

# Applying for work

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Learn about protections for job applicants in Washington State. With information about prohibited practices for employers and employment agencies in advertising and hiring, including restrictions on criminal record searches, cannabis and genetic testing, and social media access.

## **1. Prohibited discrimination during hiring**

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Some federal, state, and local anti-discrimination laws specifically prohibit certain treatment from a prospective employer.

Employment protections apply to applicants for jobs as well as employees, former employees, and trainees or apprentices. Generally, the laws also apply to employment agencies and their practices.

Sometimes the treatment can be excused if the employer can show it was **related to a necessary function** of the job.

For example, a job posting for firefighters may say “Applicants must be able to meet strenuous fitness, lifting, and physical requirements, including lifting over 150 pounds alone.” But they may not restrict applications from a protected class or status by saying “only men may apply” or “no disabilities.”

The posting can’t assume or imply that women or other protected classes couldn’t meet these requirements. But it **isn’t discrimination** to have these requirements, even if many people couldn’t do this, because these requirements **are necessary and related** to a job function.

If a business’s main purpose is religious, preferences related to religion in their hiring that would otherwise be discriminatory may be allowed. But religious organizations still may not discriminate against other protected classes, like race, color, disability, sex, age, and national origin.

## Examples

Other examples of prohibited discriminatory acts in job posts and during hiring:

- Job advertisements that discourage someone with a protected class from applying or other recruitment efforts that discriminate against protected classes. This includes failing to provide reasonable accommodation requested by applicants so that they can apply, unless the accommodation is too hard or expensive for the employer.

- Hiring preferences against people from a protected class, including prohibiting employers from basing hiring decisions on stereotypes and assumptions about a protected status.
- Requiring tests to get a job must be necessary and related to the job **and** can't exclude people of a protected class.
- Employers, unions, and employment agencies involved in referrals can't discriminate against prospective employee referrals based on a protected class.
- Former employers can't give you a negative or false reference because you have a protected status.
- Questions about your protected class status or questions that would make you reveal a status through identifying with certain groups, organizations or associations. Employers shouldn't ask you for a photo of yourself until after you're hired. Employers shouldn't have height and weight requirements. They shouldn't ask about your marital status, family status, or family plans.
- Prospective employers also can't ask you to identify if you have disability. They shouldn't ask you to provide medical information or have a medical exam before you are hired.
- If the employer does ask questions related to a protected class, they can't use the information to discriminate in hiring preference and should have had a justifiable job-related reason for asking.

## 2. Criminal records and hiring

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Washington's **Fair Chance Act**, at RCW 49.94.010

(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.94.010>)

(<https://app.leg.wa.gov/RCW/default.aspx?cite=49.94.010>), restricts what kinds of criminal history information an employer can ask you about in a written job application or verbally. Employers can't use a criminal history background check or ask about your criminal record **until** they determine that you qualify for the position **and** they offer you employment. At that point, they may make the employment offer conditioned on a criminal record check.

Employers can't add language to job listings that exclude people with criminal records from applying, for example saying or "no criminal background," or "no felons" need apply.

With certain exceptions (see below), employers may not make a "**tangible adverse employment action**" based on an applicant's:

- Arrest record
- Juvenile conviction record
- Adult conviction record, unless the employer has a "**legitimate business reason.**"

A "tangible adverse employment action" means a decision to reject an otherwise qualified applicant, or to terminate, suspend, discipline, demote, or deny promotion to a current employee.

Before making a tangible adverse employment action, the employer should notify you in writing about the legitimate business reason for the adverse action. The employer has to explain the "legitimate business reason" for denying an applicant. They have to show how the criminal conduct in the adult

conviction record will:

- have a negative impact on the applicant's ability to perform the position
- or**
- harm or cause injury to people, property, or business reputation.

The employer then must give the applicant 2 days to respond by correcting or explaining the record and provide information about rehabilitation, good conduct, or additional experience, education, or training.

Certain types of businesses and positions are exempt from these requirements, including:

- Employees who may have unsupervised access to children under 18, or vulnerable people
- Financial institutions permitted or required by law to consider applicants' criminal records
- Most law enforcement and criminal justice agencies
- Non-employee volunteer positions
- Certain federally regulated organizations or employer with certain federal contracts

Washington's Attorney General has [more information about the Fair Chance Act \(http://www.atg.wa.gov/fair-chance-act\)](http://www.atg.wa.gov/fair-chance-act), and offers an [online complaint form](https://fortress.wa.gov/atg/formhandler/ago/FairChanceJobsComplaint.aspx) (<https://fortress.wa.gov/atg/formhandler/ago/FairChanceJobsComplaint.aspx>) to use if you believe an employer violated this law. You may also contact the Attorney General's office about this [fairchancejobs@atg.wa.gov](mailto:fairchancejobs@atg.wa.gov)

(mailto:fairchancejobs@atg.wa.gov) or by leaving a message on their toll-free line at (833) 660-4877.

### 3. Former employer references

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#### Former employers can't blacklist you

Anyone who violates the anti-blacklisting law (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.010>) could be charged with a misdemeanor.

It is illegal (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.010>) for anyone in the state to **willfully** or **maliciously**:

- Make public statements or written statements meant to block or prevent another person from obtaining employment (called "blacklisting").
- Disclose or make known to an employer a person's membership in a private organization for the purpose of preventing them from securing employment.

These are different from **honest but negative** references your former employers may give to potential future employers as long as those statements are made in **private** and are **honest**.

If **you** use a fake or false job reference or letter to get a job, you could be charged with a misdemeanor (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.040>).

## 4. Preemployment testing

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### Genetic testing

RCW 49.44.180 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.180>) prohibits employers from requiring that applicants provide 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 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

## 5. Social media accounts

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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.

## 6. Employment agencies can't lie to you

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RCW 49.44.050 (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.050>), prohibits employment agents or brokers can't misstate or otherwise misrepresent an important factor or detail related to:

- The demand for labor.
- The conditions under which any work will be performed.
- The duration of the work.
- The wages to be paid.

An employment agent who violates this law can be charged with a misdemeanor (<https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.050>).

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