

FINAL BILL REPORT

EHB 2020

C 349 L 19

Synopsis as Enacted

Brief Description: Exempting the disclosure of names in employment investigation records.

Sponsors: Representatives Dolan, Kretz, Doglio, Stanford, Slatter, Klippert, Davis, Hudgins, Macri, Jinkins, Morgan, Frame and Ormsby.

House Committee on State Government & Tribal Relations
Senate Committee on State Government, Tribal Relations & Elections

Background:

The Washington Law Against Discrimination (WLAD) prohibits discrimination based on a protected characteristic in employment, public accommodations, and real estate, credit, or insurance transactions. With respect to employment, it is an "unfair practice" under the WLAD to take certain actions because of a person's protected characteristics. Those actions are:

- refusing to hire;
- discharging or barring from employment;
- discriminating in compensation or other terms or conditions of employment; or
- including limitations in employment advertisements or inquiries.

Protected characteristics under the WLAD are race, creed, color, national origin, sex, veteran or military status, sexual orientation, and disability.

The primary federal law that prohibits employment discrimination is Title VII of the Civil Rights Act of 1964 (Title VII), which precludes employers from refusing to hire, discharging, or otherwise discriminating in compensation or other terms or conditions of employment because of an employee's protected characteristics. Title VII also prohibits employers from limiting, segregating, or classifying employees or applicants in a way that deprives an individual of employment opportunities or otherwise adversely affects an employee's status because of protected characteristics. Protected characteristics under Title VII are race, color, religion, sex, or national origin. Federal law also prohibits discrimination in employment under the Age Discrimination in Employment Act and the Americans With Disabilities Act.

In 1985 the Washington Supreme Court held in *Glasgow v. Georgia-Pacific Corporation* that sexual harassment in the workplace is an unfair practice prohibited by the WLAD when it affects the terms or conditions of employment and is imputed to the employer. Harassment is

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imputed to the employer when an owner, manager, partner, or corporate officer personally participates in it, or when the employer knew or should have known of the harassment and failed to take prompt and adequate corrective action. Similarly, the United States Supreme Court held in *Meritor Savings Bank v. Vinson* in 1986 that sexual harassment in the workplace is discrimination because of sex in violation of Title VII when it creates a hostile or abusive work environment.

State agencies in Washington are required to develop and disseminate their own policies to define and prohibit sexual harassment among their employees. Agencies must also include procedures that describe how the agency will address concerns, including appropriate sanctions and disciplinary action.

The Public Records Act (PRA) generally requires state and local agencies to make many government records available to the public upon request. There are, however, over 500 statutory exemptions for certain records or information contained in records.

One exemption to disclosure is for investigative records compiled by a state or local agency, acting as an employer, in connection with an investigation of an unfair employment practice or a violation of federal, state, or local laws prohibiting employment discrimination. This exemption is temporary, however; information is exempt from disclosure only while the investigation is active and ongoing.

Another exemption to disclosure is for salary and benefit information for maritime employees collected for the Marine Employees' Commission salary survey. Until 2010, the Maritime Employees' Commission collected salary and benefit information from maritime employees to publish a document comparing wages, hours, benefits, and conditions of employment of ferry employees in Washington to similar employees in other west coast states. Beginning in 2010, the salary survey has been conducted by the Office of Financial Management. The salary survey is used to guide collective bargaining and arbitration.

Summary:

After an employer-agency has notified the complaining employee of the outcome of the investigation, records of the investigation may be disclosed under the PRA only if the names of complainants, other accusers, and witnesses are redacted. Those names may be disclosed, however, if the person consents to disclosure. The employer-agencies must notify complainants, other accusers, and witnesses that their name will be redacted from the investigation records unless they consent to disclosure.

The exemption for investigative records is expanded to include investigations into violations of an agency's internal harassment and discrimination policies.

The exemption for salary and benefit information for maritime employees collected for the Marine Employees' Commission salary survey is eliminated.

Votes on Final Passage:

House 97 1

Senate	45	1	(Senate amended)
House	98	0	(House concurred)

Effective: July 28, 2019