

Employment discrimination and legal protections for workers

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Learn all about employment discrimination laws and other legal protections for workers. This has information about protections for employees and instructions on how to make state and federal agency complaints. It has tips about how to find an employment lawyer and the basics about employment discrimination lawsuits.

1. Basics

Employment discrimination means your employer or prospective employer treated you unfairly in a way that breaks (violates) federal, state, or local law. Many kinds of behavior at work might be wrong or unfair, but to qualify **legally** as discrimination, the treatment must be related to a specific "protected status." A **protected class or status** is a **legally** protected characteristic.

A **protected class** is a group of people with a specific characteristic, like age, sex, or gender (including pregnancy, gender identity or sexual orientation), race, religion, veteran status, disability, and so on. People who have a protected status can't be targeted for discrimination **because of** that characteristic. Most discrimination laws include a list of the protected classes they cover.

Federal law and state law have some of the same and some **different** protected classes.

To be considered **illegal** employment discrimination, the unfair treatment **must**:



- Be based on a protected status or
- Have a disproportionate negative impact on one of the protected groups

An employer might be able to excuse certain unfair practices that are jobrelated and necessary for the operation of the business. For example, requiring employees to be able to lift 40 pounds to work in a warehouse loading boxes into shipping containers is unfair because some disabled people can't lift 40 pounds alone. But it's also excused and legal because it's necessary for the job and is related to the job. It would be illegal if the job posting said, "Don't apply if you have a disability," instead of "Must be able to repeatedly lift 40 pounds during shift."

Employment discrimination 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.

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.

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. Read our guide about retaliation at work to learn more.

What if I was sexually harassed at work?

Sexual harassment at work is a specific kind of mistreatment that can have legal consequences for your employer. Not all sexual harassment is **discrimination** but **some treatment** can be both sexual harassment **and** employment discrimination. It can be complicated to figure out if what you experienced would be considered **legal** sexual harassment. Read our <u>guide about sexual harassment</u> to learn more about what **legally** qualifies as sexual harassment and how to make complaints about it.

Which laws protect me?

If you were discriminated against while at work in Washington state, **both** federal and state laws **might** protect you. You can choose to file a complaint with **both** the **state** and **federal** governments, but you should only start the complaint with **one of them**. If you start the complaint with the Washington state agency, it can be "dual filed" to the federal government agency if you also have federal claims. You might need to tell the state agency that you want to dual file if you plan to do that.

If you work for a tribal nation, tribal business, tribal organization, at a tribal casino, or on a reservation, you might not be able to use an agency complaint or to file in state court. Read our guide about <u>civil rights in Indian country instead</u>. It has information about employment rights in Indian Country.

Local laws might also protect you if your county or city has specific employment discrimination protections. This guide will cover the basics of Washington laws and the federal process.

Your city or county might have local protections too. **Local anti-discrimination laws may** provide you with more rights. Contact your county or city office to find



out if it has a human rights office. If so, contact that office for information about any additional local rights. Your local Labor Board may also have more information.

If the discrimination you experienced was based on marital status, veteran status, or citizenship status, you should file with the **state agency** because **only state laws** protect you. You might be able to make a citizenship status related complaint to a federal agency, but get legal advice (https://www.ailalawyer.com/) first.

Farmworkers have special rights and protections at work

If you are a farmworker or work in agricultural production or processing, you have special employment protections. Get specific information about rights and protections for farmworkers from our Farmworkers topic area.

2. Agencies

Two main agencies investigate employment discrimination against workers in Washington: the Human Rights Commission (state) and the Equal Employment Opportunities Commission (federal). The agencies are **neutral** fact finders who investigate and issue findings about whether discrimination occurred. They can also help by:

- Helping with settlement with your employer
- Referring your case to mediation
- Sending your case to an Administrative Law Judge who can order your employer to do things (for state complaints)
- Issuing you a Right-to-Sue letter (for federal complaints)
- Giving you findings that can help with court cases and settlements
- Suing your employer themselves in court or having the Attorney General sue (this is very rare)

What is the Washington Human Rights Commission (HRC)?



The HRC (https://www.hum.wa.gov/) is the **state** agency that manages complaints about employment discrimination based on state law.

You must file a complaint with the HRC

(https://wahum.my.site.com/FileaComplaintOnline/s/?language=en_US) no more than **180 days after the discriminatory event**, or, if the discrimination is ongoing, 180 days after the most recent incident. The deadline is **strict**. The HRC will investigate after getting your complaint. If it finds the complaint valid, it can hold a hearing and act against the employer.

The HRC is the Fair Employment Practices Agency (FEPA) for Washington for enforcing federal laws. You can use the HRC to start a complaint that you want to use **both** state and federal protections for.

The Human Rights Commission serves any person regardless of immigration or citizenship status. The HRC **doesn't** ask about immigration or citizenship status and **doesn't record that information**

What is the Equal Employment Opportunities Commission (EEOC)?

The EEOC is the **federal** agency that manages complaints about employment discrimination based on federal law.

The EEOC is <u>still processing and accepting complaints</u> (https://www.eeoc.gov/wysk/state-eeoc-frequently-asked-questions) amidst federal changes but will be closed for services if any federal budget lapses occur.

If you're going to choose to file a complaint with the EEOC (http://www.eeoc.gov/employees/howtofile.cfm), you must file it within 300 days of when the discrimination occurred. The EEOC will investigate and may try to help you reach a settlement, so you don't have to go to court.

If you work for the federal government **itself** and want to make a claim of discrimination **against** the federal government, you must first follow their <u>specific</u> procedures for federal employees (https://www.eeoc.gov/publications/federal-eeo-



complaint-processing-procedures).

3. Find a lawyer

How do I find an employment lawyer?

If you do need to file a state court case, or if you get a Right-to-Sue letter for federal court, get legal help. Some lawyers will also help with the agency complaint filing and preparation.

To find an employment lawyer in your area, use the Washington State Bar Association's (WSBA) <u>Legal Directory</u> (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 (https://legalvoice.org/how-to-find-a-lawyer/) well before your deadline to file anything. A lawyer needs time to evaluate your claim and prepare the paperwork. There are no exceptions to the deadlines. If you don't file your claim on time, you'll lose the lawsuit.

Before hiring a lawyer, <u>learn how the lawyer will be paid</u> (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.

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.

4. Independent contractors

Your legal rights differ depending on whether you're an employee or an independent contractor. Federal anti-discrimination laws **don't** protect independent contractors. State laws

(https://app.leg.wa.gov/wac/default.aspx?cite=162-16-230) might protect independent contractors depending on the situation. The state rule describes (https://app.leg.wa.gov/wac/default.aspx?cite=162-16-230) how the state law determines who is considered to be an independent contractor. Read the rule (https://app.leg.wa.gov/wac/default.aspx?cite=162-16-230) to figure out if your situation would be an independent contractor for the purposes of discrimination protections.

In deciding which you are, judges and agencies don't rely on your title alone. They mostly look at other factors to determine out how much control the employer has over your job. The **more control** the employer has, the more likely it is that you're an employee, not a contractor.

If you are an independent contractor, even if you aren't protected by the Washington Law Against Discrimination, you are still protected by <u>RCW</u> 49.60.030(1) (https://app.leg.wa.gov/RCW/default.aspx?cite=49.60.030). This means you **could still** sue your employer in **state** court if the protections apply to your situation.

It can be hard to determine if WLAD applies to independent contractors. If you're an independent contractor who experienced discrimination, contact the HRC (https://wahum.my.site.com/FileaComplaintOnline/s/?language=en_US) about your situation to confirm that state protections would apply to you. Call the HRC at 1-800-233-3247, then choose option #4.



5. Union members

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.

The laws also apply to unions as employers

If the union has a hiring hall or employs at least 15 members, the law 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.

6. 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 (https://welalaw.org/) 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 <u>sexual harassment or sexual</u> <u>assault</u> 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.

7. 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 agreement too. NDA protections include independent contractors and any 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.

The conduct covered by the law includes anything prohibited that happened:

- At the workplace
- At work-related events coordinated by or through your employer
- Between employees (whether at the workplace or outside of work)
- Between an employer and an employee (whether at the workplace or outside of work)

The **amount** of a monetary settlement **is allowed** to be in an NDA, but the agreement can't otherwise restrict your ability to discuss or disclose any prohibited conduct like discrimination, retaliation or harassment.

Don't sign an NDA that asks you to sign away any of these rights or the rights to other protected legal claims you might have. If an agreement asks you to sign away your legal protections and then your employer punishes you if you won't sign, that is <u>retaliation</u> and is also illegal. It is illegal for your employer to use threats, retaliation, or other means to get you to sign a prohibited agreement. <u>Get legal help (https://welalaw.org/)</u> and <u>report your employer (https://wahum.my.site.com/FileaComplaintOnline/s/?language=en_US) to the state agency.</u>

What if my employer asks me to sign a non-disclosure agreement when I am hired or fired?



When you are hired and during employment, new employers can ask you to sign a nondisclosure agreement related to sharing work product or trade secrets, client information, and other private, confidential, or sensitive information that you may have access to at your job and that doesn't involve illegal acts. This can be very common in certain industries. But a new employer shouldn't ask you to sign away protected employment rights that you have under the laws or ask you to sign an NDA that restricts your disclosure of illegal acts.

If you sign an NDA or non-disparagement provision as a part of your required hiring paperwork or employment contract, only the **legally valid parts** of the agreement could be enforceable. If the agreement includes a restriction on your ability to disclose discriminatory, retaliatory, or harassing treatment, then that part of the agreement won't be legally valid or enforceable even if other parts of the agreement might be.

If you are fired, your employer shouldn't ask you to sign a nondisclosure agreement that would violate any of your protected rights. They could ask you to sign a nondisclosure agreement about certain things if you are involved in a settlement. Get legal advice (https://welalaw.org/) before you sign a nondisclosure agreement related to any firing or settlement from a firing.

What if my employer asked me to sign a nondisclosure agreement about discriminatory treatment?

If your employer **doesn't** fix or stop the discrimination after you tell them about it, report them to the HRC if state laws apply to your situation.

You **shouldn't** sign any NDA that violates employment discrimination protections or asks you to waive your rights to those protections. <u>Get legal advice</u> (https://welalaw.org/) before you sign a non-disclosure agreement related to any discriminatory treatment. An NDA or other agreement that restricts your ability to discuss discrimination you experienced at work **won't be enforceable and is illegal**.

8. Deadlines

The deadlines are strict and complicated



Your deadline to file a complaint or to sue **depends** on whether you use federal or state law. Most situations that can lead to a lawsuit using **federal laws** will **require** you to file with a state or federal agency **first before** you can sue in court. Then the agency will investigate. After the investigation, there can be various results, including that you could get a Right-to-Sue letter for **federal claims**.

A Right-to-Sue letter from the EEOC grants you the right to file your case in court based on the investigation findings. Having this letter really helps employment discrimination court cases.

If state protections also apply, you can still choose to file in **state** court, using **state** laws, even if you don't get a Right-to-Sue letter.

Generally, there are 2 timelines. The 1st applies to the discrimination you experienced. The 2nd applies to the complaint process.

- For most situations, you have less than 6 months from when the discriminatory treatment occurred to file your claims with the state.
 Pregnancy discrimination related claims made with the state have up to 12 months.
- If you choose to file **federally** first, you have less than **10 months** from **when the discriminatory treatment occurred** to file with the **EEOC**.
- Once you file your complaint with an agency, the 2nd timeline will depend on the agency and your situation. Investigations can take longer than a year. If the EEOC issues you a Right-to-Sue letter, the process speeds up: You then have only 90 days to start the case in court. It can be hard to prepare for these complaints and cases without legal help. Try to find an employment lawyer before filing your complaint.
- Equal Pay Act claims have up to 2 years to file (or 3 years if the violation
 was intentional). Equal Pay Act claims are federal protection cases where
 one sex was paid a discriminatory lower wage than another. Equal Pay Act
 claims don't need a Right-to-Sue letter, unlike most other employment
 discrimination claims.
- State Employee Whistleblower Retaliation complaints must be filed within 2 years from when the unfair treatment took place.



Don't file 2 complaints. Instead, choose to start the complaint with **either** the state or federal government, **then** ask that agency to "dual" file the complaint with the **other** agency **if both** state and federal laws protect you. The state or federal agency you start with will file the complaint with the other agency, but will usually keep control of the investigation where you filed the complaint.

Most federal protections **are** included in Washington protections. The HRC is the FEPA reporting agency for Washington for the EEOC. For these reasons, **you can start most complaints with HRC**, but tell them you want to dual file if possible for your situation so long as federal laws also protect you.

9. Remedies

What result can I get from filing a state or federal complaint?

A **remedy or relief** is what can be done to help you and to make the situation as right as possible. Relief can sometimes include any **damages** that might be justified. **Damages** means a money award or a financial remedy.

The remedy or relief you can get will be specific to your situation and which agency you file your complaint with. It can also be based on whether the treatment was caused by intentional acts or by practices that have a discriminatory effect but weren't intentional.

Can remedies include money payments?

Yes. You can get back pay you lost or are entitled to. You could also get attorney's fees, expert witness fees, and court costs. If you win a suit in **state** court using state laws, you might also be able to get **money damages**.

You might also be able to get **compensatory damages** using **federal** law if a judge finds the discrimination was **intentional** or **willful**. Damages could be for actual money loss, future money loss, and your pain and suffering. You could get **punitive damages** if your employer acted with **malice** or **reckless indifference**



and you're using **federal** protections to make your claim. There are <u>limits to the</u> amount of damages (https://www.eeoc.gov/remedies-employment-discrimination) you can get depending on your situation.

You **can't** get punitive damages if your employer was a federal, state, or local government.

Common types of relief

These are some of the common types of relief for employment discrimination claims:

- Being hired
- Getting the promotion
- Getting back pay
- Getting your job back
- Getting front pay, a kind of financial award if you can't be reinstated or get the job. It's a loss of "future pay" calculation kind of damages
- Getting the reasonable accommodation you requested
- Having your employer post notices in the workplace describing their violations and employee rights under the law
- Making your employer take preventative, corrective actions to stop the discriminatory actions, patterns, practices, or policies
- Other actions that will correct the condition or treatment to be as if the discrimination hadn't occurred
- Getting a Right-to-Sue letter that can make it easier to sue in federal court about the discrimination, where you might be awarded more remedies
- Having investigative findings that you can use in a lawsuit or settlement process

The remedies most often will come from the court case you eventually file, from related administrative rulings, or from settlement agreements. The HRC and EEOC can't **order** an employer to do or stop doing something, like rehire you. Only a **court can do that.** The agencies mainly make investigations and determinations that can help your court and settlement process.



Many cases are resolved through settlement and administrative hearings. Agency investigations also help in the settlement process.

The **HRC** can also eventually move your case to an Administrative Law Judge who **can impose penalties** on your employer and issue orders.

10. Prohibited treatment

Specific things are prohibited

The laws specifically prohibit certain treatment from your employer. 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 **can't** say: "Women shouldn't apply." But it **can** say "Applicants must be able to meet strenuous fitness, lifting, and physical requirements, including lifting over 150 pounds alone."

The posting can't assume or imply that women 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.

Prohibited during hiring:

Job advertisements that discourage someone with a protected class from applying



- Any recruitment of new employees that discriminates against them because
 of a protected class. This includes failing to provide reasonable
 accommodation requested by applicants so that they can apply, unless the
 accommodation would be too hard or expensive for the employer
- Any hiring preferences against persons from a protected class, including prohibiting employers from basing hiring decisions on stereotypes and assumptions about a protected status
- Any tests required to get a job must be necessary and related to the job, and can't exclude persons 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. They 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 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.

Prohibited during employment:

- Making job assignment, scheduling, or promotion decisions based on a protected class, including basing decisions on stereotypes and assumptions about a protected status
- Any tests required for a job assignment or promotion must be necessary and related to the job and can't exclude persons of a protected class
- Discrimination based on a protected class related to the payment of wages or provision of employee benefits, including fringe benefits, retirement plans and disability leave
- Discrimination based on a protected class related to decisions about discipline, compensation, 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.



- Failing to provide reasonable accommodation when requested by an employee. This includes accommodation requests related to pregnancy, childbirth, or related conditions. An employer can be excused if the accommodation would be too hard or expensive for the employer.
- Failing to provide reasonable accommodations related to religion when requested by an employee, unless the accommodation would be too hard or expensive for the employer.

Other prohibited discriminatory behaviors

Other behaviors are prohibited in the workplace under these laws, including:

- Any 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. They can include taking away job
 responsibilities or privileges or favorable working assignments, or other
 downgrades in your job status, shifts, or environment, including being fired.
 Read our guide about retaliation to learn more.
- Making employment decisions based on stereotypes, assumptions, or myths about the abilities, traits, or performance of employees or prospective employees who belong to a protected class.
- Denying employment opportunities to a person because they're married to, related to, or in association with someone of a particular race, religion, national origin, or disability, or because of participation in a school or place of worship associated with a racial, ethnic, or religious group.

11. Before filing complaint or suit

What should I do first?

You must figure out if the unfair treatment you're experiencing is **illegal discrimination**. You'll need to know:



- Are you an employee or an independent contractor?
- Is there a federal, state, or local law that protects your protected class from job discrimination? Or another type of employment law protection?
- Does the size of your workplace qualify you for the protections?
- Are you a member of a protected class according to the agency or laws you will use?

Most labor and employment laws apply to undocumented workers, including laws against workplace sexual harassment. But undocumented workers sometimes can't get lost wages for claims of employment discrimination.

If you're an **employee** at a **qualified workplace** who **is a member** of **a protected class** that **has laws** protecting the class from discrimination, **then** you can make a complaint if you were treated in an unfair way based on your protected class. Start by gathering your evidence.

Follow your workplace's process

If your employer has a procedure for reporting discrimination or harassment, follow it first before making a legal complaint. You may be able to solve the problem within your company without filing a formal discrimination complaint with the government.

Do these things to make sure you've met your employer's requirements:

- Even if you don't believe it will solve your problem, follow your employer's
 procedure as soon as possible after the harassment or discrimination
 occurred. If you don't, it can create problems later. For example, if you end
 up in court, you might have to show that you tried to follow your company's
 policies and procedures before filing a lawsuit.
- Find a copy of your employer's reporting policy if there is one. Your employer's reporting policy is usually in an employment handbook or policy manual. If you don't have a copy, ask your employer for one. Keep this copy for your case records.
- Even if your employer doesn't have an official policy about filing a complaint in writing, you should still give a brief written summary of your complaint to your boss, supervisor, or human resources department. Sign and date the complaint and make a copy to keep for your records. If you send the



complaint as an email, CC your personal email as a recipient and print the email as proof.

12. Evidence

Gather your evidence before filing

Proving discrimination against a protected class requires specific kinds of evidence. It's not enough to say, for example, "I'm a **woman** and I wasn't hired, but a **man** was." Different treatment **alone** isn't illegal if there was a **legitimate**, **nondiscriminatory reason** for the different treatment. You need more evidence showing that the decision to not hire you was **because** you're a woman.

Your own testimony or declarations are **one** important kind of evidence the EEOC and HRC will accept. You can also provide written proof, like documents from your workplace. If you want a witness to give a statement, give the person's contact information to the agency. **Don't** take testimony from the witness yourself.

You'll need proof of these types of things depending on your situation:

- You were treated differently than other employees who aren't in your protected class. Be able to describe who receives what treatment from what managers, and why it's different between groups of people.
- Someone similarly qualified in a similar position was treated more favorably than you in similar circumstances because they aren't in the protected class and you are. Be able to describe how you and the other person are similarly qualified and why. You must show that you both work at the same place under similar conditions with shared management and have the same rules applied to you. You can provide documents like policies or other written evidence you have access to. You must prove that the other person isn't in the protected class (or isn't thought to be so by your employer).
- There wasn't a legitimate, nondiscriminatory reason why the employer treated you differently. Be able to show a good work history and other evidence that there was no work-related reason for the mistreatment. Explain why your employer's reasons for the negative treatment aren't true (if they aren't). Show that you were a good employee with no reason for the negative treatment. Include things like job performance evaluations, attendance records, raises, trainings, other job qualifications, and proof of



work history.

If you're making a complaint about **disability** discrimination, you'll also need <u>additional proof of your disability</u>
(https://disabilityrightswa.org/publications/disability-based-employment-discrimination-washington-state/).

How do I document discriminatory or unfair treatment?

If it only happens once, document as much as you can about what happened as **soon** you can after it happened. If it happens more than once, make notes **every time** something happens.

Make your notes **during breaks or after work** so your employer can't say you were doing personal business on company time. Keep your notes somewhere safe outside of work. Only make or keep copies of documents if you have your employer's **permission** to do so. If you don't have permission, you can be fired, and it will hurt your legal claim.

Check your company handbook or manual to be sure you're allowed to print documents or emails or forward email to be printed later. If not, those documents might be inadmissible as evidence.

Discuss your situation only with sympathetic co-workers, not on work premises or on company time. Confide only in people you know for certain you can trust. Keep up with your work responsibilities. It's hard to prove you were fired or disciplined due to workplace discrimination if you have negative patterns of behavior at work.

Document these kinds of things

- What happened and when it happened. Be exact about dates and times.
 Limit your notes to the facts (who, what, when, where). Don't guess or exaggerate. Don't misrepresent what happened.
- Who said, did, or wrote what specific things. Be exact about whose action was wrong and why. Try to remember and note as many details as you can.
- The names and roles of anyone who witnessed the behavior.



- Track how the discrimination or unfair treatment made you feel, or what your response was when it happened. Note your physical and emotional responses (for example, loss of appetite, can't sleep, losing or gaining weight, depression, anxiety), and how it affected your job performance.
- Keep a log of any times you **reported** the behavior to your employer.
- If you have a written job **description**, keep a copy in your personal records.
- If you've had a written job **evaluation**, ask for a copy. A good evaluation can help fight an employer's claim that they disciplined or fired you because of your poor work habits or quality.
- If you get a written disciplinary warning or notice, read it carefully. Make sure you understand it before you sign it. If you don't, ask questions. Ask permission to have a witness at any disciplinary meeting. If you disagree with the notice, write a statement with your view of the facts and ask that it be put in your employment file. Keep a copy for yourself. You have a right to look at your personnel file to make sure your statement is there.
- If you're **fired**, you're entitled to a written statement explaining why.

Keeping good documentation of the treatment will make the complaint process easier. You'll have a short deadline to make a complaint with the state or federal agencies. Be ready to make the complaint by documenting what happened **right away** after it happened.

Give your evidence to your lawyer

If you talk to a lawyer

(https://www.mywsba.org/PersonifyEbusiness/LegalDirectory.aspx), try to organize your information neatly and in order by dates of incidents. Prepare a brief, clear summary of the highlights of your claim. Make a numbered list of facts in order of when the facts happened. **Give that list to the lawyer**

13. Make the agency complaint

How do I complain to the state or federal agency?



You make an "administrative complaint" - a formal, written complaint to an antidiscrimination enforcement agency. This is the first step for most employment discrimination cases.

Each agency has specific ways to start a complaint. It depends on whether you use the state agency or the federal agency.

The state agency **can dual file** your complaint with the federal agency so you can access **both** the state and federal protections that might be available to you.

You don't need to include all your evidence with your administrative complaint when you start the complaint. But you must give the agency all the evidence once it begins its investigation.

You can use a lawyer

(https://www.mywsba.org/PersonifyEbusiness/LegalDirectory.aspx) to help you make and prepare your agency complaint. Many lawyers prefer to help you make your agency complaint **before** they work on a lawsuit with you for the same case.

14. Investigation

After getting your complaint, the agency begins an investigation. They'll ask the employer for a statement in response to your complaint. They'll also usually interview you. They may also interview witnesses.

Cooperate with the investigator and provide all the evidence you have. Tell the investigator where to go, who to talk to, and where to look for relevant documents. If the investigator leaves you a voicemail or writes you a letter, respond promptly. If your phone number or address changes, notify the agency right away.



If you don't cooperate with the investigation or respond to requests in time, your case could be closed. If that happens, you can only reopen your claim if you're granted reconsideration. **Stay responsive and involved**.

Can an agency make my employer or a witness cooperate?

Yes. The agencies can use subpoenas to make your employer or uncooperative witnesses take part in the investigation. They can also issue subpoenas for documents or other evidence.

15. Washington anti-discrimination laws

Washington has <u>state protections against employment discrimination</u> (https://www.hum.wa.gov/employment/). Our state anti-discrimination law (https://app.leg.wa.gov/RCW/default.aspx?cite=49.60.180) has many protected classes, **more** than federal law does.

Washington's HRC will investigate a complaint if the discrimination was based on or related to your:

 Age (https://www.hum.wa.gov/employment/age) (if you're 40 or older (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.090))

Example: A store refuses to hire a qualified, experienced salesperson because the store manager thinks the applicant, age 55, is "too old to be a good salesperson."

 Religion or creed (https://www.hum.wa.gov/sites/default/files/public/publications/Guidance_Docs/Guidance_Rel discrimination_Current.pdf)

Example: A manufacturing plant HR manager refuses to hire anyone with a "Jewish" sounding name because they need people who "will work on Saturdays."



<u>Disability status</u>
 (https://www.hum.wa.gov/sites/default/files/public/publications/Disability%20Q%20and%20A_
 (https://www.hum.wa.gov/sites/default/files/public/publications/Disability%20Q%20and%20A_
 (including HIV and Hepatitis C status)

Example: A highly qualified applicant is offered an interview an interview for a position with a large firm. The applicant requests an ASL interpreter for the interview, and is immediately turned down for the job instead.

Example: A newly hired grocery store employee discloses her HIV positive status to her supervisor during training. The supervisor immediately changes their tone and behavior towards the new hire. At the end of the day, the supervisor tells the trainee to "not come back tomorrow, we won't be hiring you after all."

 Use of a trained service animal (https://www.hum.wa.gov/sites/default/files/public/publications/Service%20Animals%20and%2032019.pdf) by a person with a disability

Example: A tele-support company employee transfers to a new company location. The new location tells them they can't bring their trained disability-related service animal to work and don't offer any reasonable explanation of why. The service animal was allowed at the previous location.

(https://www.hum.wa.gov/sites/default/files/public/publications/veterans%20military%20status

Example: A local, non-religious, for-profit newspaper refuses to hire veterans because "war doesn't align with our political beliefs, so veterans can't work here."

 Marital status (https://www.hum.wa.gov/employment/marital-statusemployment)

Honorably discharged veteran or service member status

Example: A law firm with 40 employees hires 2 new receptionists. One is married with children. The other is single. After a week, the single receptionist is let go because the firm owner "likes to have respectable family people as the welcoming face of the firm."

 National origin (https://www.hum.wa.gov/employment/national-originemployment)

Example: A restaurant chain employee who is from Russia is regularly subjected to negative remarks and jokes from coworkers about his national origin. The employee reports the treatment to management, but the discrimination continues.



Race or color (https://www.hum.wa.gov/employment/racecolor-employment)

Example: A kitchen supervisor regularly yells at and demeans any black employee who makes a mistake but doesn't yell at white employees who make the same mistake.

Example: Because of his skin color, an employee at a shipyard is constantly taunted by his coworkers to tell them where he's from, to "speak Spanish" for them, and to "go back to his own country." The employee is a Native American was born in Washington state.

 <u>Citizenship or immigration status</u> (https://app.leg.wa.gov/RCW/default.aspx?cite=49.60.180)

Example: An immigrant with the legal right to work in the U.S. is routinely denied employment by the same large local chain store that offers her citizen family members jobs.

<u>Sex or pregnancy status</u>
 (https://www.hum.wa.gov/employment/sexpregnancy-employment)

Example: A large advertising firm pays the male members of their sales team more than they pay their female sales team members. All women sales teams members start at a salary that is \$10,000 lower than any male sales team member's starting salary.

Example: A data entry clerk's job with a large company was given away while she was on leave after childbirth, even though she was told her job would be there when the leave ended.

 Sexual orientation (https://www.hum.wa.gov/employment/sexual-orientationgender-identity-employment)

Example: A gay car mechanic is routinely harassed at work by coworkers who make fun of the way he talks, sounds, dresses, and behaves. They call him derogatory names based on his sexual orientation. He complains to management, but the behavior doesn't stop.

Example: A lesbian who works on a medium-sized farm is repeatedly told by her male boss to "man up" and "butch up" whenever she rightfully complains that a job duty is unreasonably dangerous and harmful.



• Gender identity (https://www.hum.wa.gov/employment/sexual-orientation-gender-identity-employment)gender-identity-employment)

Example: A nonbinary person working for a sales team that has a dress code is forced to wear the uniform that women are supposed to wear. This makes the nonbinary person uncomfortable because of their gender. No reasonable alternatives were offered to the employee and they were denied their request to be allowed to wear the more "gender neutral" men's uniform.

Example: A transgender person working in a large manufacturing plant isn't allowed to use the bathroom that's safest and most appropriate for the person because it "makes the other bathroom users feel uncomfortable."

• State employee whistleblowers (https://www.hum.wa.gov/employment/state-employee-whistleblower-retaliation)

State laws also <u>protect you against retaliation</u>
(https://www.hum.wa.gov/employment/retaliation-employment) if you complain about or oppose discrimination in the workplace, or <u>because you file a charge</u> (https://www.hum.wa.gov/employment/state-employee-whistleblower-retaliation),

Example: An employee working for a state agency is fired for taking part in an investigation related to a discrimination claim.

Which employers do the state anti-discrimination laws apply to?

State anti-discrimination law

or testify in or take part in a related hearing.

(https://app.leg.wa.gov/RCW/default.aspx?cite=49.60.040) covers any employer with at least 8 employees. Anyone acting on behalf of or in the interest of such employer is also covered.

If you work for a religious organization or their sectarian non-profit, the state laws won't apply to your employer.

16. Additional state protections



The HRC doesn't investigate the type of violations we discuss in this chapter. Instead, you would need to find a lawyer and file a lawsuit. Some of these protections can involve criminal charges which means you would need to contact the District Attorney for your county.

Political beliefs

State law (https://app.leg.wa.gov/rcw/default.aspx?cite=42.17A.495) protects certain political statements and beliefs you make from affecting you at work. This is different from anti-discrimination protections.

You have the right under RCW 49.44.250 (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.

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.

There are exceptions to the law (https://app.leg.wa.gov/RCW/default.aspx?d

(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.

Drug tests under state law



Some employers test for drugs during hiring and employment. It can be important for some jobsites for safety and equipment reasons. But employers in Washington can't discriminate against job applicants (for most types of jobs) based on use of cannabis (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.240) outside of work.

Criminal records and hiring

A <u>state law (https://app.leg.wa.gov/RCW/default.aspx?cite=49.94)</u> has <u>protections</u> <u>for applicants and employees (https://www.atg.wa.gov/fair-chance-act)</u> who have criminal records. Employers can't use background checks during the decision-making process. They can only use them **after** making a job **offer**. The offer **can be** based on whether the employee can pass a criminal record background check **once hired**.

Employers can't ask about criminal records. They also can't advertise job openings in a way that excludes applicants with criminal records. This law doesn't cover certain types of employers (https://www.atg.wa.gov/fair-chance-act).

File a complaint about potential Fair Chance Act violations with the Attorney General's Office. Send an email describing what happened to fairchancejobs@atg.wa.gov (mailto:fairchancejobs@atg.wa.gov). Or call 1-833-660-4877, or use the online complaint form (https://fortress.wa.gov/atg/formhandler/ago/FairChanceJobsComplaint.aspx) on the Fair Change Act ATG website (http://www.atg.wa.gov/fairchance-act).

Privacy protections

Employers can't:

• Make workers take a lie detector (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.120) as a condition of being hired or staying employed (unless the job is in law enforcement, the juvenile court services agency of a county, in a sensitive position related to national security, or is involved in the manufacture, distribution or dispensing of a controlled substance 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 <u>RCW 49.44.135.</u> (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.135)

- Require genetic testing or genetic screening
 (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.180)
 or as a condition of continuing employment. Genetic testing doesn't include urine and drug tests.
- Search an employee's personal non-work vehicle (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.230) even if it is parked on company property including company garages and parking lots. If you use the vehicle for work-related activities, your employer might be able to search the vehicle to confirm that it is suitable for such work-related activities. Your vehicle can be searched for security purposes if you work at a state or federal military installation or facility, if your vehicle is located on the premises of a state correctional institution, or if it is in specific employer areas that are themselves subject to inspection under state or federal law.

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. You must give the 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.

- Limit what personal items employees can keep (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.230) in their vehicles so long as the items are legal.
- Retaliate against employees for exercising their rights to say no (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.230) to a vehicle search.
- Force applicants or employees to disclose personal social media
 (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.200) information or
 otherwise force employees to share personal social media login, content,
 information, contacts or other access with the employer. 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 are confidential and protected

Employers must not be able to identify the individual information for employees who use employee assistance programs. Any individually identifiable information must be kept confidential

(https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.220) if it was gathered while the employee was using an employee assistance program unless disclosure of the attendance in the program is required for employment or is one of the other limited exceptions to the rule (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.220) for disclosure.

An employer also **can't treat you differently** because you use any employee assistance program. Employers can't consider your participation or lack of participation in an employee assistance program when they are making decisions related to your promotions, job security, disciplinary actions, or other employment rights.

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 purposes of preventing them from securing employment.

These are different from honest 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 <u>charged with a misdemeanor</u>





(https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.040).

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 antidiscrimination 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**.

Employment agencies can't lie to you

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 <u>charged with a misdemeanor</u> (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.050).

17. Union related laws

Employers can't interfere with your Union representation



It is a gross misdemeanor

(https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.020) 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

There could also be a <u>gross misdemeanor</u> (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.030) charge against the union representative if your union or labor organization representative took 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.

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 <u>charged</u> with a misdemeanor (https://app.leg.wa.gov/RCW/default.aspx?cite=49.44.080).

18. File a state complaint with the HRC

1. Read your employment contract, workplace policy, or collective bargaining agreement, if you have any of these. Follow your workplace or union's procedure to report discrimination, if the contract requires this. You aren't required by state law to report to your HR or union before making a complaint with the HRC.



2. **Determine if the laws** that protect you are the specific issues that HRC can investigate claims for. This is what HRC calls "having jurisdiction" over a type of claim.

If you can file with the HRC, go to Step 3.

If you <u>can't file with the HRC</u>, **stop here** and clarify which timelines and laws apply to your situation. Decide if you will try to file a court case instead since you can't file an agency complaint. <u>Find an employment lawyer</u> to help you.

- 3. **Gather and organize** all your evidence.
- 4. **Try to** talk to an employment lawyer to help you prepare and file the complaint.
- 5. **Prepare your complaint**. Be clear and concise. Include exact facts and dates. At this time, only give important overview information. You can give more evidence later. Include your contact information and your employer's contact information. Describe the actions you felt were discriminatory and **when** they took place. State why you believe you were discriminated against (because of your protected class). Sign and date your letter or email. Prepare and include the required complaint form

(https://www.hum.wa.gov/sites/default/files/public/CurrentComplaintForms/Employment_Inqui (also available in Spanish

(https://www.hum.wa.gov/sites/default/files/public/CurrentComplaintForms/Cuestionario_Emp) with anything you send in.

6. Make your state agency complaint.

If you're <u>using a lawyer</u> (https://welalaw.org/) to help file your complaint, follow their guidance to do this.

If you're filing without legal help, choose which method to start your complaint. Prepare your HRC required complaint form

(https://www.hum.wa.gov/sites/default/files/public/CurrentComplaintForms/Employment_Inqui (also available in Spanish

(https://www.hum.wa.gov/sites/default/files/public/CurrentComplaintForms/Cuestionario_Emp) ahead of time. You can **call** 1-800-233-3247 then choose option #4 or file



online using the instructions form HRC

(https://www.hum.wa.gov/sites/default/files/public/DBInstructions/SAW%20instructions.pdf) (https://www.hum.wa.gov/sites/default/files/public/DBInstructions/SAW%20instructions.pdf) about how to set up the SAW account needed to file. Learn more from HRC about how to start your complaint online.

(https://wahum.my.site.com/Files/Complaint/Opline/s/2language-op. US) Or

(https://wahum.my.site.com/FileaComplaintOnline/s/?language=en_US) Or you can email your complaint to frontdesk@hum.wa.gov or fax it to 1-360-586-2282. You can also mail it to PO Box 42490, Olympia, WA 98504-2490.

You might have to resubmit your complaint using a specific HRC complaint form

(https://www.hum.wa.gov/sites/default/files/public/CurrentComplaintForms/Employment_Inqui (also available in Spanish

(https://www.hum.wa.gov/sites/default/files/public/CurrentComplaintForms/Cuestionario_Emp) if your submission doesn't match their requirements.

- 8. Wait to hear back from the HRC about your complaint.
- 9. **Take part in the investigation** with the HRC, if they investigate.
- 10. During the investigation, **if any new things happen to you at work** (related to the same complaint), tell your agency agent right away. They might be able to amend your complaint to include the new actions.
- 11. If at any time you want to file a court case and close your HRC investigation, you can ask the HRC to do so.
- Accept HRC's resolution, settlement, mediation, dismissal, or other remedy offer when they finish their investigation or file a suit in court for additional remedies.

19. After filing with HRC



First, HRC will decide if they "have jurisdiction". What this means related to HRC is that HRC will determine whether the state laws that they are the enforcement agency for can protect you based on the facts of your situation. Not all worker rights laws are laws that HRC can enforce. If HRC decides that a law was violated that was a type of law they can enforce, then they will "have jurisdiction".

If HRC decides they have the jurisdiction and enough evidence to support a claim, they'll send you a formal complaint to review and sign. After you've returned the signed complaint, they'll notify your employer with the complaint and a letter. They must receive your **signed complaint** by the 6-month deadline so you must **start your complaint as early as possible**.

An investigator will contact you to interview you and get any additional evidence you have. The investigation process can take a long time. Prepare for this process to take a year **or more**.

Once the investigation is complete, the investigator will decide if there's **reasonable cause** to believe discrimination occurred and issue a finding that discrimination occurred. The agency will help you and employer try to settle the case. If settlement doesn't work, the HRC might move the complaint to a formal hearing before an Administrative Law Judge. Administrative Law Judges **can impose penalties** on your employer.

In **rare** circumstances, HRC could send the case to the state Attorney General's office for possible legal action.

The HRC won't issue you a Right-to-Sue letter. Only the EEOC does that.

If the investigation doesn't find enough evidence to support that illegal discrimination happened, they'll close the case with a finding of "**No Reasonable Cause**." But you could still try to sue in state court. <u>Get legal help</u> (https://welalaw.org/) if you are going to do that.

20. After HRC investigation



Once the HRC concludes its investigation, at least one of these will have happened:

- They've issued a dismissal because there was a finding of no reasonable cause.
- They've offered mediation and it worked.
- There was a settlement that was acceptable to you.
- They issued a reasonable cause finding.
- Your case was sent to an ALJ for a formal hearing and decision.

If you don't accept the way HRC resolves the case, get legal help (https://welalaw.org/) if you want to file a court case. It may or may not be a good idea in your situation.

What if I disagree with HRC's decision?

You might be able to appeal the decision (called a "reconsideration" of the decision). You can ask for reconsideration for any of these:

- Administrative closure of your case
- No Reasonable finding issued for your case
- Withdrawal (if you withdrew your complaint)
- No Jurisdiction finding

When your case is finalized, you'll receive a Notice of Commission Action. It will include the instructions and requirements you need to ask for reconsideration of your case.

Generally, the deadline for asking for a reconsideration is **15 days after the date on** the Notice of Commission Action. Your request for reconsideration **must** include at least one of these reasons listed:

- The HRC failed to consider relevant information you provided during the investigation.
- The HRC didn't apply the law correctly.

21. Federal laws



Federal employment discrimination protections <u>come from various laws</u> (https://www.eeoc.gov/fact-sheet/federal-laws-prohibiting-job-discrimination-questions-and-answers). The EEOC calls <u>discrimination complaints</u> (https://www.eeoc.gov/how-file-charge-employment-discrimination) "discrimination charges" or "charges."

You must **include every single action** you think could have been discriminatory treatment when you **first** file your charge. If you leave something out, you can't add it to your charge later. You can lose your right to your protections for any action you leave out of your charge. But if something new happens that's unfair, you might be able to add that new action.

Example: In your charge, you only list that you were fired eventually because of race based discrimination from your boss. You forget to list that before your firing, you were passed up for a raise you should have gotten because of your boss's stereotypes about you due to your race. You can't belatedly add lost wages from the lost raise to your charge to try to get that money.

The EEOC will investigate a complaint (https://www.eeoc.gov/prohibitedemployment-policiespractices) if the discrimination was based on or related to your:

• Race (Title VII)

Example: A black employee is subjected to negative racial remarks and jokes at work. The employee reports it to the employer. The harassment doesn't stop. (Race discrimination)

Example: An employer fires a Latino employee for an error in his work performance but doesn't fire a non-Latino employee who made the same error. They otherwise have similar work histories, skills, qualifications, disciplinary records, and yearly review results.

• Color (Title VII)

Example: A hotel refuses to hire a qualified job applicant because the manager believes the applicant is Muslim because he "looks Muslim and we don't hire them." (Race, color, and religious discrimination)



• Religion (Title VII)

Example: An employee got a shift covered so they could observe a religious holiday due to a sincerely held religious belief. The shift manager docked the employee points for an unexcused absence because the manager didn't like the holiday the employee was celebrating. This happens every time the employee gets shifts covered for their religious holidays. The employee has lost so many points over this that they've missed compensation increases and other benefits that are based on the points system.

 Sex (including transgender status, sexual orientation and pregnancy) (Title VII, EPA)

Example: A bank's dress code requires female tellers to wear short skirts and high heels. Male tellers must wear long pants, collared shirts, ties, and low shoes. (Sex discrimination)

Example: A coffee shop employee is fired because she's pregnant. (Sex/pregnancy discrimination)

Example: An otherwise well liked employee with a good work history at a business is fired after coming out as transgender at work. There seems to be no reason other than discrimination due to their transgender status.

Example: A transgender woman is repeatedly passed up for promotions she's qualified for. The people promoted are less qualified with less seniority but aren't transgender.

 National origin (Title VII, IRCA). National origin protections include birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.

Example: A grocery store has a "helped wanted" sign with a job description posted on the window. It says, "No Mexicans need apply." (National origin discrimination)

• Age if age40 or older (ADEA)

Example: A department store manager offers training and mentorship opportunities to a younger employee, but not an older one, because that employee is "too old." (Age discrimination)

 Disability (ADA, Sections 501 and 505 of the Rehabilitation Act of 1973 if you work for the federal government). Disability includes HIV and Hepatitis C



status.

Disability and ADA **federal** protections **don't** include drug testing for illegal drugs. Tests for illegal use of drugs **aren't** considered medical examinations, so they **aren't** subject to the ADA's restrictions on medical examinations.

Example: A newly hired employee needs a wheelchair ramp to get into the office. It won't cost too much and it is feasible to install. Instead of providing the accommodation, the business owner fires the new employee. (Disability discrimination)

• **Genetic Information** (Title II of the Genetic Information Nondiscrimination Act of 2008)

Example: A workplace requires all employees to provide genetic test results showing their sex chromosomes to prove their "biological sex." (Sex and genetic information discrimination)

• Federal laws also **protect you against retaliation** if you complain about discrimination, file a charge of discrimination, or take part in an employment discrimination investigation or lawsuit.

Example: A coworker witnesses a manager call another employee a racial slur while denying the employee's request for a shift change. The employee who experienced the discrimination files a complaint about the discrimination and lists the coworker as a witness. The manager demotes both employees to an undesirable shift for taking part in the complaint investigation.

The Civil Rights Act of 1991 lets you ask for **money** damages if there was **intentional** employment discrimination.

22. Employers under federal laws



Which employers do the federal laws cover?

It <u>depends</u> (https://www.eeoc.gov/employers/coverage-0) on the type of discrimination and type of employer. Generally, if your employer has 15 or more employees on a regular basis for at least 5 months a year, the federal laws should apply. Part-time, seasonal, and temporary employees count, but contractors and owners **don't**.

The Equal Pay Act (EPA) applies to almost all people in the workplace **no matter the number of employees**. The EPA protects workers from wage discrimination **only**. It makes it illegal to pay different wages to people of different sexes if they are doing substantially the **same** work in the **same** workplace.

- If your claim is for age related discrimination, generally your employer must have 20 employees. If your employer is a state or local government (https://www.supremecourt.gov/opinions/18pdf/17-587_n7ip.pdf), there's no minimum number of employees.
- If your claim is for national origin discrimination, your employer must have just 4 or more employees. Employers with at least 4 employees also can't discriminate based on citizenship status while verifying eligibility for employment or as retaliation for making claims about citizenship discrimination.

If you can't figure out if your employer has enough employees for the federal laws to apply, call the <u>Seattle EEOC field office</u> (https://www.eeoc.gov/field-office/seattle/location) to get help figuring it out.

23. File a federal complaint with the EEOC



- Read your employment contract, workplace policy, or collective bargaining agreement, if you have any of these. Follow your workplace or union's procedure to report discrimination, if the contract requires this.
- 2. **Gather and organize** all your evidence.
- 3. **Try to** talk to an employment lawyer (https://welalaw.org/) to help you prepare your complaint.
- 4. Prepare your complaint. Be clear and concise and include exact facts and dates. At this time, only give important overview information. You can give more evidence later. Include your contact information and your employer's contact information. Describe the actions you felt were discriminatory and when they took place. State why you believe you were discriminated against (because of your protected class).
- 5. Make your federal agency complaint.

If you're using a lawyer to help file your complaint, follow their guidance.

If you're filing without legal help, choose the method (https://www.eeoc.gov/sites/default/files/2024-05/4%20ways%20to%20Contact%20the%20EEOC-paper%20%282%29508FINAL.pdf) you'll use to start your complaint. You can call 1-800-669-4000 or use the online interview in the online portal (https://publicportal.eeoc.gov/Portal/Login.aspx) to see if you can schedule an interview for your complaint. Or you can file in person at the Washington EEOC Field Office (https://www.eeoc.gov/field-office/seattle/location) in Seattle, or by mail.

If there's **60 days or less left** to file your complaint, you should file using the online portal or in person. **Don't** mail it.



- 6. If you're filing by mail only: Send the EEOC a letter including your name, address, email and phone number. Include the employer's (or employment agency's) name, address, email and phone number. If you know the number of employees at the workplace (or a close estimate), include that. Describe the actions you felt were discriminatory and when they took place. State why you believe you were discriminated against (because of your protected class). You must sign your letter and date it, or the EEOC can't investigate it.
- 7. **Wait to hear back** from the EEOC about your complaint.
- 8. **Take part in the investigation** with the EEOC if they decide to investigate.
- 9. If any new discriminatory actions happen to you at work (related to the same complaint), tell your agency agent right away. They might be able to amend your complaint to include the new actions.
- You can ask the EEOC for a Right-to-Sue letter at any point, even if they
 haven't finished their investigation. <u>Find a lawyer to help you</u>
 (https://welalaw.org/) before you file any suit in federal court.
- 11. Accept the EEOC's offered resolution (or dismissal) when they finish their investigation or file a suit in court to ask for additional remedies.

24. After filing with EEOC

EEOC will first try mediation and then investigate based on the priority of complaint. Complaints with stronger evidence of discrimination get higher priority. The investigation usually involves a series of interviews and forms. There could also be a site visit.



The EEOC might offer you mediation **before** investigation as an alternative. You **don't** have to agree to mediation if you don't want to. Mediation is not required and is only voluntary for EEOC complaints.

The EEOC may sue on your behalf, but more often will send you a "Right-to-Sue" notice. This lets you file a private lawsuit in court. Getting this letter can help you get a lawyer for your case.

Sometimes the resolution the EEOC offers will be to sue your employer in federal court. If that happens, **the EEOC lawyer won't be your lawyer.** You'll still need your **own** lawyer. You might also be able to sue your employer yourself.

Your employer may offer you an acceptable settlement during the process. If you accept it, be sure to notify the EEOC so they can update their records.

The EEOC may continue to investigate an employer **even after** a settlement, particularly if the discrimination impacted a whole group of people.

The 2 common outcomes of federal complaints

- If the EEOC dismisses your charge, you'll get a letter stating you have 90 days to file a suit instead of continuing the EEOC claim, since their investigation didn't find enough supporting evidence. You might be able to appeal the dismissal (the EEOC's letter should mention this). You can still try to file your case in a federal court within 90 days of the dismissal. You will need to find a lawyer (https://welalaw.org/) who is admitted to practice in federal court.
- If the EEOC determines that discrimination occurred, they'll send you
 and your employer a determination letter with the findings. Then they'll work
 with you to try to find a remedy for the discrimination. If you and the
 employer can't agree on a remedy, the EEOC can decide to sue your
 employer in federal court. Or they could close your case and send you a
 letter stating you have 90 days to file in federal court yourself.



With either outcome, if you want to file in federal court yourself, you should find a lawyer (https://welalaw.org/) licensed to practice in the federal court district where you plan to file your case. Just because a lawyer is licensed by the Washington State Bar Association (WSBA) doesn't mean the lawyer is licensed to practice in the federal district court. The federal district court will have its own admission process for lawyers so make sure to ask any potential lawyers if they are admitted to practice in federal district court (or able to become admitted quickly).

You can also try to file the case and represent yourself but it can be very difficult to do without a lawyer.

Can I withdraw or cancel my complaint?

You can contact the EEOC staff assigned to your case at any time to ask them to drop (withdraw) your complaint. They'll send you a form to complete and mail back. Once EEOC receives your form, they'll decide whether to drop the claim.

Age discrimination complaints don't need a Right-to-Sue letter

You must file an EEOC complaint to be able to file a federal age discrimination lawsuit, but unlike other protected classes, you **won't** need a Right-to-Sue letter. Age discrimination cases under the ADEA can be filed in federal court any time after 60 days from when you first filed your charge up to 90 days after receiving notice that the EEOC investigation is done.

25. After the EEOC investigation

If the investigation closes without the EEOC suing on your behalf, no matter why, ask **right away** for their **investigation file**. It should include your employer's responses to the investigator's questions. Lawyers who evaluate your case will want to look at this file.



If you don't already have a lawyer, talk to an <u>employment lawyer immediately</u> (https://welalaw.org/) so they have time to evaluate your case before the deadline to file your federal case ends. A lawyer can help evaluate your claim, identify settlement options, and determine whether to go to court. A lawyer may agree to work with you on a contingency fee basis (the lawyer's fee is taken out of any money you get from the lawsuit).

After getting Right-to-Sue letter

If you get a Right-to-Sue letter from the EEOC and want to sue, you only have 90 days if you're going to sue in **federal** court using the letter. Act quickly. Many lawyers might not take your case if they only have 90 days to prepare the lawsuit. It's best to already be working with a lawyer before you get your Right-to-Sue letter if you think you'll want to sue.

Some lawyers will be more likely to take your case if you tell them that you already got your Right-to-Sue letter. Be prepared to act fast once you receive the letter to **either** find a <u>lawyer who can file in federal court (https://welalaw.org/)</u> or file your case yourself.

Only the EEOC, not HRC, will issue a Right-to-Sue letter. If you have a dual complaint and you need a Right-to-Sue letter, you must get it from the **EEOC**.

Age discrimination complaints never need to get a Right-to-Sue letter.

26. Working with a lawyer

Employment discrimination complaints can be hard to manage without a lawyer. Try to find a lawyer (https://welalaw.org/) if you can. If you do talk to a lawyer at any point, you can do several things to help (https://legalvoice.org/working-with-a-lawyer/) your lawyer serve you best.

- Come to meetings prepared. Do your research and write down specific questions so your lawyer can help you understand your situation better.
- 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. You can also create a list (a "log") of all the dates and times when discrimination occurred, and facts you remember from each occurrence.
- If the discrimination is still happening, write down facts and details like the
 date, time, who was there, and what was said and done after work while
 details are still fresh in your mind. 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.
- Be honest, even if certain details might make you feel embarrassed or ashamed. 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.

27. File a lawsuit

How do I know when to file a lawsuit?

It depends on which law was broken and the facts of your situation.

- You might want to file in federal court after getting a 90 day Right-to-Sue letter from the EEOC.
- You might want to file in federal court using the Equal Pay Act.
- You might want to file in federal court for age discrimination.
- You might want to file in state court to use your state protections for your protected class because they're broader than federal protections.
- You might only be able to file a case in state court if you're an independent contractor.
- You might only be able to file a case in state court because you missed the deadlines for an agency complaint, but can still file under the 3-year state court deadline.

The laws vary about whether and when you can sue an employer in court. Try to talk to an employment lawyer (https://welalaw.org/) as soon as possible after the discrimination before deciding what to do. The lawyer can help you understand the pros and cons of filing a lawsuit versus taking a settlement. The lawyer can also help you avoid mistakes such as missing the deadline to file your claim if you're filing with an agency first.



Government agencies and courts don't act quickly. It often takes one to 2 **years** for a case to resolve. Even arbitration may take many months. If you're ready for delays, the process will be less frustrating. In general, you have an **obligation** to search for other jobs while waiting for the outcome of your case.

What result can a lawsuit get for me?

Depending on the law used and the facts of your case, a judge could order your employer to do any of these:

- Re-hire, reinstate, or promote you
- Pay you lost wages and benefits
- Pay you for lost future wages or front pay (wages you would have gotten if the discrimination hadn't happened)
- Pay you for damages, economic loss, and emotional distress
- Pay you punitive damages (federal claims only)
- Pay your attorney's fees and costs

What happens after I file my lawsuit?

A lawsuit can take a long or short time, depending on the strength of your case and how motivated you or the employer is to resolve the matter. There can be many hearings and phases in a employment discrimination case.

You and your employer may exchange <u>requests for information and documents</u>, and each party can <u>gather sworn testimony from witnesses</u>. This process, known as discovery, has its own deadlines, and is slow. You can get more evidence for your case from discovery. Once the discovery phase is over, the main hearing on your case will happen and that could lead to a trial. You can also find out about and prepare witnesses for trial during discovery.

Other hearings will happen about motions and other case management matters. Eventually your case will be considered by a judge, a jury or both. The evidence will be looked at and witnesses will give testimony. You or your lawyer will present your side of your case.

A judge or jury will decide your case, or the judge might dismiss it, or you might settle before trial.



The losing party usually can appeal the court decision.
WashingtonLawHelp.org gives general information. It is not legal advice.

Employment discrimination and legal protections for workers

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