

Your Rights and Responsibilities as an Employee in Washington State

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Introduction

This publication provides general information about employment rights in Washington state. It is only a brief overview and does not give all the details of the law. It should not replace legal advice from a lawyer.

To find out more about your legal rights, you may wish to consult one of the resources listed at the end of this publication, section 8, "Where To Get Help".

This publication focuses on private employment. If you are a **public employee** (employed by a local, county, state or federal agency) you have some additional and different rights. See section 8 at the end of this publication, "Where To Get Help" for a list of some agencies that help public employees.

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1. Hiring

Your first step towards employment is often filling out an application or having an interview with a potential employer. This is where you get your chance to show the employer that you have the skills to work for them. This section explains what kinds of questions the employer may legally ask you in the interview or application.

In this publication, we will talk a lot about "discrimination." Generally, "discrimination" means treating certain people differently than others. Discrimination is illegal when people are treated differently because of their age, sex, race, marital status, national origin, disability, or because they might want to join a union. Any employer cannot legally ask questions that might show a bias or discriminate against you based on these things. However, an employer can ask you questions to help him or her evaluate how you will perform a specific job.

Note: In some places in Washington state, employers cannot legally ask about political affiliation or sexual orientation.

Here are some examples of questions that are legal and questions that are not legal.

NOT LEGAL: UNLAWFUL TO ASK	LEGAL: OKAY TO ASK
Sex discrimination: Specific questions about your marital status, spouse, children, child care arrangements, whether you are pregnant or intend to become pregnant or about your dependents.	But, it's okay to ask if you can meet the work schedule or if you have other commitments that might keep you from coming to work.
Disability-based discrimination: Questions about the nature, severity or extent of a disability or whether you require accommodation.	But, it's okay to ask if you can perform the functions of the job with or without accommodation. Employer can sometimes ask interviewee to perform physical tasks such as lifting boxes.
National origin discrimination: Questions about your race, ancestry, birthplace, first language, clubs.	But, it's okay to ask if you can speak a foreign language.

Drug testing: It is not against the law for a private employer to require a drug test of its employees, unless the employer uses the test to discriminate against certain people. For example, it would be against the law if only women or African Americans were given a drug test. Public employers are somewhat more restricted in their ability to require drug testing.

I-9 forms: Your employer is required to get information from all employees that shows they are lawfully entitled to work in the United States. Employees are required to sign a form called an "I-9" form. The

form lists the types of identification that are allowed. An employer must accept any form of ID that is on the list. If you believe your employer has treated you unfairly because of the documents they have asked you to provide, you may call the U.S. Justice Department, Office of Special Counsel at 1-800-255-7688 (202) 616-5525 or 1-800-237-2515 (TDD for hearing impaired).

At Will Employment v. Employment Contracts: Most employment is "at will." That means you can be fired at will -- for any reason or no reason at all, as long as it's not for one of the illegal reasons discussed in section 5, below. It means you can lose your job after spending a lot of money to relocate, or after giving up another job to take this one; most employees in this situation have no legal claim against their employer. "At will" employment also means you can quit your job at will -- for any reason, at any time.

Union contracts give you more rights, so that you are not an "at will" employee. In addition, some individual employment contracts and personnel manuals make binding promises that an employer must keep (such as a promise to fire you only for certain reasons, or only after going through certain procedures).

Example: A new manager comes on the job and she wants to hire new staff. She fires you, even though your work has been satisfactory. You have no union contract or other binding agreement that restricts the employer's right to fire you at will. The firing is legal unless it meets one of the exceptions discussed in section 5, below.

Pay close attention to the following list of what is expected of you as an employee. These are things employers are often concerned about. Violating these things can often lead to dismissal.

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

Most employers will ask you to sign an employment application. It is important that the information you give on the application be entirely accurate, because employers frequently fire workers who give false information on the application.

2. On the Job

Wage and Hour Laws

Minimum Wage: As of January 2008, the state minimum wage for most workers in Washington is \$8.07 per hour. The state minimum wage will be adjusted every January based on inflation. If an employer fails to pay you minimum wage, the employer may be liable for twice the amount of wages owed to you.

Piece Rate: You must be paid minimum wage even if your work is by piece rate. For example, Samuel works for a janitorial service that pays its workers \$200 for each floor of a big office building they clean. Samuel recently spent a 40 hour work week cleaning a single floor. If he is paid \$200 for the week, he has earned less than the minimum wage, which is $\$8.07 \times 40$, or \$322.80. Samuel has been underpaid by \$122.80.

Minimum wage is counted by the week, not by the day. If some days you earn less than minimum wage, and other days you earn more, it is legal as long as you earn at least the minimum wage by the end of the week.

Working Time: The employer has to pay you for the time that you spend at activities that benefit the employer, even if it is not part of your regular work day. For example, you have to be paid for travel time between work locations and for training and meeting time, if it is directly related to the job, especially if you are required to attend. The employer does not have to pay you for time spent going to and from work at the beginning and end of the day, or for "on call" time if you carry a beeper and can use the time for your own activities.

Overtime Pay: Most employers must pay overtime pay of 1-1/2 times your regular rate of pay for hours worked above 40 hours per week. The overtime law does not cover all workers. For example, it does not cover agricultural employees, administrative, executive or professional employees or outside salespersons.

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

If an employer fails to pay you overtime, the employer may be liable for twice the amount of overtime wages owed to you.

Wage Claims: The employer must pay you at least once per month, not less often. If you quit or are fired, you must be paid at the regular payday; you have no right to be paid before then.

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

Wage Deductions: Your employer can deduct from your wages only the deductions required by law (such as Social Security) or only those for which you give permission. In the case of breakage or lost equipment, the employer may not deduct these unless they can show that the loss was caused by dishonesty or willful acts.

If a cash register shortage occurs, money may be deducted from your paycheck only if the employer can show that you had sole access to the cash register and participated in counting the money both before and after the shift.

Uniforms: If a uniform is required, and if the purchase of the uniform reduces income to below minimum wage, the employer must pay for the uniform. Example: John is required to wear a white lab coat costing \$50. John only makes \$25 above minimum wage per week. His employer is required to pay the additional \$25 toward the uniform.

Meal and Rest Breaks: You must receive a 30-minute meal break if you work more than five hours, and it must come between two and five hours from the beginning of your shift. The employer does not have to pay for your meal break unless they require that you stay at your work station.

You must receive a 10-minute paid rest break about midway through each four hours on the job.

Inspection of Personnel Files: You have the right to look at your personnel records any time during your employment and for two years after your employment ends. You also have the right to insert rebuttals into your personnel file during that period.

Family and Medical Leaves: Employers are not required to provide paid sick leave. But employers who do provide sick leave must let you use it to take care of sick children.

If your employer has 50 or more employees, and you have worked there at least one year (and at least 1,250 hours during that year), your employer must let you to take 12 weeks of unpaid family or medical leave in a 12-month period. The leave does not have to be taken all at one time. You can take this leave for the birth, adoption, or foster care placement of a child. You can also take it if you or a family member have a “serious health condition”. (It does not have to be all that “serious”. It depends on how many days you are out and how many doctor visits you have. To find out the detailed rules on this, contact the U.S. Department of Labor, listed in section 8 of this publication.) If you are suffering from physical or emotional injuries due to domestic violence, you may use your family and medical leave time to get medical care.

The employer can require you to use up your paid sick or vacation leave before allowing you to take the rest of the 12 weeks as unpaid leave.

Other Benefits: Apart from the rights listed here, the only work-related benefits that an employer is required to provide are workers' compensation (see section 4) and unemployment compensation (see Section 6). The employer is generally not required to give you a pension, health insurance, vacation or sick leave. However, many low-income workers are eligible for food stamps and subsidized medical care from the state. To find out if you are eligible, contact your local office of the Washington Department of Social and Health Services.

Firing v. Forcing you to quit: If you can prove that your employer deliberately made your working conditions so intolerable that a reasonable person would have felt compelled to quit, then you were “constructively discharged”. The law regards this as the same as if you were actually discharged.

3. Income Taxes and Earned Income Tax Credit

Each time you begin work for an employer, you should be given a tax form "W-4" to fill out. The employer must take a deduction from your pay based on the information you give on the form regarding the number of dependents you have. If you did not earn enough money last year to have to pay taxes, and you do not expect to earn more this year, you should fill in the box labeled "Exempt" to prevent tax money from being withheld from your wages.

At the beginning of each new year, each of your employers should mail you a form "W-2". You should file this form when you file your income tax return. The form shows how much you earned and how much was deducted from your pay for taxes.

When you file your federal income tax, it is very important to know that you may be entitled to the Earned Income Tax Credit (EITC), *even if you do not owe any federal tax*. This tax credit is money that the government gives to individuals who earn less than \$31,030 (if they have at least one qualifying child) or \$11,750 (if there is no qualifying child) in 2005. Married couples filing jointly qualify if they earned less than \$33,030 (if there is at least one qualifying child) and \$13,750 (if there is no qualifying child) in 2005. The qualifying amount is based on the number of children, if any, supported by the taxpayer. The children who you list must have lived with you all year in order to be claimed.

For more information on the EITC, you may call the Internal Revenue Service at 1-800-829-1040 or visit their web site at <http://www.irs.gov/>

“Independent Contractors”: The company you work for might give you a form "1099" showing your earnings instead of a W-2 form. This means the company is treating you as an “independent contractor” rather than an “employee” for tax and other purposes.

This publication focuses on the rights of "employees." Some employers wrongly call their workers "independent contractors" in order to avoid employment laws. Independent contractors have very few labor rights. If you are being treated as an independent contractor, you may want to ask yourself these questions:

- Have I been given instructions about how to perform my work, or do I use my own methods?
- Am I just a worker, or do I have any investment in the business?
- Do I simply receive a paycheck, or do I have an opportunity to earn a profit?
- Does my employer cover my business expenses, or do I pay them?
- Do I work for only one employer, or do I perform similar services for several employers?
- Is my work basically unskilled, or do I have a special skill that I use at work?
- Can I be fired, or do I keep my work as long as I meet the specifications of a contract?
- Is my work an integral part of the business, or do I perform a specialty job may be short-term?

A “yes” to the first half of each question above indicates you are probably an employee. A “yes” to the second half indicates you might be an independent contractor. These are only some of the factors used in determining which you are. If you think you are being wrongly called an independent contractor and are not receiving the rights or benefits you should receive as an employee, you may want to contact the IRS and some of the resources listed at the end of the publication, section 8.

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

4. Health and Safety in the Workplace

In general, your employer must provide you with a safe workplace, free from recognizable dangers that can cause injury or death.

Your employer must also comply with all rules that the Department of Labor and Industries (L & I) has written about safe workplaces. There are a number of specific standards for different kinds of jobs, such as construction and health care jobs.

Your employer will be required to correct any problem that violates the law and has a direct relationship to health and safety. Your employer may also have to pay a fine.

You can make a complaint to the Department of Labor and Industries if you feel there are unsafe conditions at your workplace. You can ask that your name not be given to your employer. Complaints must be made in writing. Forms for a complaint are available at L & I, or you can write a letter explaining who you are and describing the hazard. Be sure to explain why the situation is dangerous and what might happen if there is an accident. L & I schedules its inspections, in part, based on how dangerous the hazard is.

Inspections: If L & I finds that there are reasonable grounds to believe that there is a violation, it must make an inspection as soon as it reasonably can. If L & I does not believe there are grounds for an inspection, it must notify the employee in writing.

Review of L & I Decisions: An employee can get an informal review of L & I's decision not to conduct an inspection or not to issue a citation to the employer. If L & I issues a fine and the employee believes the time to correct the violation is unreasonable, the employee may request a review of the decision within 15 working days of the citation by filing a notice with L & I.

Excessive Overtime: Generally, your employer can require you to work overtime. "Time and a half" overtime pay may be required by law (see section 2, above). If mandatory overtime is harmful to your health or safety, you can also ask for an investigation by L & I.

Right to Know about Hazardous Substances: You have a right to find out about hazardous substances that are being used in your workplace. You must be given information on these substances when you are first assigned to the job and whenever a new hazard comes into your workplace. The information must include how you can find a list of hazardous chemicals used in the workplace and "material safety data sheets" that provide detailed information about the chemicals.

If You Are Asked to Perform Unsafe Work: Try to get the hazard corrected by reporting it to your employer, union and L & I. If there is not enough time, due to the urgency of the situation, to eliminate the hazard in one of these ways, and you have a reasonable, good faith fear of serious injury, you have the right to refuse to do the unsafe work. You must first exhaust all reasonable options for getting your employer to correct the hazard. Also, tell your employer that you will refuse to do the work if the hazard is not corrected. If you are then fired (or disciplined) for refusing to do the work, you have a claim of retaliation against your employer. You can ask L & I to investigate your claim. See the paragraph immediately below this one.

Retaliation for Complaining about Health & Safety: Retaliation is action taken against you by your employer because of something you have done. The law protects you from retaliation for making a health and safety complaint. If you want L & I to investigate your retaliation claim, you must file it within 30 days of the retaliation. (L & I calls it "discrimination" rather than retaliation.) If you miss L & I's 30-day deadline, you can still sue in court for up to 3 years from when you were fired. To sue in court on these grounds, you have to be fired, not just disciplined.

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

If you are injured or get sick as a result of your work, you are entitled to workers' compensation benefits even if the injury or illness was your own fault. Usually, your doctor fills out the form and sends it to the state Department of Labor and Industries.

If you have work injury, be sure to explain to your doctor that you were injured or became ill as a result of your work. Do this as soon as possible after the injury occurs. The doctor is then required to complete an application for Workers' Compensation benefits.

Claims for injuries must be filed within one year after the day the injury occurred. For occupational diseases, the claim must be filed within two years after you receive a doctor's notice that you are suffering from an occupational disease.

If You Become Sick or Injured from Your Work, You Should:

- Tell the boss right away. Make sure your employer knows of your injury as soon as possible.
- Get medical help immediately, even if the injury does not seem serious. It is important for you to receive treatment. It is also important to have a medical record of your injuries in case they bother you at a later time.
- Give all the facts of your work injury to the doctors. All details about the job are important.
- Make sure that your doctor sends the application to L & I.

Workers' Compensation Will Pay:

- All medical bills connected with treatment for a work injury.
- Money to replace part of your lost wages if you are unable to work for more than four days.
- Compensation for a permanent disability.
- In some cases, retraining and rehabilitation benefits.

Crime Victims' Compensation Act: If you are the victim of a crime, such as assault, domestic violence or child abuse, you may be eligible for benefits under the state Crime Victims' Compensation Act. The Act operates similarly to workers' compensation, but covers situations where workers' compensation is not available. For example, if you lose work because you are the victim of a crime, you may be able to receive lost wages from this fund. In addition, the funds pay pension benefits and burial expenses for victims who die from injuries caused by crime. It also pays a lump sum payment to the spouse and/or children of a victim who died from injuries caused by crime.

For more information about this fund, you may call the Crime Victims' Compensation Program at L & I, 800-762-3716.

5. Discrimination and Retaliation

Most employment in Washington state is "at will." This means your employer can fire you at will -- for any reason, or for no reason at all. Earlier in this handbook (section 1) we talked about some of the exceptions to this.

Other exceptions to "at will" employment include:

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

Retaliation for exercising your legal rights as an employee, such as: making a complaint (either to your employer or to an outside agency) that your employer is violating a law that protects employees; blowing the whistle on your employer for violating some other type of law; acting to try to improve wages or working conditions for other workers; engaging in union activities; complaining about unsafe conditions; filing a claim for minimum wage or overtime; and filing a claim for workers' compensation or unemployment benefits. See subsection on Retaliation, below.

If you think you were fired due to discrimination or retaliation, keep a written log of all your efforts to find another job. This will be important if you want to seek lost wages from your employer.

It is important to remember that if your employer takes action against you, but it is not because of any of the reasons listed above, it may not be unlawful "discrimination" or "retaliation."

Q: Which of these is unlawful discrimination? 1. Maria is fired from her job as a secretary because her new boss wants to hire his teenaged daughter. 2. Maria is fired from her job as a secretary because her new boss doesn't want a Latina secretary.

A: Example 2.

Q: Which of these is unlawful retaliation? 1. Linda, a health care worker at a nursing home, is fired because she complained to the owner of the business that she needed to work more hours. 2. Linda is fired because she complained to DSHS that nursing home residents were being neglected.

A: Example 2.

Discrimination laws protect you even if your employer has a mistaken belief, but acts against you because of that belief. For example, Greg gets fired because his employer thinks he filed a complaint about health and safety. Greg is protected by the law, whether or not he actually filed the complaint.

It is rare in a discrimination or retaliation case for an employer to come out and say that he or she is taking action against you because of, for example, your race or age. Often employers give another reason, related to the quality of your work or to your violating a rule. If discrimination or retaliation was a substantial factor in why the employer acted against you, then you may prevail even though the employer had other reasons for acting against you.

AGE DISCRIMINATION:

Age discrimination laws protect workers 40 years or older. You are protected in more than just hiring and firing: the employer cannot refuse to promote or train you because of your age, and cannot lay you off or lower your pay or benefits because of your age.

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

RACE AND NATIONAL ORIGIN DISCRIMINATION:

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

Q: Discrimination or not? Hannah, who is white, is married to a man from Saudi Arabia. She works at an auto parts store. Her employer tells her that her husband should not come into the store to pick her up at work because his customers feel uncomfortable around Arabs.

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

Job rules that have the effect of disproportionately excluding minorities or persons of a particular national origin can be unlawful. For example, a rule that workers only speak English on the job, or a rule excluding people who speak English with an accent may be unlawful. It depends on whether the rule is found to be necessary to the particular job.

Q: Discrimination or not? Ignacio recently came to the United States from El Salvador. He wants to work as a dispatcher for an ambulance company. His employer tells him he cannot work dispatch because the employer is afraid Ignacio's English is not good enough and the ambulance drivers would not understand him and that there could be safety problems.

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

SEX DISCRIMINATION AND SEXUAL HARASSMENT:

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

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

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

Pregnancy discrimination is a form of sex discrimination. The employer cannot discriminate against a woman because of pregnancy, childbirth or any related condition as long as she is able to perform the essential functions of the job.

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

A: Discrimination.

Q: After the birth, Grace wants to return to work when her baby is six weeks old. But her supervisor thinks a mother should stay home longer with a new baby and doesn't put her on the schedule for several months.

A: Discrimination.

Sexual harassment is a form of sex discrimination. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature can be unlawful harassment. It is unlawful sexual harassment if submitting to or rejecting the conduct affects your employment, unreasonably interferes with your work performance, or creates an intimidating, hostile or offensive work environment.

The harasser can be either a man or a woman. Likewise, the victim can be either a man or a woman.

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

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

For example, Susan's co-workers at the auto parts store are constantly showing her pictures of naked women and making suggestions of a sexual nature to her. Susan's boss, Joe, sees that Susan is offended by this conduct, but does nothing to stop it. Susan is a victim of sexual harassment.

Generally, offensive remarks must be common in the work environment, not just occasional, to rise to the level of violating of the law. The worse the conduct is, the fewer occasions are needed for it to rise to the level of a hostile working environment.

Q: Discrimination or not? Henry brings a cartoon about "dumb blondes" to the offices one day and shows it to Jane, without comment. She is offended, but says nothing to anyone.

A: This is not sex discrimination or sexual harassment.

RELIGIOUS DISCRIMINATION:

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

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

A: Discrimination.

Q: Discrimination or not? Kim is a hotel maid. His religion celebrates its Sabbath on Saturday, and he may not work on that day. His employer refuses to allow him to take Saturday off, even though Kim's co-worker, Samantha, is willing to come in and work for him on Saturdays.

A: Probably discrimination unless, for example, Samantha does not have the skills to perform the work that Kim performs.

DISABILITY DISCRIMINATION:

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

Under Washington law, people are considered disabled if they have an abnormal condition, and the condition has a substantially limiting effect on their ability to perform their job. (Federal law is stricter on the definition of disability – fewer people are considered disabled under federal law than under Washington law.) A disability can be physical or mental. The law also protects people with a history of disability (even though they are recovered now) and people who are not disabled but their employer *perceives* them to be. Washington law protects people with temporary disabilities.

A qualified person is one who can perform the essential functions of the job in question. If the person can perform the job with reasonable accommodation, they are qualified and the employer must provide accommodation. Accommodation can include many things, among them: modifying work schedules, reassignment, acquiring equipment, providing interpreters, making facilities accessible, or granting a leave of absence for recovery. Accommodation must be provided unless it would be an undue hardship on the employer.

Q: Discrimination or not? Lyla is a bookkeeper. She suffers from depression from an experience of domestic violence that has prevented her from working in the past. She needs to take a long lunch once a week in order to meet with her therapist. She still completes her workload, and she is able to continue working as long as she takes her medication.

A: The employer must accommodate Lyla unless the modified schedule creates an undue hardship on the employer.

The Washington law is enforced by the Washington Human Rights Commission (HRC). The federal law (Americans with Disabilities Act, ADA) is enforced by the Equal Employment Opportunity Commission (EEOC). Private attorneys can also sue to enforce these laws. You can sue under the state law without first going through the HRC. But to sue under federal law (the ADA), you have to first go through the EEOC. Seattle, Tacoma and King County have human rights offices that enforce their own ordinances against discrimination. Unions and mediators are also good sources of help if you are discriminated against.

RETALIATION:

Retaliation is action taken against you by your employer because you exercised a legal right. One form of retaliation is where your employer acts against you because you complained about discrimination – whether that discrimination was directed at yourself or someone else. For example, if you make a complaint about sexual harassment and your employer fires you for making the complaint, you have been retaliated against. If you ask for reasonable accommodation of your disability and you are demoted as a result, you have been retaliated against. Other kinds of retaliation include retaliation because you: complained about unsafe working conditions; complained about not being paid minimum wage or overtime; filed for workers' compensation; complained to DSHS about abuse or neglect of patients in a health care facility; engaged in union activities; or took some action to try to improve pay or conditions for

workers at your job. In each of these examples, there is a statute forbidding not only firing, by other action against you short of firing (e.g., suspension or demotion).

Where there is no specific anti-retaliation statute, you can only sue your employer if you are fired – not if action is taken against you short of firing. It is illegal to fire an employee for a reason that goes against a public policy clearly expressed in state law. For example, it is illegal to fire an employee for “whistleblowing” -- reporting a violation by your employer of environmental, business or health laws. If you are discharged for doing this, you can sue your employer for “wrongful discharge in violation of public policy”. The public policy must be clearly expressed in state law.

Workers have the right to join a union. They also have the right to come together to ask the employer to improve conditions without being retaliated against.

Example: Six women work together sewing sleeves on jackets. The room where they work is dark, and they have trouble seeing their work. They ask the manager to make the lighting system brighter. Shortly after that, they are fired.

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

Example: Henry hurt his back on the job and was off work for two months. His employer pressured him to come back when he didn't feel ready. He went back, but had to leave early one day because he was in so much pain. Henry tried to tell his supervisor, but he couldn't find her. He left a written message on the secretary's desk, but the secretary didn't find it until the next day. Henry was fired for violating a rule that employees must notify their supervisor before leaving work. However, other workers have left work without notifying their supervisors and have only been reprimanded, not fired.

Example: Susan was injured on the job and filed a workers' compensation claim. Soon after that she was fired, and the employer claims it was for some other reason. Susan thinks she may have been selected for layoff because she filed a workers' compensation claim. Here are some questions she should ask herself:

- What has happened to other injured workers in the same situation? (For example, other people hurt on the job were fired soon afterward.)
- Did the employer fire her for something that other workers routinely get away with?
- Did the employer violate his or her own rule? (For example, the employer has a rule that you are not fired until you have received three written warnings. Susan was fired without any prior warning.)

Written statement of reasons you were discharged: You have a right under state law to receive a signed, written statement of the reasons you were discharged. Your employer must provide it to you within 10 working days of receiving your written request.

6. Unemployment Compensation

Most employees are covered by the unemployment insurance law. While you are working, your employer pays into the unemployment insurance fund. When you lose your job, you may be eligible for unemployment compensation.

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

You must also be unemployed through no fault of your own. If you quit your job, you ordinarily cannot receive unemployment compensation. You may be able to receive unemployment compensation if you have a “good cause” to quit that is recognized by the law. Before quitting your job, consult with a lawyer, union representative, or the Washington Employment Security Department about whether your reason for quitting might qualify as “good cause” so that you could quit and still receive unemployment benefits.

Q: Which worker probably qualifies for unemployment compensation – Monique or James?

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

James is transferred to night shift. He quits immediately, telling his employer that he can't stand to work nights.

A: Monique.

If you are fired or laid off from a job, you will qualify for unemployment compensation unless you are fired for "misconduct". Misconduct means that a worker acted in willful disregard of the employer's interest and harmed the employer's business. To be misconduct, the worker's act must be intentional, grossly negligent or take place after warning against it. Mere incompetence or a mistake in judgment is not misconduct.

Q: Which worker probably qualifies for unemployment compensation – Hannah or Karen?

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

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

A: Hannah.

To qualify for unemployment compensation, you must be able, available and willing to work. This is normally shown by filling out a claim form and then submitting continued claim forms during the period of unemployment. If you have lost your job due to domestic violence, you may still be able to qualify for unemployment compensation.

If you apply for unemployment compensation and are denied, you should file an appeal at the unemployment office or job service center. In two or three weeks, you will have a chance to tell your side of the story at a hearing before an administrative law judge. Many hearings are done by telephone. When you file your appeal at the job service center, you should ask for a complete copy of your unemployment file. If you are low-income and would like help with your hearing, you may call the Unemployment Law Project at (206) 441-9178 or 1-888-441-9178 (they help people all over the state, not just in the 206 area code). The hearing is the most important part of the appeal process because it is the only time you can tell your side of the story. You should bring witnesses and present documents at the hearing.

7. Remedies and Resources

If you are represented by a union, you will want to approach the union with your workplace complaint. Your union has a duty of fair representation. This does not mean the union will handle every case of every employee, but it might handle yours. Your union may also be able to refer you to a lawyer or to an administrative agency that handles the type of claim you have.

If you are not represented by a union, you have a number of options available to you. These include: informal negotiation with your employer, mediation, small claims court, a complaint to an administrative agency, and getting legal representation. This section reviews some of your options.

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

INFORMAL NEGOTIATION WITH YOUR EMPLOYER:

You may wish to present your complaint directly to your employer. Here are some tips for doing so:

1. Keep records. Write down, for example, what was said during a conversation that bothered you, the true hours that you worked or the names, address and phone numbers of witnesses to any important events.

2. Bring a friend to take notes. You want to focus on communicating. Have someone else write down exactly what is said.
3. Tell your side of the story in as unemotional way as you can. You don't want your employer to be distracted by emotion; you want him or her to focus on the facts.
4. Make sure you have the facts straight. Check and recheck beforehand.

MEDIATION:

Mediation is a meeting run by a mediator. At the meeting, you and a co-worker or boss can talk out problems you have with each other. Participation is voluntary. The mediator runs the meeting and is trained as a neutral facilitator. This means the mediator doesn't take sides or decide for you what should happen; the mediator does make sure that the meeting is a safe place for all parties and that everybody is participating in a straightforward and respectful way. The mediator does this by asking for agreement on simple ground rules about civil behavior and honesty. The mediator also makes sure that nobody feels intimidated or threatened by anybody else. Read our publication titled "Mediation" for more information.

Mediation can be a big help when you have a problem communicating with a boss or supervisor. It is also helpful when you think your needs aren't being taken into consideration or you think your legal rights are being violated.

Mediation may work best if you do it before you have filed a formal grievance or taken legal action. However, mediation is often used to settle grievances and lawsuits, too. Don't miss any filing deadlines while waiting for mediation.

Example: When Jodi needed to leave 15 minutes early one day to pick up her son from daycare, she was told by her supervisor, Annie, in no uncertain terms that she couldn't and not to ask in the future for special favors. Jodi felt awful about the incident. She felt she let down her daycare provider, who needed the 15 minutes to go to a funeral for her best friend. She also felt Annie was mean, threatening, and unreasonable. Annie, for her part, felt protective of Jodi and responsible to help Jodi maintain good work habits. She was hurt that Jodi, who had always been very friendly, seemed to withdraw and be unfriendly afterwards.

In mediation, both Jodi and Annie had a chance to air their complaints, explain their needs to each other and, with the help of the mediator, come up with some better ways of talking to each other in the future. The both left the mediation feeling a lot better about themselves and each other and actually improved their working relationship.

Where to find a mediator: Any party to a dispute can call a local Dispute Resolution Center (DRC), usually listed in your telephone book. DRC's offer sliding fee scale based on your income, but you should ask your employer if they are willing to pay for the mediation. If there is no DRC in your county, look in the yellow pages of your phone book under "Mediation". The mediator's office will usually contact to each party separately on the telephone. When all parties to the dispute have decided to give mediation a try, the mediator will schedule a private mediation session at a neutral location in the community and at a time that is convenient to all parties.

SMALL CLAIMS COURT:

If you have a small claim, worth \$4,000 or less you might consider pursuing it in small claims court. This approach has the advantage of being relatively quick, inexpensive and informal. You are not allowed to have an attorney represent you, but neither is your employer. For more information on small claims court, look for the publication titled Small Claims Court on the Washington LawHelp web site at www.washingtonlawhelp.org. If you are low-income and live outside of King County, you may call CLEAR at 1-888-201-1014 for legal advice and ask them to send you that publication. In King County, call 206-464-1519.

ADMINISTRATIVE AGENCY COMPLAINTS:

You can file certain types of complaints with state and federal administrative agencies. It is important to know the time limits for filing, as well as the process.

For many claims, you will need to supply a description of the facts, as well as names and addresses of witnesses. It is important that you document your claim and that you keep copies of everything you've filed with an agency. Good documentation will help the agency do a better job of investigating your claim.

Some important time limits for filing administrative agency complaints:

For complaints of discrimination or retaliation to the federal **Equal Employment Opportunity Commission** (EEOC), you must file within 300 days.

For complaints of discrimination or retaliation to the **Washington Human Rights Commission** (HRC), you must file within 6 months if you want HRC to investigate. HRC can take your case only if your employer has 8 employees or more. If you miss the 6-month deadline, or if your employer has fewer than 8 employees, consult an attorney about suing in court.

For complaints of discrimination or retaliation to the **Washington Department of Labor & Industries** based on your complaining about **unsafe working conditions**, you must file within 30 days if you want L & I to investigate. If you miss that deadline, consult an attorney about suing in court.

For complaints of discrimination or retaliation to the **Washington Department of Labor & Industries** based on **exercising your right to workers' compensation**, you must file within 90 days if you want L & I to investigate. If you miss that deadline, consult an attorney about suing in court.

For complaints that you were discriminated against for acting to get better wages or working conditions for workers at your job, or for union activities, you must file with the **National Labor Relations Board** within 6 months. If you are an agricultural worker or a public employee, you are covered by different laws. See section 8, below, "Where To Get Help".

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

8. Where to Get Help

For complaints of violations of **overtime, child labor and Family & Medical Leave Act**, contact the **U.S. Department of Labor**:

Seattle Office
1111 Third Avenue, Suite 755
Seattle, WA 98101-3212
206-398-3770

Spokane Office
P.O. Box 1282
Spokane, WA 99210
509-353-2793

Tacoma Office
1201 Pacific Avenue South, Suite 425
Tacoma, WA 98402
253-428-3770

For complaints of violations of **federal discrimination laws**, contact the **Equal Employment Opportunity Commission** (EEOC):

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

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

2948 Jackson Federal Bldg.

915 Second Ave.
Seattle, WA 98174
(206) 220-6300

For complaints of violations of **state discrimination laws**, call the **Washington Human Rights Commission (HRC)**:

Olympia Headquarters Office:
711 S. Capitol Way, Suite 402
P.O. Box 42490
Olympia, WA 98504-2490
800-233-3247

Seattle District Office:
Melbourne Tower, Suite 921
1511 Third Avenue
Seattle, WA 98101-1626
206-464-6500

Spokane District Office:
Great Western Building, Suite 412
W-905 Riverside Avenue
Spokane, WA 99201-1099
509-456-4473

Yakima District Office:
Washington Mutual Building
Suite 441, 32 North Third Street
Yakima, WA 98901-2730
509-575-2772

For complaints about **minimum wage or overtime, unsafe working conditions, meal or rest breaks, wage claims, pay periods, retaliation for filing workers' compensation or health and safety claims**, call the **Washington Department of Labor & Industries**. Your local office is listed in the blue-edged pages of your telephone directory, under "Washington, State of."

Agricultural Employees: If you are employed in agriculture and have an employment law question, call Columbia Legal Services or the Northwest Justice Project:

Columbia Legal Services:
Tri Cities 888-201-9735
Wenatchee 800-572-9615
Yakima 800-631-1323

Northwest Justice Project:
Wenatchee 888-201-1021
Yakima 888-201-1018

Public Employees: Public employees can get help from their unions and many of the same agencies listed above. In addition, they may get help from the following agencies:

County and Local Employees contact:
Public Employment Relations Commission
112 Henry Street NE, Ste. 300
PO Box 40919
711 Capitol Way So.
Olympia, WA 98504
(360) 570-7334

State Employees contact:
State Department of Personnel
521 Capitol Way So.
PO Box 47500
Olympia, WA 98504
(360) 664-1960

Federal Employees contact:
Merit Systems Protection Board
1840 Jackson Federal Bldg.

915 Second Ave.
Seattle, WA 98174
(206) 220-7975

To Find Attorneys: For a list of private attorneys who handle employment cases in your area, look in the yellow pages of your phone book under "Attorneys," and the within that section look for, the headings "Employment" or "Workers Compensation" – whichever is appropriate to your case.

Some counties have Lawyer Referral Services that charge \$20-35 for the first half-hour visit. Those counties are: Clark, King, Kitsap, Lewis, Pierce, Snohomish and Thurston Counties – check in the white pages of your phone book under Lawyer Referral Service for their phone numbers, or call the county bar association.

If you are low-income, you can get free legal advice and referral by calling the Coordinated Legal Education Advice and Referral (CLEAR) line at 1-888-201-1014 weekdays between 9:30 a.m. and 12:30 p.m.

Unemployment Hearings: If you are low-income and need help with an unemployment compensation hearing, call the Unemployment Law Project:

Seattle Office
2800 First Avenue, Room 216
Seattle, WA 98121
(206) 441-9178
toll free (888) 441-9178

If you need more information on the **Earned Income Tax Credit**, call the IRS at 800-829-1040.

If you are interested in **mediation** of an employment dispute, call your local Dispute Resolution Center, listed in your telephone book. If your county does not have a Dispute Resolution Center, look in the yellow pages under "Mediation".

To find out more about **unions and your rights to organize and bargain collectively**, call:

King County Labor Council
Union Cities Organizer
206-441-7102

Jobs with Justice
206-441-4969

To find out more about **welfare rights**, call your nearest legal services office or the Coordinated Legal Education Advice and Referral (CLEAR) line at 888-201-1014 weekdays between 9:30 a.m. and 12:30 p.m. or contact:

Welfare Rights Organizing Coalition
Seattle 206-324-3063
Olympia 360-352-9716

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, January 2006.

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