

Worker protections

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Learn about basic worker rights in Washington State, including legal protections for your political beliefs and privacy (drug, genetic, cannabis testing, and vehicle searches), protections for union members, and restrictions on arbitration agreements.

1. Basic worker rights

What is constructive discharge?

Constructive discharge is when your working conditions become so intolerable because of discrimination or harassment that you are forced to quit. Courts and agencies treat constructive discharge more like being fired because the unfair treatment **forced** you into quitting. Constructive discharge **is a legal claim** that your lawyer can make for you if you were forced to quit because of discrimination at work. Just because you weren't fired and were forced to quit instead, doesn't mean you don't have rights.

If you are in a constructive discharge situation, [get legal help](#).

What is retaliation?

Retaliation is when your employer punishes you or treats you negatively because you made a claim of discrimination to HR, your union, other managers, the courts, or one of the reporting agencies. Retaliation can also happen to witnesses, workers that oppose discrimination, or other workers who participate in a discrimination investigation.

Retaliation is prohibited under both state and federal law. Learn more about [retaliation at work](#).

2. Prohibited treatment

Prohibited during employment

Generally, workers in Washington state are protected by federal and state laws prohibiting [discrimination](#), [sexual harassment](#), and [retaliation](#). Other laws also protect workers' privacy, political beliefs, and union membership.

Some examples of employer actions that are probably illegal include:

- Making job assignments, scheduling, or promotion decisions based on a [protected class](#), including basing decisions on stereotypes and

assumptions about a protected status.

- Requiring tests for a job assignment or promotion that are unrelated to the job and exclude people of a protected class.
- Discrimination based on a protected class related to the payment of wages or benefits, retirement plans, paid leaves, and other compensation.
- Discrimination based on a protected class related to decisions about discipline, dress code rules, other rules, training, apprenticeship, denials, demotions, compensation, layoffs, recalls after layoffs, use of company facilities, termination, and other terms and conditions of employment.
- Denying employment opportunities to a person because they're married to, related to, or in association with someone of a protected status, including race, religion, national origin, or disability, or due to their participation in a school or place of worship associated with a racial, ethnic, or religious group.
- Allowing harassment based on a protected class. Harassment is offensive unwanted contact, and it can include slurs, graffiti, offensive or derogatory comments, or other verbal or physical actions.
- Retaliation against an employee or prospective employee for filing a charge of discrimination, being part of an investigation of discrimination, or opposing discriminatory practices. You must prove that your complaint was a major reason why your employer treated you unfairly at work. These are called **adverse employment actions** and can include taking away job responsibilities or favorable working assignments, or other downgrades in your job status, shifts, or environment, including being fired.
- Failing to provide a reasonable accommodation () when requested by an employee. This includes accommodation requests related to pregnancy,

childbirth, or related conditions. An employer may not have to provide an accommodation if it would cause an undue financial or administrative hardship (<https://www.eeoc.gov/disability-discrimination-and-employment-decisions>). However, an employer may not refuse an accommodation **just** because it involves some cost or burden.

Learn about your rights and responsibilities if you recently lost your job and / or if you think you may be owed wages.

Farmworkers have special rights and protections at work

If you're a farmworker or work in agricultural production or processing, you have special employment protections. Get specific information about rights and protections rights and protections for farmworkers.

3. Nondisclosure agreements

Nondisclosure agreements are limited by state law.

Washington law protects workers

(<https://app.leg.wa.gov/rcw/default.aspx?cite=49.44.211>) from certain types of nondisclosure agreements (NDAs). The law includes non-disparagement provisions in any other work-related agreements too. NDA protections include independent contractors and any current, former or prospective employee who is a resident of Washington when they sign such agreements.

An NDA **is in violation of the law and is void and unenforceable if** it asks you to sign away your rights to discuss or disclose any of these:

- Conduct or treatment that you reasonably believed violated Washington, federal or common laws protections against illegal discrimination, illegal harassment, illegal retaliation, wage and hour violations or sexual assault.
- Conduct or treatment that you reasonably believed violated a recognized, clear mandate of public policy.
- The **existence of** any settlement about conduct or treatment that you reasonably believed violated Washington, federal or common laws protections against illegal discrimination, illegal harassment, illegal retaliation, wage and hour violations, or sexual assault.

Nondisclosure agreements can be complicated. Learn more about [NDAs in the workplace](#).

Employers can't require confidential resolutions for discrimination claims

Any part of an employment contract or agreement will be considered to be void, unenforceable and against public policy if it requires an employee to waive their rights to:

- Publicly pursue a cause of action or complaint using state anti-discrimination laws (RCW 49.60).
- Publicly pursue a cause of action or complaint using federal anti-discrimination laws.

- Publicly file a complaint with the appropriate state or federal agencies.

It is also a violation of this law

(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.085>) if any part of an employment contract requires an employee to resolve discrimination claims in a dispute resolution process that is **mandatorily confidential**.

4. Privacy protections

Washington State law includes several provisions that protect employees' privacy.

The state anti-discrimination agency (<https://www.hum.wa.gov/>) **doesn't** investigate the type of violations discussed in this chapter. Instead, you would need to find a lawyer and file a lawsuit.

Lie detector tests

RCW 49.44.120 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.120>) prohibits most employers from requiring you to take a lie detector test as a condition of employment. The law provides exceptions for law enforcement agencies, juvenile court services, sensitive positions involving national security, and positions involving making or dispensing controlled substances (defined under RCW 69.50 (<https://app.leg.wa.gov/RCW/default.aspx?cite=69.50>)). If your employer violates this, you can try to sue them and could get the relief available through

RCW 49.44.135 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.135>).

Genetic testing

RCW 49.44.180 prohibits employers from requiring you to give genetic information or submit to genetic screening as a condition of employment. Genetic information includes DNA-based or other laboratory test, family history, or medical examination, but it doesn't include tests for drugs or alcohol or routine chemical, blood, and urine analysis tests (unless the tests are conducted to diagnose genetic or inherited characteristics).

Cannabis testing

RCW 49.44.240 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.240>) prohibits most employers from discriminating against job applicants based on use of cannabis **outside of work**. There are exceptions for some employers, for example:

- Employers who are required to maintain a drug free workplace by law or regulation
- Positions requiring federal background checks or security clearance
- Most law enforcement agencies and correction officer positions
- Fire departments and first responders (911 dispatchers and emergency medical services)
- Airline and aerospace industries
- Other safety sensitive positions that involve substantial risk of death

Your employer may be able to test you for substances other than cannabis during hiring or employment.

Employee's personal vehicle

Employers can't limit what personal items you can keep in your vehicle so long as the items are legal. RCW 49.44.230(1)(b)
(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.230>).

RCW 49.44.230 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.230>) prohibits most employers from searching your privately owned vehicle, even if it is parked in the employer's parking lot or garage. There are some exceptions where an employer may search a vehicle:

- If the employer owns or leases the vehicle
- If your vehicle is used for work-related activities and the employer needs to inspect it to make sure it's suitable for the work-related activities.
- If there is an immediate threat to human health, life, or safety
- For security inspections for a vehicle that is on state and federal military installations
- If the vehicle is at a state correctional institution

If you do consent to a vehicle search to prove that you don't unlawfully possess
(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.230>) employer property or a substance that is illegal under both federal law and

banned by your employer's written policy about drug use, then you must give **written** consent immediately before the search is conducted. An employer **can't require** employees to give consent. If you do consent to a vehicle search, **you are allowed to bring a witness** with you to observe the search as it happens. Employers can't retaliate against you if you say no (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.230>) to a vehicle search.

Social media accounts

RCW 49.44.200 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.200>) prohibits employers from requesting or requiring you to disclose login information for your personal social networking account. Employers also can't ask you to access your social networking account so they can observe the contents of your account.

Employers also can't require you to add them or another person as a contact and can't take adverse action against you if you refuse to disclose social networking account information.

There are exceptions to this law if the disclosure or access is related to certain types of investigations (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.200>) and for other situations.

Employee assistance programs

RCW 49.44.220 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.220>) prohibits employers from obtaining your individually identifiable information for if you use an employee assistance program (EAP). Personal information gathered by an employee assistance program must be kept confidential.

There are limited exceptions that allow an employer to gather certain information when:

- Information about appointments and attendance is needed if you are referred to the EAP for poor job performance. RCW 41.04.730 (<https://app.leg.wa.gov/RCW/default.aspx?cite=41.04.730>).
- Information is needed to prevent or lessen a health or safety threat.
- There are other certain exceptions under RCW 18.225.105 (<http://app.leg.wa.gov/RCW/default.aspx?cite=18.225.105>), 70.02.050 (<http://app.leg.wa.gov/RCW/default.aspx?cite=70.02.050>), or 71.05.120 (<http://app.leg.wa.gov/RCW/default.aspx?cite=71.05.120>).

Whether you participate or not in an EAP shouldn't be a factor in a decision affecting your job security, promotions, discipline, or other employment rights. RCW 49.44.220(2) (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.220>).

5. Political beliefs

RCW 49.44.250 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.250>) protects certain political statements and beliefs you make from affecting you at work. This is different from anti-discrimination protections.

Any employer-sponsored religious or political events or meetings must:

- Be **strictly** voluntary. There can't be mandatory or required attendance.
- **Not** result in any different kinds of treatment based on whether an employee did or didn't attend an employer-sponsored religious or political event or meeting.

This includes making you listen to or view communications or speeches, including electronically, that are primarily meant to express the employer's opinion about political or religious issues. It also protects employees who complain about these behaviors from retaliation.

You have the right under RCW 49.44.250(4) (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.250>) to file a suit in Superior Court **within 90 days** if your employer penalizes you or otherwise treats you unfairly for refusing to take part in an employer-sponsored meeting or event that's primarily for a religious or political purpose.

There are exceptions to the law (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.250>), like for necessary job information or legally required trainings or communications.

The restrictions on religious activities and speech might not apply if you work for a religious organization.

6. Union members

Union rights

Your union contract may give you rights and protections stronger than the law. If you believe your employer has discriminated against or retaliated against you, contact your union representative as soon as possible to find out if your union can help you. You may have a **shorter deadline** to notify your union of discrimination.

Even if you're not in a union, you and the employer might have a written employment contract giving you some rights, such as the right to be terminated only for specific reasons and after the employer follows certain procedures. If you think you might have such an agreement, mention it when you talk to a lawyer or write your complaint.

Employers can't interfere with your Union representation

Under RCW 49.44.020

(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.020>), it is a gross misdemeanor for anyone to attempt to bribe or unduly influence a union representative from a labor organization for the purposes of getting the representative to:

- act against union interests
- influence the representative's duties or interests
- cause or prevent a strike of the business's employees

Also, under RCW 49.44.030

(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.030>), it is a gross misdemeanor if a union representative if your union or labor organization representative takes a bribe.

Be careful how you quit, strike or walk out

If you are going to quit your job, strike or walk out, follow the rules of your workplace or union. Give the required notice for ending your employment contract if you can. Work with your union to plan any strikes or walk outs.

Under RCW 49.44.080

(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.080>), it could be illegal if you quit suddenly and you knew or had reason to believe that your absence could result in any of these:

- Endanger human life
- Cause grievous bodily injury
- Expose valuable property to destruction or serious injury

Anyone who **willfully or maliciously** breaks a contract of service or employment when they had reason to believe that such harms could occur could be charged with a misdemeanor

(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.080>).

Discrimination laws also apply to unions as employers

If the union has a hiring hall or employs at least 15 members, Washington's Law Against Discrimination applies to labor unions. Labor unions aren't allowed to discriminate when acting as an employer, as a bargaining

representative for its members, or as a referral agency or hiring hall.

For **age discrimination** related complaints using federal laws, the union must have at least 25 members.

7. Arbitration agreements

An employer may make you sign an agreement stating that if you have any legal claim against them, including discrimination, you can't sue the employer in court. Instead, you must use the employer's arbitration process.

Arbitration is a way to resolve legal disputes without going to court. A private lawyer acts as the arbitrator (like a judge in court). The arbitrator decides how to resolve the dispute.

Arbitration agreements **are** allowed unless:

- The employer has set up an arbitration process in a way that's biased toward the employer or against the employee.
- The employer has set up an arbitration process in a way that tries to change the law.

Figure out if you signed an arbitration agreement **before** starting any claim about discrimination. Your employer can ask you to sign an arbitration agreement at any time. Usually, you sign it along with other employment documents when you're first hired. It might be included in your employee handbook.

Arbitration agreements often have their own procedures and timelines. If you signed one, talk to a lawyer as soon as possible. A lawyer will help you find out if you must go through with arbitration and, if so, help you follow the procedures.

Your employer **can't** make you take sexual harassment or sexual assault claims to arbitration. Contracts to arbitrate such claims **aren't enforceable**. This exception **only** applies to sexual harassment and sexual assault (forms of gender discrimination), and not to other forms of discrimination, like racial discrimination.

8. Find an employment lawyer

Try to get legal help from an employment lawyer as soon as possible after the discriminatory acts. Some employment lawyers will work **on contingency**, which means they won't get paid unless you get a settlement, and you won't have to pay them until the end of the case.

To find an employment lawyer in your area, use the Washington State Bar Association's (WSBA) Legal Directory (<https://www.mywsba.org/PersonifyEbusiness/LegalDirectory.aspx>). You can choose search options for your results that can include:

- Your county, city, or area

- What kind of lawyer you need (you could choose Employment, Civil Rights, or Labor in the “Practice Area” dropdown menu)
- If you need a lawyer with specific community expertise, you can also choose that in the “Practice Area” dropdown menu (like Disability, LGBTQ, Military, or Workers Compensation)
- If you need a lawyer that speaks a language other than English, you can filter for that

Try to talk to a lawyer well before your deadline to file anything. A lawyer needs time to evaluate your claim and prepare the paperwork.

Before hiring a lawyer, learn how the lawyer will be paid (<https://legalvoice.org/working-with-a-lawyer/>) and how much the lawyer charges. Ask what costs you’ll be charged on top of the lawyer’s fee. If you have a low income, you might qualify for free legal help.

You can also use employment lawyer directories:

- The Washington Wage Claim Project (<https://wageclaimproject.org/>) (specifically for wage and hour violations)
- Washington Employment Lawyers Association (<https://welalaw.org/>)
- National Employment Lawyers Association (<http://exchange.nela.org/network/findalawyer>) is a national professional organization of lawyers who represent employees.
- Workplace Fairness (<http://www.workplacefairness.org/find-attorney>) has an Attorney Directory that includes lawyers who represent workers.

Working with a lawyer on your case

Employment claims can be hard to manage without a lawyer.

Before you meet with a lawyer, you can prepare for the first meeting by doing these ahead of time:

- **Gather evidence** such as emails, letters, contracts, or other documents related to the situation and the effect it had on you, including your physical and mental health.
- **Create a timeline** with dates and times when discriminatory acts occurred, with facts you remember from each occurrence.
- **If the employment discrimination is ongoing**, write down facts and details like the date, time, who was there, and what was said and done. Write these facts down after work while details are still fresh in your mind, but **don't** do this while you're "on the clock" at work.
- **If you were terminated**, save any records that show how you're trying to find a new job.
- **Come to meetings prepared.** Write down specific questions so your lawyer can help you understand your situation better.
- **Be honest, even if certain details might make you feel embarrassed.** Your lawyer can help you best when they know the good and bad. Every detail will be important to the legal strategy you and your lawyer create together.

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