
HOUSE BILL 2186

State of Washington

61st Legislature

2009 Regular Session

By Representative Williams

Read first time 02/12/09. Referred to Committee on Judiciary.

1 AN ACT Relating to public policy; amending RCW 49.60.210 and
2 49.60.120; reenacting and amending RCW 49.60.040; and creating new
3 sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 protect employees who are acting in furtherance of public policy.
7 Current case law is in a state of disorder and a clear rule of law will
8 ensure equitable access within the courts. This act creates a cause of
9 action, separate from the common law tort of wrongful discharge,
10 protecting against employee termination for actions opposing employer
11 violations of public policy. The intended result is to encourage
12 employees to act to protect policy by removing the risk of employer
13 retaliation. Illustrative examples of activities that are protected by
14 this act include, but are not limited to, opposing unlawful action by
15 employers, attending jury duty, testifying in court, reporting crimes
16 to law enforcement or misconduct to regulatory agencies, voting,
17 claiming workers' compensation benefits, and opposing unsafe conditions
18 in the workplace.

1 **Sec. 2.** RCW 49.60.210 and 1992 c 118 s 4 are each amended to read
2 as follows:

3 (1) It is an unfair practice for any employer, employment agency,
4 labor union, or other person to discharge, expel, or otherwise
5 discriminate against any person because he or she has opposed any
6 practices forbidden by this chapter, or because he or she has filed a
7 charge, testified, or assisted in any proceeding under this chapter, or
8 because he or she has engaged, or is believed to have engaged or will
9 engage, in activity protected by public policy. The availability of
10 any other right or remedy, or mechanism for protecting public policy,
11 does not affect the relief available under this section.

12 (2) It is an unfair practice for a government agency or government
13 manager or supervisor to retaliate against a whistleblower as defined
14 in chapter 42.40 RCW.

15 **Sec. 3.** RCW 49.60.040 and 2007 c 317 s 2 and 2007 c 187 s 4 are
16 each reenacted and amended to read as follows:

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

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

26 (2) "Commission" means the Washington state human rights
27 commission.

28 (3) "Employer" includes any person acting in the interest of an
29 employer, directly or indirectly, who employs eight or more persons,
30 and does not include any religious or sectarian organization not
31 organized for private profit.

32 (4) "Employee" does not include any individual employed by his or
33 her parents, spouse, or child, or in the domestic service of any
34 person.

35 (5) "Labor organization" includes any organization which exists for
36 the purpose, in whole or in part, of dealing with employers concerning

1 grievances or terms or conditions of employment, or for other mutual
2 aid or protection in connection with employment.

3 (6) "Employment agency" includes any person undertaking with or
4 without compensation to recruit, procure, refer, or place employees for
5 an employer.

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

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

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

19 (10) "Any place of public resort, accommodation, assemblage, or
20 amusement" includes, but is not limited to, any place, licensed or
21 unlicensed, kept for gain, hire, or reward, or where charges are made
22 for admission, service, occupancy, or use of any property or
23 facilities, whether conducted for the entertainment, housing, or
24 lodging of transient guests, or for the benefit, use, or accommodation
25 of those seeking health, recreation, or rest, or for the burial or
26 other disposition of human remains, or for the sale of goods,
27 merchandise, services, or personal property, or for the rendering of
28 personal services, or for public conveyance or transportation on land,
29 water, or in the air, including the stations and terminals thereof and
30 the garaging of vehicles, or where food or beverages of any kind are
31 sold for consumption on the premises, or where public amusement,
32 entertainment, sports, or recreation of any kind is offered with or
33 without charge, or where medical service or care is made available, or
34 where the public gathers, congregates, or assembles for amusement,
35 recreation, or public purposes, or public halls, public elevators, and
36 public washrooms of buildings and structures occupied by two or more
37 tenants, or by the owner and one or more tenants, or any public library
38 or educational institution, or schools of special instruction, or

1 nursery schools, or day care centers or children's camps: PROVIDED,
2 That nothing contained in this definition shall be construed to include
3 or apply to any institute, bona fide club, or place of accommodation,
4 which is by its nature distinctly private, including fraternal
5 organizations, though where public use is permitted that use shall be
6 covered by this chapter; nor shall anything contained in this
7 definition apply to any educational facility, columbarium, crematory,
8 mausoleum, or cemetery operated or maintained by a bona fide religious
9 or sectarian institution.

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

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

18 (13) "Dwelling" means any building, structure, or portion thereof
19 that is occupied as, or designed or intended for occupancy as, a
20 residence by one or more families, and any vacant land that is offered
21 for sale or lease for the construction or location thereon of any such
22 building, structure, or portion thereof.

23 (14) "Sex" means gender.

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

31 (16) "Aggrieved person" means any person who: (a) Claims to have
32 been injured by an unfair practice in a real estate transaction; or (b)
33 believes that he or she will be injured by an unfair practice in a real
34 estate transaction that is about to occur.

35 (17) "Complainant" means the person who files a complaint in a real
36 estate transaction.

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

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

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

21 (21) "Covered multifamily dwelling" means: (a) Buildings
22 consisting of four or more dwelling units if such buildings have one or
23 more elevators; and (b) ground floor dwelling units in other buildings
24 consisting of four or more dwelling units.

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

28 (23) "Dog guide" means a dog that is trained for the purpose of
29 guiding blind persons or a dog that is trained for the purpose of
30 assisting hearing impaired persons.

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

34 (25)(a) "Disability" means the presence of a sensory, mental, or
35 physical impairment that:
36 (i) Is medically cognizable or diagnosable; or
37 (ii) Exists as a record or history; or
38 (iii) Is perceived to exist whether or not it exists in fact.

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

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

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

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

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

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

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

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

32 (26) "Honorably discharged veteran or military status" means a
33 person who is:

34 (a) A veteran, as defined in RCW 41.04.007; or

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

38 (27)(a) "Activity protected by public policy" means:

1 (i) Engaging in conduct or communication, whether or not work
2 related, which the employee reasonably believed would further public
3 policy;

4 (ii) Refraining from engaging in conduct or communication, whether
5 or not work related, which the employee reasonably believed would
6 hinder public policy; or

7 (iii) Being regarded as having engaged in or intending to engage in
8 conduct or communication described in (a)(i) or (ii) of this
9 subsection.

10 "Public policy" includes policies reflected in a Constitution,
11 statute, rule, ordinance, governmental code, executive order, judicial
12 decision, or standard of a licensed profession.

13 (b) "Activity protected by public policy" includes, but is not
14 limited to, the following:

15 (i) Reporting or opposing employer or employee behavior that
16 violates, or that the person reasonably believes violates, public
17 policy;

18 (ii) Performing a public duty or obligation;

19 (iii) Exercising a legal right or privilege; or

20 (iv) Acting to prevent danger to life or avoid serious injury or
21 illness.

22 **Sec. 4.** RCW 49.60.120 and 2007 c 187 s 5 are each amended to read
23 as follows:

24 The commission shall have the functions, powers, and duties:

25 (1) To appoint an executive director and chief examiner, and such
26 investigators, examiners, clerks, and other employees and agents as it
27 may deem necessary, fix their compensation within the limitations
28 provided by law, and prescribe their duties.

29 (2) To obtain upon request and utilize the services of all
30 governmental departments and agencies.

31 (3) To adopt, amend, and rescind suitable rules to carry out the
32 provisions of this chapter, and the policies and practices of the
33 commission in connection therewith.

34 (4) To receive, impartially investigate, and pass upon complaints
35 alleging unfair practices as defined in this chapter, except that it
36 shall have no jurisdiction over allegations regarding activity
37 protected by public policy as defined in RCW 49.60.040.

1 (5) To issue such publications and results of investigations and
2 research as in its judgment will tend to promote good will and minimize
3 or eliminate discrimination because of sex, sexual orientation, race,
4 creed, color, national origin, marital status, age, honorably
5 discharged veteran or military status, or the presence of any sensory,
6 mental, or physical disability, or the use of a trained dog guide or
7 service animal by a person with a disability.

8 (6) To make such technical studies as are appropriate to effectuate
9 the purposes and policies of this chapter and to publish and distribute
10 the reports of such studies.

11 (7) To cooperate and act jointly or by division of labor with the
12 United States or other states, with other Washington state agencies,
13 commissions, and other government entities, and with political
14 subdivisions of the state of Washington and their respective human
15 rights agencies to carry out the purposes of this chapter. However,
16 the powers which may be exercised by the commission under this
17 subsection permit investigations and complaint dispositions only if the
18 investigations are designed to reveal, or the complaint deals only
19 with, allegations which, if proven, would constitute unfair practices
20 under this chapter. The commission may perform such services for these
21 agencies and be reimbursed therefor.

22 (8) To foster good relations between minority and majority
23 population groups of the state through seminars, conferences,
24 educational programs, and other intergroup relations activities.

25 NEW SECTION. **Sec. 5.** This act is remedial in nature, is necessary
26 to resolve confusion in the law, and is effective as to claims filed on
27 or after the effective date of this act.

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