Human Rights Commission (HRC) at 1-800-233-3247.

**Minimum wage or overtime, unsafe working conditions, meal or rest breaks, wage claims, pay periods, retaliation for filing workers' compensation or health and safety claims** - call the [Washington Department of Labor & Industries](#). You can find the phone number for your local office online.

**Agricultural Employees:** If you have an employment law question, call Columbia Legal Services or the Northwest Justice Project:

Columbia Legal Services: Tri Cities 888-201-9735 Wenatchee 800-572-9615 Yakima 800-631-1323	Northwest Justice Project: Wenatchee 888-201-1021 Yakima 888-201-1018
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**Public Employees** can get help from their unions and many of the same agencies listed above. They can also get help from these:

County and Local Employees:  
[Public Employment Relations Commission](#)  
 112 Henry Street NE, Ste. 300  
 PO Box 40919  
 711 Capitol Way So.  
 Olympia, WA 98504  
 (360) 570-7300

**State Employees:**

[State Human Resources \(SHR\) Division, Office of Financial Management](#)

P.O. Box 47500  
Olympia, WA 98504-3113  
360-407-4105

**Federal Employees:**

[Merit Systems Protection Board](#) (Western Regional Office)

1301 Clay Street, Suite 1380N  
San Francisco, CA 94612-5217  
(510) 273-7022 phone  
(510) 273-7136 – fax

**To Find Lawyers:** Your county bar association may be able to help. You can find a list of bar associations: [www.wsba.org/Legal-Community/County-Bar-Associations](http://www.wsba.org/Legal-Community/County-Bar-Associations). **Some counties have Lawyer Referral Services that charge a small fee for the first half-hour visit.**

If you are low-income, you can get free legal advice and referral by calling the Coordinated Legal Education Advice and Referral (CLEAR) line at 1-888-201-1014 weekdays 9:15 a.m. - 12:15 p.m.

**Unemployment Hearings:** If you are low-income and need help with an unemployment compensation hearing, call the [Unemployment Law Project](#):

Seattle Office  
1904 Third Avenue, Suite 604  
Seattle, WA 98101  
(206) 441-9178  
toll free (888) 441-9178

For more info on the **Earned Income Tax Credit**, call the IRS at 800-829-1040.

If you are interested in **mediation** of an employment dispute, call your local Dispute Resolution Center. For a directory, check [resolutionwa.org/dispute-resolution-centers/](http://resolutionwa.org/dispute-resolution-centers/). If your county does not have a Dispute Resolution Center, Try the [Washington State Mediation Association's Mediator Directory](#) for a mediator near you.

For more about **unions and your rights to organize and bargain collectively**, call:

<a href="#">King County Labor Council</a>	<a href="#">South Sound Jobs</a>
<a href="#">Union Cities Organizer</a>	<a href="#">with Justice</a>
206-441-8510	(253) 473-3810

For more about **welfare rights**, call your nearest legal services office or CLEAR at 888-201-1014 weekdays 9:15 a.m. - 12:15 p.m. or contact the [Welfare Rights Organizing Coalition](http://www.wroc.org/) through [www.wroc.org/](http://www.wroc.org/).