



West's Revised Code of Washington Annotated [Currentness](#)

Title 49. Labor Regulations ([Refs & Annos](#))

▢ [Chapter 49.60](#). Discrimination--Human Rights Commission ([Refs & Annos](#))

→ **49.60.040. Definitions**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Aggrieved person” means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur.

(2) “Any place of public resort, accommodation, assemblage, or amusement” includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or **schools** of special instruction, or nursery **schools**, or day care centers or children's camps: **PROVIDED**, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

(3) “Commission” means the Washington state human rights commission.

(4) “Complainant” means the person who files a complaint in a real estate transaction.

(5) “Covered multifamily dwelling” means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

(6) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

(7)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

(8) “Dog guide” means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

(9) “Dwelling” means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(10) “Employee” does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

(11) “Employer” includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

(12) “Employment agency” includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

(13) “Families with children status” means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(14) “Full enjoyment of” includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

(15) “Honorably discharged veteran or military status” means a person who is:

(a) A veteran, as defined in [RCW 41.04.007](#); or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

(16) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment.

(17) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

(18) "National origin" includes "ancestry".

(19) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

(20) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(21) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

(22) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

(23) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

(24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a sensory, mental, or physical disability of a person with a disability.

(25) "Sex" means gender.

(26) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a **gender identity**, self-image, appearance, behavior, or expression, whether or not that **gender identity**, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

CREDIT(S)

[2009 c 187 § 3, eff. July 26, 2009. Prior: 2007 c 317 § 2, eff. July 22, 2007; 2007 c 187 § 4, eff. July 22, 2007; 2006 c 4 § 4, eff. June 8, 2006; 1997 c 271 § 3; 1995 c 259 § 2; prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

HISTORICAL AND STATUTORY NOTES

Reviser's note: The definitions in this section have been alphabetized pursuant to [RCW 1.08.015\(2\)\(k\)](#).

Finding--2007 c 317: “The legislature finds that the supreme court, in its opinion in *McClarty v. Totem Electric*, 157 Wn.2d 214, 137 P.3d 844 (2006), failed to recognize that the law against discrimination affords to state residents protections that are wholly independent of those afforded by the federal Americans with disabilities act of 1990, and that the law against discrimination has provided such protections for many years prior to passage of the federal act.” [2007 c 317 § 1.]

Retroactive application--2007 c 317: “This act is remedial and retroactive, and applies to all causes of action occurring before July 6, 2006, and to all causes of action occurring on or after July 22, 2007.” [2007 c 317 § 3.]

Effective date--1995 c 259: See note following [RCW 49.60.010](#).

Severability--1993 c 510: See note following [RCW 49.60.010](#).

Severability--1993 c 69: See note following [RCW 49.60.030](#).

Severability--1969 ex.s. c 167: See note following [RCW 49.60.010](#).

Construction--1961 c 103: “Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act.” [1961 c 103 § 4.]

Severability--1957 c 37: See note following [RCW 49.60.010](#).

Severability--1949 c 183: See note following [RCW 49.60.010](#).

As enacted, this section read:

“As used herein: (a) The term ‘person’ includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees in bankruptcy, receivers or any group of persons, and includes any political or civil subdivision of the state and any agency or instrumentality of the state or of any political or civil subdivi-

sion thereof;

“(b) The term ‘employer’ includes any person acting in the interest of an employer, directly, or indirectly, who has eight or more persons in his employ, and does not include any religious, charitable, educational, social or fraternal association or corporation, not organized for private profit;

“(c) The term ‘employee’ does not include any individual employed by his parents, spouse or child, or in the domestic service of any person;

“(d) The term ‘labor organization’ includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

“(e) The term ‘employment agency’ includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

“(f) The term ‘national origin’ shall, for the purpose of this act, include ‘ancestry.’ ”

Laws 1957, ch. 37, § 4, rewrote the section.

Laws 1961, ch. 103, § 1, in the definition of “Any place of public resort, accommodation, assemblage or amusement” inserted following “seeking health, recreation or rest” inserted “or for the burial or other disposition of human remains”; and, in the proviso, inserted “columbarium, crematory, mausoleum, or cemetery”. Following amendment, the section read:

“As used in this chapter:

“ ‘Person’ includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

“ ‘Employer’ includes any person acting in the interest of an employer, directly, or indirectly, who has eight or more persons in his employ, and does not include any religious or sectarian organization, not organized for private profit;

“ ‘Employee’ does not include any individual employed by his parents, spouse or child, or in the domestic service of any person;

“ ‘Labor organization’ includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

“ ‘Employment agency’ includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

“ ‘National origin’ includes ‘ancestry’;

“ ‘Full enjoyment of’ includes the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited;

“ ‘Any place of public resort, accommodation, assemblage or amusement’ includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or **schools** of special instruction, or nursery **schools**, or day care centers or children's camps: *Provided*, That nothing herein contained shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything herein contained apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

“ ‘Publicly-assisted housing’ includes any building, structure or portion thereof which is used or occupied or is intended to be used or occupied as the home, residence or sleeping place of one or more persons, and the acquisition, construction, rehabilitation, repair or maintenance of which is financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions, or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly-assisted only during the life of such loan and such guarantee or insurance, or if a commitment, issued by a government agency, is outstanding that the acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or

the state or any of its political subdivisions, or any agency thereof;

“ ‘Owner’ includes the owner, lessee, sublessee, assignee, agent, creditor, lender or other person having the right to ownership or possession of housing, or to have housing pledged as security for a debt.”

Laws 1969, Ex.Sess., ch. 167, § 3, added the definitions of “real property” and “real estate transaction”; and deleted former definitions of “publicly assisted housing” and “owner”.

Laws 1973, ch. 141, § 4, added the definition of “credit transaction”.

Laws 1979, ch. 127, § 3, in the definition of “employee” inserted “or her”; in the definition of “full enjoyment of” inserted “or with any sensory, mental, or physical handicap, or a blind or deaf person using a trained dog guide,”; and made nonsubstantive changes throughout the section.

Laws 1985, ch. 185, § 2, inserted the definition of “commission”.

Laws 1985, ch. 203, § 2, in the definition of “full enjoyment of” inserted “sex”; and inserted the definition of “sex”.

Laws 1993, ch. 69, § 3, in the definition “Full enjoyment of” substituted “physical disability” for “physical handicap”; in the definition of “Real property” following “structures” inserted “dwellings,”; in the definition of “Real estate transaction” following “includes the sale,” inserted “appraisal, brokering,” and following “or lease of real property” added “, transacting or applying for a real estate loan, or the provision of brokerage services”; inserted the definitions of “Dwelling”, “Aggrieved person”, “Complainant”, and “Families with children status”; and added subsection designations.

Laws 1993, ch. 510, § 4, inserted the definition of “Marital status”; and, in the definition of “Full enjoyment of” following “race, creed, color, sex,” substituted “national origin, or with any sensory, mental, or physical disability, or the use of a trained guide dog or service dog by a disabled person, to be treated as not welcome” for “or with any sensory, mental, or physical handicap, or a blind or deaf person using a trained dog guide, to be treated as not welcome”.

Laws 1995, ch. 259, § 2, inserted subsec. (17) and redesignated former subsecs. (17) and (18) as subsecs. (18) and (19), respectively; in subsec. (19), in the first sentence deleted “when” preceding “one or more” and substituted “being” for “is” following “of eighteen years”, and in the second sentence deleted “or guardianship” following “securing legal custody”; and added subsecs. (20) and (21).

Laws 1997, ch. 271, § 3, in the definition of “Full enjoyment of” substituted “dog guide or service animal” for “guide or service dog”; and added the definitions of “Dog guide” and “Service animal”.

Laws 2006, ch. 4, § 4 rewrote the introductory paragraph, which formerly read “As used in this chapter:”; in the definition of “full enjoyment of” inserted “sexual orientation”; inserted the definition of “sexual orientation”; and renumbered definitions accordingly.

Laws 2007, ch. 187, § 4 added the definition of “honorably discharged veteran or military status”; and twice substituted “person with a disability” for “disabled person”.

Laws 2007, ch. 317, § 2 added the definition of “Disability”; and substituted references to person with a disability for references to disabled person.

2009 Legislation

Laws 2009, ch. 187, § 3, reenacted the section without apparent change.

LAW REVIEW AND JOURNAL COMMENTARIES

AIDS legal issues. Robin L. Thompson, 44 Wash.St.B.News 13 (Aug. 1990).

Marital Status [Discrimination in Washington: Relevance of the Identity and Actions of an Employee's Spouse](#). Katrina R. Kelly, 73 Wash.L.Rev. 135 (1998).

Washington state's barrier-free code: Still misunderstood after all these years. Robert Hal White, 20 Gonz.L.Rev. 229 (1984/85).

RESEARCH REFERENCES

ALR Library

[83 ALR 5th 1](#), Individual Liability of Supervisors, Managers, Officers or Co-Employees for Discriminatory Actions Under State Civil Rights Act.

[83 ALR 5th 467](#), What Constitutes Private Club or Association Not Otherwise Open to Public that is Exempt from State Civil Rights Statute.

[37 ALR 5th 349](#), Judicial Construction and Application of State Legislation Prohibiting Religious Discrimination in Employment.

[76 ALR 4th 310](#), Accommodation Requirement Under State Legislation Forbidding Job Discrimination on Account of Handicap.

[171 ALR 920](#), Private Rights and Remedies to Enforce Right Based on Civil Rights Statute.

[98 ALR 1088](#), Validity of Statute or Ordinance Regulating Barbers.

Encyclopedias

[23 Am. Jur. Proof of Facts 3d 499](#), Discrimination on the Basis of Handicap Under the Fair Housing Act.

[93 Am. Jur. Trials 193](#), Enforcement of Restrictive Covenant or Lease Provision Limiting the Keeping of Animals or Pets on Residential Property.

Treatises and Practice Aids

[Employment Coordinator Employment Practices § 7:61](#), Washington.

[Employment Coordinator Employment Practices § 20:76](#), Washington.

[Employment Coordinator Employment Practices § 21:66](#), Washington.

[Employment Coordinator Employment Practices § 32:35](#), Washington.

[Employment Coordinator Employment Practices § 9:126](#), Washington.

[Employment Coordinator Employment Practices § 20:141](#), Washington.

[Employment Coordinator Employment Practices § 20:210](#), Washington.

[Employment Coordinator Employment Practices § 20:262](#), Washington.

[Employment Coordinator Employment Practices § 6:18.50](#), Washington.

[Emp. Discrim. Coord. Analysis of State Law § 53:4](#), Sex or Pregnancy.

[Emp. Discrim. Coord. Analysis of State Law § 53:7](#), National Origin or Ancestry.

[Emp. Discrim. Coord. Analysis of State Law § 53:9](#), Disability or Handicap.

[Emp. Discrim. Coord. Analysis of State Law § 53:10](#), Failure to Make Reasonable Accommodation for Disabilities.

[Emp. Discrim. Coord. Analysis of State Law § 53:12](#), Marital Status.

[Emp. Discrim. Coord. Analysis of State Law § 53:28](#), Private Employers.

[Emp. Discrim. Coord. Analysis of State Law § 53:29](#), Public Employers.

[Emp. Discrim. Coord. Analysis of State Law § 53:30](#), Labor Organizations.

[Emp. Discrim. Coord. Analysis of State Law § 53:31](#), Employment Agencies.

[Emp. Discrim. Coord. Analysis of State Law § 53:37](#), Law Against Discrimination.

[Restatement \(2d\) of Property, Land. & Ten. § 3.1](#), Restrictions on Freedom to Refuse to Lease.

[6A Wash. Prac. Series WPI 330.00](#), Employment Discrimination--Introduction.

[6A Wash. Prac. Series WPI 330.01](#), Employment Discrimination--Disparate Treatment--Burden of Proof.

[6A Wash. Prac. Series WPI 330.21](#), Workplace Harassment--General.

[9A Wash. Prac. Series § 23.11](#), Complaint for Sexual Discrimination, Damages, Injunctive Relief, and Class Action.

[16A Wash. Prac. Series § 24.1](#), Overview of Washington Anti-Discrimination Laws.

[16A Wash. Prac. Series § 24.8](#), Sex Discrimination and Sexual Harassment.

[16A Wash. Prac. Series § 24.10](#), Hostile Work Environment--Sexual Harassment.

UNITED STATES SUPREME COURT

Employment discrimination, definition of employer based on number of employees, employment relationship test, see [Walters v. Metropolitan Educational Enterprises, Inc., U.S.111.1997, 117 S.Ct. 660, 519 U.S. 202, 136 L.Ed.2d 644](#), on remand [111 F.3d 133](#).

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1. Validity

Fact that law against discrimination exempted from its coverage employers with fewer than eight employees did not violate State Constitution's privileges and immunities clause; state had substantial interest in well-being of small business and could have concluded that burdening many employers to benefit few employees was not, on balance, of sufficient public benefit to offset burden. [Griffin v. Eller \(1996\) 130 Wash.2d 58, 922 P.2d 788](#), reconsideration denied. [Civil Rights 1105](#); [Constitutional Law 2877](#)

Employee's interest in being free of discrimination was important, but class of small employers, or persons employed by them, was neither suspect nor semisuspect, and thus rational basis test would be applied to employee's allegation that law against discrimination violated State Constitution's privileges and immunities clause by exempting employers with fewer than eight employees. [Griffin v. Eller \(1996\) 130 Wash.2d 58, 922 P.2d 788](#), reconsideration denied. [Constitutional Law 2877](#)

Washington state legislature's retroactive application of amendment adding statutory definition for "disability" to Washington Law Against Discrimination did not violate state constitution's separation of powers doctrine, and therefore amended definition applied to terminated firefighter's employment discrimination claim against county fire prevention district and related officials, rendering improper district court's instruction to jury defining disability and warranting remand by Court of Appeals, on appeal from adverse judgment on such claim, for further proceedings. [Moore v. King County Fire Protection Dist. No. 26, C.A.9 \(Wash.\)2009, 327 Fed.Appx. 5, 2009 WL 886354](#), Unreported. [Civil Rights 1106](#); [Constitutional Law 2382](#); [Federal Courts 947](#)

2. In general

The public accommodations provisions of the Washington Law Against Discrimination (WLAD) reach the membership policies of organizations. [Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles \(2002\) 148 Wash.2d 224, 59 P.3d 655](#), certiorari denied [123 S.Ct. 2221, 538 U.S.](#)

1057, 155 L.Ed.2d 1107. [Civil Rights 1044](#); [Civil Rights 1050](#)

3. Exemptions--Nonprofit religious organizations

Nonprofit religious employers were exempt from all provisions of Washington Law Against Discrimination (LAD), and LAD limited jurisdiction of Washington State Human Rights Commission (WSHRC) to claims covered by LAD, and thus, WSHRC did not have subject matter jurisdiction over former employee's charge that employer, a nonprofit religious organization, sexually harassed and retaliated against her, and thus, even though Equal Employment Opportunity Commission (EEOC) regulation listed WSHRC as a Fair Employment Practice agency without exception for any particular charge, 180-day deadline for filing of EEOC charge applied, as prerequisite to Title VII action against employer, rather than 300-day deadline applicable when person aggrieved instituted proceedings with State or local agency with authority to grant or seek relief. [MacDonald v. Grace Church Seattle, C.A.9 \(Wash.\)2006, 457 F.3d 1079. Civil Rights 1114](#); [Civil Rights 1507](#); [Civil Rights 1707](#)

4. ---- Private organizations, exemptions

The Washington Law Against Discrimination (WLAD) requires a fraternal organization to be distinctly private in order to qualify for a statutory exemption from the WLAD's definition of public accommodation. [Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles \(2002\) 148 Wash.2d 224, 59 P.3d 655, certiorari denied 123 S.Ct. 2221, 538 U.S. 1057, 155 L.Ed.2d 1107. Civil Rights 1050](#)

Factors that serve as framework for determining whether an institute, club, or place of accommodation is distinctly private, as statutory basis for exemption from Washington Law Against Discrimination (WLAD), include the organization's: (1) size; (2) purpose; (3) policies; (4) selectivity; (5) public services offered; (6) practices, e.g., whether women and nonmembers participate in activities and how the admission of women would affect the members' rights of association; and (7) other characteristics pertinent to a particular case. [Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles \(2002\) 148 Wash.2d 224, 59 P.3d 655, certiorari denied 123 S.Ct. 2221, 538 U.S. 1057, 155 L.Ed.2d 1107. Civil Rights 1050](#)

When determining whether an institute, club, or place of accommodation is distinctly private, as statutory basis for exemption from Washington Law Against Discrimination (WLAD), emphasis should be placed on whether the organization is a business or a commercial enterprise and whether its membership policies are so unselective and unrestricted that the organization can fairly be said to offer its services to the public. [Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles \(2002\) 148 Wash.2d 224, 59 P.3d 655, certiorari denied 123 S.Ct. 2221, 538 U.S. 1057, 155 L.Ed.2d 1107. Civil Rights 1050](#)

Fraternal organization that excluded new female members was not "distinctly private," and thus, the organization did not qualify for statutory exemption from the Washington Law Against Discrimination's (WLAD) definition of public accommodation; organization and its members supported and undertook benevolent social causes and projects, welcoming brochure stated that each member owed one new member to his chapter each year and that large membership roll made it possible for organization to charge small dues, and organization's membership department created recruitment and incentive programs to increase membership rolls. [Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles \(2002\) 148 Wash.2d 224, 59 P.3d 655](#)

, certiorari denied 123 S.Ct. 2221, 538 U.S. 1057, 155 L.Ed.2d 1107. [Civil Rights 1050](#)

Fraternal organizations are “distinctly private” under Washington's law against discrimination (WLAD), and are thus excluded from WLAD's coverage. [Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie, Fraternal Order of Eagles \(2001\) 108 Wash.App. 208, 27 P.3d 1254, review granted 145 Wash.2d 1033, 43 P.3d 20, reversed 148 Wash.2d 224, 59 P.3d 655, certiorari denied 123 S.Ct. 2221, 538 U.S. 1057, 155 L.Ed.2d 1107. Civil Rights 1050](#)

5. ---- Small businesses, exemptions

Taking the statute prohibiting employment discrimination as a whole, the exception for small businesses is a narrow exception to the statute's broad public policy to eliminate all discrimination in employment. [Brown v. Scott Paper Worldwide Co. \(2001\) 143 Wash.2d 349, 20 P.3d 921. Civil Rights 1111](#)

6. Employer

City's anti-discrimination ordinance conflicted with Washington's Law Against Discrimination insofar as it defined “employer” to include a religious nonprofit organizations, and thus was unenforceable against such organizations. [City of Tacoma v. Franciscan Foundation \(1999\) 94 Wash.App. 663, 972 P.2d 566. Municipal Corporations 592\(1\); Municipal Corporations 626](#)

Employers of fewer than eight persons are exempt from private causes of action under Law Against Discrimination. [Anaya v. Graham \(1998\) 89 Wash.App. 588, 950 P.2d 16. Civil Rights 1111](#)

Person's employment relationship with employer determines whether that person is employed for purposes of Law Against Discrimination's threshold requirement that employer employ at least eight persons before it may be subject to private suit under the Law; to this end, whether person's name is on employer's payroll for pertinent period is effective means of demonstrating whether person has employment relationship on day an alleged unfair employment practice is alleged to have occurred. [Anaya v. Graham \(1998\) 89 Wash.App. 588, 950 P.2d 16. Civil Rights 1111](#)

Employer who had seven full-time employees and one part-time employee on its payroll, at time it removed company computer from employee's home and then terminated her, employed eight persons and, therefore, was subject to private suit under Law Against Discrimination, though some of those employees did not actually work on dates of the alleged unfair practices. [Anaya v. Graham \(1998\) 89 Wash.App. 588, 950 P.2d 16. Civil Rights 1111](#)

For purposes of including part-time employee in eight-employee threshold necessary under Law Against Discrimination for employer to be subject to private suit, inquiry is same as for full-time employee: did individual have employment relationship with employer on date in question, as demonstrated by payroll? [Anaya v. Graham \(1998\) 89 Wash.App. 588, 950 P.2d 16. Civil Rights 1110; Civil Rights 1111](#)

Employers of fewer than eight employees are exempt from remedies provided in law against discrimination. [Griffin v. Eller \(1996\) 130 Wash.2d 58, 922 P.2d 788](#), reconsideration denied. [Civil Rights 1111](#)

Fact that law against discrimination exempted from its coverage employers with fewer than eight employees did not violate State Constitution's privileges and immunities clause; state had substantial interest in well-being of small business and could have concluded that burdening many employers to benefit few employees was not, on balance, of sufficient public benefit to offset burden. [Griffin v. Eller \(1996\) 130 Wash.2d 58, 922 P.2d 788](#), reconsideration denied. [Civil Rights 1105](#); [Constitutional Law 2877](#)

Corporation conducting rental car business was “employer” for purposes of statute prohibiting employment discrimination, even though corporation had only one shareholder. [Patten v. Ackerman \(1993\) 68 Wash.App. 831, 846 P.2d 567](#), reconsideration denied, review denied [122 Wash.2d 1004, 859 P.2d 602](#). [Civil Rights 1111](#)

Organization which operated nursing home was not equitably estopped from asserting religious organization exemption defense from antidiscrimination laws in wrongful discharge claim, where organization at all times held itself out to employee as religious organization and employee's personal statement indicated that she believed that organization was Christian organization. [Farnam v. CRISTA Ministries \(1991\) 116 Wash.2d 659, 807 P.2d 830](#). [Estoppel 52\(8\)](#)

Definition of “employer” found in Washington's Law Against Discrimination [[§ 49.60.040](#)] does not apply outside that chapter so as to bar an implied cause of action under unfair employment practice statute [[§ 49.44.090](#)] or public policy wrongful discharge tort claims when such claims are advanced by employees of a firm and employing fewer than eight persons. [Bennett v. Hardy \(1990\) 113 Wash.2d 912, 784 P.2d 1258](#). [Civil Rights 1111](#)

Credit union founded in connection with a popular trend in the Roman Catholic Church to financially aid members was not a “religious or sectarian organization” within meaning of exception in provision of this section defining employer, and therefore was an “employer” subject to law against discrimination. [Hazen v. Catholic Credit Union \(1984\) 37 Wash.App. 502, 681 P.2d 856](#), review denied. [Civil Rights 1114](#)

7. Employee

Plaintiff resident-worker at commitment center operated by Department of Social and Health Services (DSHS), who was in custody awaiting civil commitment trial regarding possible classification as sexually violent predator and pending the outcome of his criminal sentence appeal, was not an “employee,” for purposes of plaintiff's claim under Washington Law Against Discrimination (WLAD), relating to plaintiff's allegations that his supervisor in commitment center's maintenance department treated him inappropriately, including making racially derogatory comments; while plaintiff's work at commitment center was optional, paid, and supervised, he was a pretrial detainee attempting to adapt to life, and the primary goal of his work was to maintain a healthy lifestyle and to promote good habits. [Calhoun v. State \(2008\) 146 Wash.App. 877, 193 P.3d 188](#), as amended. [Civil Rights 1116\(1\)](#)

Other than to state that term “employee” does *not* include person employed by his or her parents, spouse, or

child, or one who is in domestic service of any person, term “employee” is not further defined in law against discrimination, and Supreme Court thus would presume that legislature intended the word to mean what it did at common law, as limited by the statute. [Marquis v. City of Spokane \(1996\) 130 Wash.2d 97, 922 P.2d 43. Civil Rights 1110](#)

Relatives of sole shareholder of corporation, working in corporation's rental car business, would be counted in determining whether corporation employed eight or more persons, as required in order for statute prohibiting employment discrimination to apply; there was no basis for excluding such individuals from the count. [Patten v. Ackerman \(1993\) 68 Wash.App. 831, 846 P.2d 567, reconsideration denied, review denied 122 Wash.2d 1004, 859 P.2d 602. Civil Rights 1111](#)

Officer and sole shareholder of corporation engaged in rental car business would be considered “employee” of corporation for purposes of determining whether employment discrimination law requirement of eight employees was satisfied; officer was involved in daily management of enterprise. [Patten v. Ackerman \(1993\) 68 Wash.App. 831, 846 P.2d 567, reconsideration denied, review denied 122 Wash.2d 1004, 859 P.2d 602. Civil Rights 1110; Civil Rights 1111](#)

8. Independent contractor

Common law distinguishes between employees and independent contractors, based primarily on degree of control exercised by employer/principal over manner of doing work involved. [Marquis v. City of Spokane \(1996\) 130 Wash.2d 97, 922 P.2d 43. Labor And Employment 29](#)

Human Rights Commission was within its authority in promulgating rule stating that protection of law against discrimination extended to independent contractors; regulation did not create new protected class because independent contractor would still have to show that he or she was member of protected class as delineated in statute, and regulation was consistent with legislative purpose behind statute, in light of statute's broad mandate to Commission to prevent and eliminate discrimination. [Marquis v. City of Spokane \(1996\) 130 Wash.2d 97, 922 P.2d 43. Civil Rights 1110](#)

9. Person

Credit union, which had allegedly terminated plaintiff's credit union membership because he assisted with discrimination suit brought by credit union employees, was “person” prohibited from discriminating under Washington Law Against Discrimination (WLAD) anti-retaliation provision. [Galbraith v. TAPCO Credit Union \(1997\) 88 Wash.App. 939, 946 P.2d 1242, amended on reconsideration, review denied 135 Wash.2d 1006, 959 P.2d 125. Civil Rights 1737](#)

“Political or civil subdivision,” comprehended in word “person,” includes **school** district. [Washington State Bd. Against Discrimination v. Board of Directors, Olympia School Dist. No. 1 \(1966\) 68 Wash.2d 262, 412 P.2d 769.](#)

10. Place of public accommodation

“Public accommodation,” from which plaintiffs in civil rights action must establish that they did not receive treatment comparable to level of designated services provided to individuals without disabilities, as required to make out prima facie case of discrimination, extends to places and facilities, not to services; question of what constitutes place of “public accommodation” is appropriately question of fact for trier of fact. [Fell v. Spokane Transit Authority \(1996\) 128 Wash.2d 618, 911 P.2d 1319](#), reconsideration denied. [Civil Rights 1044](#); [Civil Rights 1750](#)

In proceeding in which issue was whether country club discriminated against woman on basis of her marital status in violation of [§ 49.60.222](#), which makes it unfair practice for any person to refuse to engage in real estate transaction with another because of marital status, when she was denied membership in country club, which membership carried with it right to exclusive possession, use, and occupancy of club-owned lot, because she was living with man without being married, trial court properly determined that country club's private character was not outcome determinative issue under present statute. [McFadden v. Elma Country Club \(1980\) 26 Wash.App. 195, 613 P.2d 146](#). [Civil Rights 1050](#)

Barbershop serving public is “place of public accommodation” within meaning of this statute, which defines such term for purposes of law against discrimination. [In re Johnson \(1967\) 71 Wash.2d 245, 427 P.2d 968](#). [Civil Rights 1049](#)

The Legislature mandated not only a liberal interpretation of the Washington Law Against Discrimination (WLAD), it also intended a liberal reading of what constitutes a “public accommodation” under the WLAD. [Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles \(2002\) 148 Wash.2d 224, 59 P.3d 655](#), certiorari denied [123 S.Ct. 2221, 538 U.S. 1057, 155 L.Ed.2d 1107](#). [Civil Rights 1004](#); [Civil Rights 1044](#)

11. Service animal

Under statute prohibiting discrimination against disabled person who uses service animal, there must be some evidence of individual training to set the service animal apart from the ordinary pet. [Timberlane Mobile Home Park v. Washington State Human Rights Com'n \(2004\) 122 Wash.App. 896, 95 P.3d 1288](#). [Civil Rights 1021](#)

Disabled mobile home park resident's dog, which alerted others when resident became incapacitated with severe migraines, but which had not been trained to assist resident, was not “service animal” under statute prohibiting discrimination against disabled persons who use service animal. [Timberlane Mobile Home Park v. Washington State Human Rights Com'n \(2004\) 122 Wash.App. 896, 95 P.3d 1288](#). [Civil Rights 1083](#)

Service dog of Medicaid applicant, who had mental disability, was not durable medical equipment (DME) under administrative code provision defining DME, and thus applicant was not entitled to reimbursement for expenses incurred by service dog; no relevant definition of “service animal” characterized service animals as equipment either explicitly or implicitly, provisions pertaining to DME made no reference to life forms when listing items

that were included or excluded as DME, and drafters of the governing administrative code regulations knew of service animal concept and could have specifically included “service animal reimbursement” had they intended that DME include service animal expenses. [Burnham v. State Dept. Of Social And Health Services \(2003\) 115 Wash.App. 435, 63 P.3d 816](#), review denied [150 Wash.2d 1013, 79 P.3d 445](#). Health 478

Prosthetic devices, under administrative code provision defining devices as prescribed to prevent or correct physical deformity or malfunction, needed to correct physical deformity or malfunction, and thus service dog of Medicaid applicant who had mental disability was not prosthetic device entitling applicant to reimbursement for its expenses; “physical” modified both “deformity” and “malfunction,” in its definition of “artificial limb,” provision referred to definition of “prosthetic device,” and “artificial limb” unquestionably meant physical device, list of prosthetic devices set forth in provision was replete with manufactured items, and none of the statutes or administrative code provisions that defined service animal characterized them as prosthetics. [Burnham v. State Dept. Of Social And Health Services \(2003\) 115 Wash.App. 435, 63 P.3d 816](#), review denied [150 Wash.2d 1013, 79 P.3d 445](#). Health 478

12. Disability

Legislature's retroactive amendment of Law Against Discrimination to create a definition of “disability” which specifically rejected the definition of “disability” Supreme Court had adopted in prior decision did not violate separation of powers doctrine; legislature was careful not to reverse Supreme Court's decision and did not threaten the independence or integrity or invade the prerogative of the judicial branch. [Hale v. Wellpinit School Dist. No. 49 \(2009\) 165 Wash.2d 494, 198 P.3d 1021](#). Civil Rights 1006; Constitutional Law 2384

Former **school** district employee's hearing impairment was not a sensory, mental, or physical abnormality that substantially limited her ability to perform her job at **school**, as required to establish a prima facie case of discrimination, where her hearing impairment did not substantially limit her ability to assist in kitchen or wash dishes. [Townsend v. Walla Walla School Dist. \(2008\) 147 Wash.App. 620, 196 P.3d 748](#). Civil Rights 1218(3)

Former **school** district employee's hearing impairment was a qualified disability under both former and current version of statute that would make failure of employer to accommodate employee's disability a cause of action; impairment existed even when mitigated by hearing aids, and limited major life activities such as effective communication. [Townsend v. Walla Walla School Dist. \(2008\) 147 Wash.App. 620, 196 P.3d 748](#). Civil Rights 1218(3)

13. Prima facie discrimination case

Even if former **school** district employee could establish that her hearing impairment substantially limited her ability to do her job, employer's accommodation of her impairment would prevent former employee from establishing prima facie case of discrimination; employer asked co-workers to take precaution to look at former employee so she could lip-read and tap her on the shoulder to get her attention, investigated and resolved conflict with her supervisor, and by granted former employee's transfer requests within the district. [Townsend v. Walla Walla School Dist. \(2008\) 147 Wash.App. 620, 196 P.3d 748](#). Civil Rights 1225(3)

An employee's prima facie case for discrimination based on an employer's failure to accommodate consists of four elements: (1) the employee had a sensory, mental, or physical abnormality that substantially limited his or her ability to perform the job; (2) the employee was qualified to perform the essential functions of the job in question; (3) the employee gave the employer notice of the abnormality and its accompanying substantial limitations; and (4) upon notice, the employer failed to affirmatively adopt measures that were available to the employer and medically necessary to accommodate the abnormality. [Townsend v. Walla Walla School Dist. \(2008\) 147 Wash.App. 620, 196 P.3d 748. Civil Rights 1225\(1\)](#)

West's RCWA 49.60.040, WA ST 49.60.040

Current with all 2009 legislation

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