

DISCRIMINATION

On what bases is a physician prohibited from denying a person access to professional services or treatment?

Washington law and various federal laws prohibit physicians from denying a person access to professional services or treatment based on the following particular individual attributes:¹

- Race.
- Creed.
- Color.
- Sex.
- National origin or ancestry.
- Sensory, mental, or physical handicap or disability.²
- A disabled person's use of a trained guide dog or service animal.³

Washington law also prohibits this kind of discrimination on the basis of sexual orientation (including gender identity) or honorably discharged veteran or military status.⁴

The following conduct, if based on one or more of these particular individual attributes of a patient or a prospective patient, can constitute unlawful discrimination in Washington:⁵

- Denying a person entrance to a hospital, clinic, or physician's office.
- Denying a person professional treatment or services.
- Causing a person seeking such services to be treated as not welcome, accepted, desired, or solicited.

¹ See RCW 49.60.215(1); RCW 49.60.030(1)(b). See also the definition at RCW 9.91.010(1)(d). See generally 42 U.S.C. § 1983; 42 U.S.C. § 2000a.

² See generally 42 U.S.C. § 12182 *et seq.*; WAC chapter 162-26.

³ See generally WAC chapter 162-26.

⁴ See RCW 49.60.030(1); RCW 49.60.215(1).

⁵ See, e.g., WAC 162-26-070 (disability). See generally RCW 49.60.215(1).

Can a physician be personally liable for discrimination in the access to or delivery of medical treatment?

Yes. Almost all hospitals, clinics, laboratories, physician offices, universities, colleges, schools, and other places where medical treatment is delivered are places of public accommodation that are prohibited from discriminating in the access to or delivery of medical care.⁶ The Washington Law Against Discrimination (WLAD) permits not only injunction, but recovery of actual damages sustained by the aggrieved individual (or both) and attorneys' fee against persons found to have violated the WLAD, including in places of public accommodation.⁷

Is it a criminal offense for a physician to withhold professional services or treatment from a person based on the person's race, creed or color?

Yes. In Washington, it is a misdemeanor to deny a person access to professional services or treatment based on the person's race, creed or color.⁸

Is a physician prohibited from refusing to treat persons who have AIDS, are HIV positive, appear to have AIDS, appear to be HIV positive, or have hepatitis C?

Yes. Under the ADA, it is unlawful conduct for a physician, who is otherwise qualified to treat the patient's condition, to refuse treatment to a patient because the patient has AIDS, is HIV positive, or is perceived to have either condition. An individual is considered to have a "disability" if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.⁹ Persons with HIV disease, both symptomatic and asymptomatic, have physical impairments that substantially limit one or more major life activities and are, therefore, protected by the law.¹⁰ See AIDS/HIV/STD and AMERICANS WITH DISABILITIES ACT.

Under what circumstances do the laws prohibiting discrimination on the basis of national origin require physicians to provide foreign language interpreter services to patients with limited English proficiency?

See INTERPRETER SERVICES.

Under what circumstances do the laws prohibiting discrimination require physicians to provide auxiliary aids, including qualified sign language interpreters, to patients with hearing, speech, or visual impairments?

See INTERPRETER SERVICES.

⁶ See RCW 49.60.030(1)(b); RCW 49.60.040(2); RCW 9.91.010(1)(d).

⁷ See RCW 49.60.030(2).

⁸ See RCW 9.91.010(2).

⁹ 28 C.F.R. § 35.104.

¹⁰ *Id.*

Can a physician be discriminated against for refusing to perform an abortion?

No. A physician may not be discriminated against for refusing to perform an abortion.¹¹
See **ABORTION**.

Can a physician be discriminated against for refusing to withhold or to withdraw life sustaining treatment?

No. A physician may not be discriminated against for either participating in or refusing to participate in the withholding or withdrawal of life sustaining treatment.¹² See **END OF LIFE CARE DOCUMENTS** for the procedure to follow in refusing to comply with a patient's living will.

On what bases is an employer generally prohibited from engaging in discrimination?

Federal, state, and applicable local laws prohibit employers from basing employment decisions on the following particular individual attributes:

- Age.¹³
- Sex.¹⁴ See **SEXUAL HARASSMENT**.
- Race.¹⁵
- Religion.¹⁶
- Creed.¹⁷
- Color.¹⁸
- National origin.¹⁹
- Presence of any sensory, mental, or physical handicap, or use of a trained guide dog or service animal by a disabled person.²⁰ See **AMERICANS WITH DISABILITIES ACT**.

¹¹ See RCW 9.02.150.

¹² RCW 70.122.060(4).

¹³ See RCW 49.60.180; RCW 49.44.090(1). 29 U.S.C. § 623. See also WAC chapter 162-20. See generally 29 U.S.C. § 621 *et seq.*

¹⁴ See 42 U.S.C. § 2000e-2(a); RCW 49.60.180. See also 29 U.S.C. § 206(d) and RCW 49.12.175; WAC 162-30-020.

¹⁵ See 42 U.S.C. § 2000e-2(a); RCW 49.60.180.

¹⁶ See 42 U.S.C. § 2000e-2(a). See also Tacoma Municipal Code 1.29.050; Seattle Municipal Code 14.04.040; Spokane Municipal Code 01.06.010; 01.06.080; King County Code 12.18.010; 12.18.030.

¹⁷ See RCW 49.60.180.

¹⁸ See 42 U.S.C. § 2000e-2(a); RCW 49.60.180.

¹⁹ See 42 U.S.C. § 2000e-2(a); RCW 49.60.180.

The State of Washington also prohibits employment discrimination based on:²¹

- Marital status.²²
- Sexual orientation (including gender identity).²³
- Honorably discharged veteran or military status.
- HIV or Hepatitis C infection.²⁴

The City of Tacoma also prohibits employment discrimination based on:²⁵

- Familial status (whether one has children).²⁶
- Sexual orientation.
- Gender identity.
- Marital status.
- Honorably discharged veteran or military status.

The City of Seattle also prohibits employment discrimination based on:²⁷

- Marital status.
- Sexual orientation.
- Gender identity.
- Political ideology.
- Honorably discharged veteran or military status.
- Genetic information.

The City of Spokane also prohibits employment discrimination based on:²⁸

²⁰ See RCW 49.60.180; WAC 162-22-025; See also WAC 162-22-035; WAC 162-22-075; 29 U.S.C. § 793(a).

²¹ See RCW 49.60.180.

²² See WAC 162-16-250; RCW 49.60.180.

²³ RCW 49.60.180; RCW 49.60.040(26).

²⁴ See RCW 49.60.172.

²⁵ See Tacoma Municipal Code 1.29.050.

²⁶ See Tacoma Municipal Code 1.29.040 (defining “familial status”).

²⁷ See Seattle Municipal Code 14.04.040.

- Sexual orientation.
- Marital status.
- Familial status.

Unincorporated King County also prohibits employment discrimination based on:²⁹

- Marital status.
- Sexual orientation (including gender identity).

The following conduct, if based on one or more of these particular attributes of an employee or prospective employee, can constitute employment discrimination:

- Refusing to hire the prospective employee.³⁰
- Refusing to promote the employee.³¹
- Denying the employee a benefit.³²
- Creating a hostile work environment for the employee.³³
- Discharging the employee.³⁴
- Taking other adverse action regarding the employee's compensation or other terms or conditions of employment.³⁵

The federal, state, and local laws governing employment discrimination set minimum standards only. Hospitals and other businesses may have internal policies that offer their employees more protection than these laws provide. A physician who violates these policies may be subject to discipline by the hospital or business even though the physician has not necessarily violated any laws.

²⁸ See Spokane Municipal Code 01.06.010; 01.06.080.

²⁹ See King County Code 12.18.010; 12.18.030.

³⁰ See RCW 49.60.180(1). See also, e.g., RCW 49.44.090(1); WAC 162-30-020(3)(a)(i).

³¹ See RCW 49.60.180(3). See also, e.g., RCW 49.44.090(1); WAC 162-30-020(3)(a)(i).

³² See RCW 49.60.180(3). See also, e.g., RCW 49.44.090(1).

³³ 29 C.F.R.1604.

³⁴ See RCW 49.60.180(2). See also, e.g., RCW 49.44.090(1) (age discrimination); WAC 162-30-020(3)(a)(i) (pregnancy and childbirth discrimination).

³⁵ See RCW 49.60.180(3). See also, e.g., RCW 49.44.090(1) (age discrimination); WAC 162-30-020(3)(a)(i) (pregnancy and childbirth discrimination).

Can a particular individual attribute be considered by an employer in a nondiscriminatory way?

In some circumstances, yes. It is not unlawful to consider any of the particular individual attributes identified above in an employment decision if it can be demonstrated that the particular attribute is a bona fide occupational qualification. This exception is narrowly applied and may be difficult to establish.³⁶

What employers are subject to these various federal, state, and local laws against discrimination?

Whether an employer is subject to the various anti-discrimination laws depends on the number of employees, the employer's status as a public or private sector employer, and the geographical location of the employer's business.

- Number of employees:
 - Most federal laws apply only to employers who have 15 or more employees.³⁷
 - Washington's Law Against Discrimination technically applies only to employers who have eight or more employees,³⁸ but Washington courts recognize a common law tort cause of action for discrimination against employers with fewer employees.³⁹
 - The Seattle Municipal Code applies to employers who have one or more employees.⁴⁰
 - The King County Code (which covers unincorporated King County) applies to employers with eight or more employees.⁴¹
 - The Tacoma Municipal Code applies to employers with eight or more employees.⁴²

³⁶ See 42 U.S.C. § 2000e-2(e); WAC 162-16-240; RCW 49.60.180(1), (4) (establishing exceptions for bona fide occupational qualifications). See also, e.g., RCW 49.44.090(1) (reasonable age limits vis-à-vis a job's physical demands); WAC 162-22-045 (employment for handicapped persons); Seattle Municipal Code 14.04.050 (exclusions from unfair practices); Spokane Municipal Code 01.06.070 (exemptions).

³⁷ See 42 U.S.C. § 2000e(b).

³⁸ See RCW 49.60.040(11) (defining "employer" as one who employs eight or more persons); WAC 162-16-200(3).

³⁹ See *Roberts v. Dudley*, 140 Wn.2d 58, 72–73 (2000).

⁴⁰ See Seattle Municipal Code 14.04.020(C) (application to both private employers and the City); 14.04.030(K) (defining "employer" as "any person who has one or more employees").

⁴¹ See King County Code 12.18.013 (application to employers in unincorporated King County); 12.18.020(G) (defining "employer" as any person who employs eight or more persons in unincorporated King County).

⁴² See Tacoma Municipal Code 1.29.040 (adopting the current definition of "employer" at RCW 49.60.040). RCW 49.60.040(11) defines "employer" as one who employs eight or more persons.

- The Spokane Municipal Code applies to employers with eight or more employees.⁴³
- Washington’s equal pay statute applies to any employer who employs both males and females.⁴⁴
- Public or private sector. Certain federal⁴⁵ and state laws⁴⁶ apply to public sector employers no matter how few employees they may have. Public sector employers include the federal government and any of its agencies, departments, commissions, hospitals, or laboratories; and the state government and any of its agencies, boards, departments, school districts, colleges and universities, or hospitals.
 - Certain federal laws apply to public and private employers who receive federal financial assistance.⁴⁷
 - Private employers are subject to the law when the numerical thresholds for employees are met.
- Geographical location. The additional prohibitions imposed by unincorporated King County, the City of Seattle, the City of Tacoma, and the City of Spokane apply respectively only to employers whose businesses are located in those areas.

Can a physician be personally liable for acts of employment discrimination?

Yes. Washington’s Law Against Discrimination⁴⁸ and Seattle’s Municipal Code⁴⁹ permit an aggrieved employee to allege discrimination by any individual person acting in the interest of an employer. Thus, a physician in a supervisory, managerial, or other decision-making position may be personally liable for employment discrimination.

Is an employee who reports an incident or files a charge of discrimination protected from retaliation?

Yes. It is unlawful to retaliate against anyone who, in good faith, makes a formal or an informal complaint to management or files a charge or lawsuit alleging employment discrimination. It is also unlawful to retaliate against anyone who participates in the investigation of a complaint or charge or who testifies in any legal proceeding.⁵⁰ Most public and private businesses also have internal policies that prohibit retaliation.

⁴³ See Spokane Municipal Code 01.06.030(E) (defining “employer”).

⁴⁴ See RCW 49.12.175.

⁴⁵ See, e.g., 42 U.S.C. § 2000e-16(a).

⁴⁶ See, e.g., WAC Chapter 162-20 (age discrimination in public employment).

⁴⁷ See, e.g., 42 U.S.C. §§ 2000d, 2000d-3; 29 U.S.C. § 794.

⁴⁸ RCW 49.60.180; RCW 49.60.040(11).

⁴⁹ Seattle Municipal Code 14.04.040; Seattle Municipal Code 14.04.030(K).

⁵⁰ See 42 U.S.C. § 2000e-3(a); RCW 49.60.210. See also, e.g., Seattle Municipal Code 14.04.040(F); Spokane Municipal Code 01.06.040.