

Your Rights and Responsibilities as an Employee in Washington State



Northwest Justice Project

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of February 2017.

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Should I read this?

Yes, for general info about employment rights in Washington State. This is only an overview. It does not give details. It should not replace legal advice from a lawyer.

For more about your legal rights, read one of the resources listed in the “Where to Get Help” section at the end of this publication.

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

1. Hiring

Your first step towards employment may be filling out a job application or having a job interview. This is 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.

This publication talks 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. No employer can legally ask questions that might show a bias or discriminate against you based on these things. An employer **can** ask questions to help him/her evaluate how you will do at a specific job.

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- ❖ In some places in Washington State, employers cannot legally ask about your politics or sexual orientation.
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Here are some examples of questions that are legal and 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.	It is 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 need accommodation.	It is okay to ask if you can perform the functions of the job with or without accommodation. In some cases, the employer can ask you to perform physical tasks such as lifting boxes.
National origin discrimination: Questions about your race, ancestry, birthplace, first language, clubs.	It is okay to ask if you can speak a foreign language.

Drug testing: It is legal for a private employer to require a drug test of its employees, unless the employer uses the test to discriminate against certain people. **Example:** it would be against the law if the employer only gave women or African Americans a drug test.

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- ❖ Public employers are more restricted in their ability to require drug testing.
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I-9 forms: Your employer must get information from all employees showing they may lawfully work in the United States. Employees must sign a form called an "I-9" form. It lists the types of identification allowed. An employer must accept any form of ID on the list. If you believe your employer has treated you unfairly because of the documents they have asked you to provide, call the U.S. Justice Department, Office of Special Counsel at 1-800-255-7688, (202) 616-5525 or 1-800-237-2515 (TDD for hearing impaired).

At Will Employment v. Employment Contracts: Most employment is "at will." You can be fired at will -- for any reason or none at all, as long as it is not for one of the illegal reasons discussed below.

You can lose your job after spending a lot of money to move, 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, any time.

Union contracts give you more rights, so that you are not an "at will" employee. Also, some employment contracts and personnel manuals make promises 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. 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 attention to the following list of what is expected of you as an employee. Employers are often concerned about these things. 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. The information you give on the application must be accurate. Employers often fire workers who gave false information on the application.

2. On the Job

Wage and Hour Laws

Minimum Wage: As of 2017, the state minimum wage for most workers in Washington is \$11 an hour (\$9.35 an hour for workers under age 16). The state adjusts the minimum wage every January based on inflation. If an employer does not pay you minimum wage, they may be liable for twice the amount of wages owed you.

Piece Rate: You must be paid minimum wage even if your work is by piece rate. **Example:** Samuel works for a janitorial service that pays

its workers \$200 for each floor of a big office building they clean. Samuel recently spent a 40-hour work week cleaning a single floor. If he is paid \$350 for the week, he has earned less than the minimum wage, which is \$11 x 40, or \$440. Samuel's employer underpaid him by \$90.

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

Working Time: The employer must pay you for the time you spend at activities that benefit the employer, even if it is not part of your regular work day. **Examples:** you must be paid for travel time between work locations, and for training and meeting time 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.

Examples: it does not cover agricultural employees, administrative, executive or professional employees, or outside salespersons.

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

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- ❖ An employer who does not pay you overtime may be liable for twice the amount of overtime wages you are owed.
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Wage Claims: The employer must pay you at least once a month. If you quit or are fired, you must be paid at the regular payday. You have no right to be paid before then.

Pay Stubs: The employer must give you a statement showing 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 (**example:** Social Security) or only those you give permission for. The employer may not deduct for any breakage or lost equipment unless they can show that the loss was caused by your dishonesty or willful acts.

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

Uniforms: If you have to wear a uniform, and if buying the uniform reduces your income below minimum wage, the employer must pay for it.

Example: John has to wear a white lab coat costing \$50. John only makes \$25 above minimum wage per week. His employer must pay the extra \$25 toward the uniform.

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

You must get a ten-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 job ends. You have the right to put rebuttals into your personnel file during that period.

Family and Medical Leaves: Employers do not have to give you paid sick leave. Those who do must also 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), you must be allowed twelve weeks of unpaid family or medical leave in a twelve-month period. You do not have to take all of the leave 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 has a “serious health condition.” (The “seriousness” depends on how many days you are out and how many doctor visits you have. For more details, contact the U.S. Department of Labor. Their contact info is 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 twelve weeks as unpaid leave.

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

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 vs. forcing you to quit: If you can prove that your employer deliberately made your working conditions so difficult that a reasonable person would have felt compelled to quit, then you were “constructively discharged.” The law treats this as the same as if you were actually fired.

3. Income Taxes and Earned Income Tax Credit

Each time you begin work for an employer, they should give you a tax form "W-4" to fill out. The employer must take a deduction from your pay based on the info you give on the form about 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, fill in the box labeled "Exempt" to keep tax money from being withheld from your wages.

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

You may be entitled to the Earned Income Tax Credit (EITC), even if you do not owe any federal tax. The EITC is money the government gives people who earn less than \$39,617 (if they have at least one qualifying child) or \$15,010 (if there is no qualifying child) in 2017. Married couples filing jointly qualify if they earned less than \$45,207 (if there is at least one qualifying child) and \$20,600 (if there is no qualifying child) in 2017. The qualifying amount is based on the number of children, if any, the

taxpayer supports. The children you list must have lived with you all year for you to claim them.

For more information on the EITC, call the IRS at 1-800-829-1040 or visit <http://www.irs.gov/Individuals/Preview--EITC-Income-Limits>.

“Independent Contractors:” Your employer might give you a form "1099" showing your earnings instead of a W-2 form. This means they are treating you as an “independent contractor” instead of an “employee” for tax and other purposes.

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

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

“Yes” to the first half of each question above means you are probably an employee. “Yes” to the second half means you might be an independent contractor. These are only some of the factors used to determine which you are. If you think you are being wrongly called an independent contractor and you are not getting the rights or benefits you should have as an employee, contact the IRS and some of the resources listed at the end of this publication.

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. 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 follow all the Department of Labor and Industries (L & I)’s rules about safe workplaces. There are different standards for different kinds of jobs (**examples:** construction and health care jobs).

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

You can make a complaint to L & I if you feel there are unsafe conditions at your workplace. You can ask that L & I not give your name to your employer. Complaints must be in writing. Forms for a complaint are available at L & I (see end of publication for contact info), or write a letter explaining who you are and describing the hazard. Explain why the situation is

dangerous and what might happen if there is an accident. L & I schedules its inspections, in part, based on how dangerous the hazard is.

Inspections: If L & I finds there are reasonable grounds to believe 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 tell you in writing.

Review of L & I Decisions: You can get an informal review of L & I's decision not to do an inspection or give the employer a citation. If L & I issues a fine and you think the time to fix the violation is unreasonable, you can file a notice with L & I asking for a review of the decision within fifteen working days of the citation.

Too Much Overtime: Generally, your employer can require you to work overtime. "Time and a half" overtime pay may be required by law (see discussion above). If mandatory overtime is harmful to your health or safety, you can ask L & I to investigate.

Right to Know about Hazardous Substances: You have a right to find out about any hazardous substances used in your workplace. Your employer must give you information on these substances when you are first assigned to the job and whenever a new hazard comes into your workplace. The information must say how to find a list of hazardous chemicals used in the workplace and "material safety data sheets" providing details about the chemicals.

If You are Asked to Perform Unsafe Work: Try to get the hazard fixed by reporting it to your employer, union and L & I. If there is not enough time (because the situation is urgent) to get rid of the hazard one of these ways, and you have a reasonable, good faith fear of serious injury, you have the right to refuse to do the unsafe work. You must first exhaust all reasonable options for getting your employer to fix the hazard. And you must tell your employer you will refuse to do the work if the

hazard is not fixed. 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 your employer takes against you because of something you have done. The law protects you from retaliation for making a health and safety complaint. If you want L & I to investigate your retaliation claim, you **must** file it within 30 days of the retaliation. (L & I calls it "discrimination," not retaliation.) 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 hurt 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 L & I.

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

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

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

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

Workers' Compensation Will Pay:

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

Crime Victims' Compensation Act: If you are the victim of a crime, such as assault, domestic violence or child abuse, you may be eligible for benefits under the state Crime Victims' Compensation Act. The Act is like workers' compensation, but covers different situations.

Example: if you lose work because you are the victim of a crime, you may be able to get lost wages from this fund. The fund also

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

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

5. Discrimination and Retaliation

Most employment in Washington State is "at will." This means your employer can fire you at will -- for any or no reason. At the beginning of this handbook, we talked about some of the exceptions to this. Here are others:

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

Retaliation 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 protecting employees
- blowing the whistle on your employer for violating some other type of law
- acting to try to improve wages or working conditions for other workers
- engaging in union activities
- complaining about unsafe conditions
- filing a claim for minimum wage or overtime
- filing a claim for workers' compensation or unemployment benefits

❖ See subsection on Retaliation at page 13.

If you think you were fired due to discrimination or retaliation, keep a written log

of all your efforts to find another job. You will need this if you want to sue your employer for lost wages.

Remember: if your employer takes action against you, but not because of any of the reasons listed above, it may not be illegal "discrimination" or "retaliation."

Q: Which of these is unlawful discrimination?

Example 1. Maria is fired from her job as a secretary because her new boss wants to hire his teenaged daughter. **Example 2.** Maria is fired from her job as a secretary because her new boss does not want a Latina secretary.

A: Example 2.

Q: Which of these is unlawful retaliation?

Example 1. Linda, a health care worker at a nursing home, is fired because she complained to the owner of the business that she needed to work more hours. **Example 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 acts against you because of the employer's mistaken belief. **Example:** Greg gets fired because his employer thinks he filed a complaint about health and safety. Greg is protected by the law, even if he did not actually file the complaint.

An employer will rarely come out and say s/he is taking action against you because of, for example, your race or age. S/he will probably give a reason related to the quality of your work or violating a rule. If discrimination or retaliation was a substantial factor in why the employer acted against you, you may win even if the employer had other reasons for acting against you.

Age Discrimination:

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

Example: Paul is 52 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 he 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. **Example:** A rule that workers only speak English on the job or a rule excluding people who speak English with an accent may be unlawful. It depends on if the rule is necessary to the particular job.

Q: Discrimination or not? Ignacio recently came to the U.S. from El Salvador. He wants to work as a dispatcher for an ambulance company. His employer tells Ignacio he cannot

work dispatch because his English is not good enough. The ambulance drivers would not understand him. There could be safety problems.

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

Sex Discrimination and Sexual Harassment:

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

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

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

Pregnancy discrimination is a kind of sex discrimination. The employer cannot discriminate against a woman because of pregnancy, childbirth or any related condition, if she can perform the 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. Her employer says no.

A: Discrimination.

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

A: Discrimination.

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

The harasser can be either a man or woman.

The victim can be either a man or woman.

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

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

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. He does nothing to stop it. Susan is a victim of sexual harassment.

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

Q: Discrimination or not? Henry brings a cartoon about "dumb blondes" to the offices

one day and shows it to Jane, without comment. She is offended. She does not say anything to anyone.

A: This is not sex discrimination or sexual harassment.

Religious Discrimination:

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

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

A: Discrimination.

Q: Discrimination or not? Kim is a hotel maid. His religion celebrates its Sabbath on Saturday. He may not work on that day. His employer refuses to 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 Kim's work.

Disability Discrimination:

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

Under Washington law, you are considered disabled if you have an abnormal condition, and the condition has a substantially limiting effect on your ability to do your job. (The Federal definition of disability is stricter. 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 (who are recovered now) and people who are not disabled but their employer *believes* they are. Washington law also protects people with temporary disabilities.

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

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

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

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

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

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

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

Retaliation:

Retaliation is action your employer takes against you 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 you or someone else.

Examples: if you make a complaint about sexual harassment and your employer fires you for making the complaint, that is retaliation. If you ask for reasonable accommodation of your disability and you are demoted as a result, that is retaliation.

Other examples of illegal retaliation include retaliation because you:

- complained about unsafe working conditions
- complained about not being paid minimum wage or overtime
- filed for workers' compensation
- complained to DSHS about abuse or neglect of patients in a health care facility
- engaged in union activities
- took some action to try to improve pay or conditions for workers at your job

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

If there is no specific anti-retaliation law, you can only sue your employer if you are fired –not

if there is action against you short of firing. It is illegal to fire you for a reason that goes against public policy clearly expressed in state law.

Example: it is illegal to fire an employee for “whistleblowing” -- reporting that your employer has violated environmental, business, or health laws. If you are fired for doing this, you can sue your employer for “wrongful discharge in violation of public policy.”

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. 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. You think the real reason is unlawful retaliation. You can win if retaliation was a substantial factor in why the employer acted against you.

Example: Henry hurt his back on the job. He was off work for two months. His employer pressured him to come back when Henry did not 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. He could not find her. He left a written message on the secretary's desk. The secretary did not find it until the next day. Henry was fired for violating a rule that employees must notify their supervisor before leaving work. Other workers have left work without notifying their supervisors and have only been reprimanded, not fired.

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

have been laid off because she filed a workers' compensation claim. She should ask herself:

- What has happened to other injured workers in the same situation? (**Example:** Other people hurt on the job were fired soon afterward.)
- Did the employer fire her for something other workers routinely get away with?
- Did the employer violate their own rule? (**Example:** The employer has a rule that you are not fired until you have gotten three written warnings. Susan was fired without any warning.)

Written statement of reasons you were discharged: You have a right under state law to a signed, written statement explaining why you were discharged. Your employer must give it to you within ten working days of getting 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. If you lose your job, you may be eligible for unemployment compensation.

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

You must also be unemployed through no fault of your own. If you quit your job, you ordinarily cannot get unemployment compensation, unless you have a "good cause" to quit under state law. **Before quitting your job, talk with a lawyer, union representative, or the Washington Employment Security Department**

about whether your reason for quitting might qualify as "good cause" so you could quit and still get 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. Her doctor says these are related to the night work. She takes a doctor's note to her employer and asks for day or swing shift work. It would not hurt the business in any way to switch her to days. The employer refuses. She quits.

James is transferred to night shift. He quits right away, telling his employer that he cannot stand working nights.

A: Monique.

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

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

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

Karen's employer has a rule that a worker must give 48 hours' notice before taking vacation time. Karen has violated the rule before and

received written notices 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. You normally show this 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 your application for unemployment compensation is denied, you should file an appeal at the unemployment office or job service center. In a few weeks, you will have a chance to tell your side of the story at a hearing before an administrative law judge. Many hearings are done by phone. When you file your appeal at the job service center, ask for a complete copy of your unemployment file. If you are low-income and want help with your hearing, call the [Unemployment Law Project](#) at (206) 441-9178 or 1-888-441-9178. (They help people all over the state.) The hearing is the most important part of the appeal process. It is the only time you can tell your side of the story. You should bring witnesses to and present documents at the hearing.

7. Remedies and Resources

If you are represented by a union, you should go to 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 be able to refer you to a lawyer or an administrative agency that handles your type of claim.

If you are not represented by a union, you still have options. This section reviews some of them.

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 amount of your wages if it finds the employer acted willfully -- not just carelessness or because of a good faith dispute.

Informal Negotiation with Your Employer:

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

1. **Keep records.** Write down, for example, what was said during a conversation that bothered you, the true hours you worked, or the names, address, and phone numbers of witnesses to any important events.
2. **Bring a friend to take notes.** You should focus on communicating. Have someone else write down exactly what is said.
3. Tell your side of the story as unemotionally as you can. You do not want to distract your employer with your emotion. You want them 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. You are not required to mediate.

The mediator

- runs the meeting.
- is trained as a neutral facilitator.
- does not take sides or decide for you what should happen.

- makes sure the meeting is a safe place for all parties and everyone is taking part in a straightforward and respectful way.
- asks for agreement on simple ground rules about civil behavior and honesty.
- makes sure no one feels intimidated or threatened by anyone else.

Our publication called [Mediation: Should I Use It?](#), also available at [washingtonlawhelp.org](http://www.washingtonlawhelp.org), has more info.

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

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

Example: Jodi had to leave 15 minutes early one day to pick up her son from daycare. Her supervisor, Annie, told her flat-out that Jodi could not, and not to ask again 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 felt protective of Jodi and responsible for helping Jodi keep good work habits. She was hurt that Jodi, who had always been very friendly, seemed unfriendly afterwards.

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

and each other. They improved their working relationship.

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

Small Claims Court:

If you have a small claim worth \$4,000 or less, you can go to small claims court. This option is pretty quick, cheap, and informal. Lawyers are not allowed in Small Claims Court. Our publication called [Small Claims Court](#), at www.washingtonlawhelp.org, has more info.

Administrative Agency Complaints:

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

You will probably need to supply a description of the facts and witnesses' names and addresses. You must document your claim and keep copies of everything you have filed with an agency. This will help the agency investigate 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 six months if you want HRC to investigate. HRC can take your

case only if your employer has eight employees or more. If you miss the deadline, or your employer has fewer than eight employees, talk with a lawyer 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, talk with a lawyer 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, talk with a lawyer 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 six months. Different laws cover agricultural workers and public employees. See the section 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, and/or 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 315 Fifth Avenue S, Suite 200 Seattle, WA 98104-2607 206-515-2800	Spokane Office 901 Monroe St Spokane, WA 99201 509-324-2600
Tacoma Office 950 Broadway, Suite 200 Tacoma, WA 98402 253-596-3800	

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): 1-800-233-3247.

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](#). You can find the phone number for your local office online.

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
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Public Employees: Public employees can get help from their unions and many of the same agencies listed above. They can also get help from these 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 Human Resources \(SHR\) Division, Office of Financial Management](#)
P.O. Box 43113
Olympia, WA 98504-3113
360-902-0555
TDD 360-902-0679

Federal Employees contact:

[Merit Systems Protection Board](#) (Western Regional Office)
[201 Mission Street Suite 2310](#)
[San Francisco, CA 94105-1831](#)
[\(415\) 904-6772 - telephone](#)
[\(415\) 904-0580 – fax](#)

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

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

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

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

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

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

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

King County Labor Council	South Sound Jobs
Union Cities Organizer	with Justice
206-441-8510	(253) 473-3810

For 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 9:15 a.m. and 12:15 p.m. or contact: the [Welfare Rights Organizing Coalition](#) through their website <http://www.wroc.org/>.

