

Are LGBTQ+ Washingtonians protected from workplace discrimination and harassment?

The Supreme Court will decide whether federal workplace rights extend to LGBTQ+ people in 2020.

The issue is whether Title VII of the Civil Rights Act protects LGBTQ+ people in the workplace. The court has the power to say whether or not the current law protects all LGBTQ+ folks across the nation. The cases will almost definitely not affect any state laws that protect LGBTQ+ individuals, like the Washington Law Against Discrimination.

There are several possible outcomes, some of which may affect your workplace rights.

A Really Good Result. If the court rules that Title VII does protect LGBTQ+ individuals, then LGBTQ+ Washingtonians will be protected from employment discrimination both at the state and federal level. This is like the current situation: Washington state laws prohibit LGBTQ+ employment discrimination, and Washington’s federal courts currently interpret Title VII to include LGBTQ+ individuals.

A Not-Great Result. If the court rules that Title VII does NOT protect LGBTQ+ individuals, then LGBTQ+ Washingtonians will still be protected by Washington state law, even though we are not protected by federal law. While this would not affect your workplace rights under state law, it could have an impact on other things that state law does not cover, like certain health insurance plans, or impact employers who may believe the court’s decision gives them the right to discriminate.

A Mixed Result. The court could also make a more nuanced ruling. It could, for example, rule that trans individuals are protected by the current law while bisexual, lesbian, and gay people are not—or vice versa. While this might seem like an odd result, it is still entirely possible because there are multiple cases being heard: one about anti-trans discrimination and two others about anti-gay discrimination.

What are workplace “protections”?

“Protections” generally mean that employers are not allowed to harass or discriminate against employees and job seekers based on a “protected” identity. Commonly known “protected” identities include race, disability, religion, and national origin.

Discrimination generally means different treatment that was motivated by bias against one or more protected identities. For example, if an employer pays women of color less than other similarly qualified workers, systematically fails to promote qualified women of color, or punishes women of color more harshly than other workers, then they are probably discriminating against women of color.

Harassment is slightly different. It means severe or pervasive offensive conduct. Common examples include unwanted touching (sexual harassment), verbal abuse or slurs related to protected groups, or violent threats.

What is Discrimination and Harassment for LGBTQ+ people?

If the court rules that LGBTQ+ people are a “protected” category under federal civil rights law, it would be illegal to discriminate against us—like how it is illegal to discriminate against people of color.

Under current Washington law, LGBTQ+ discrimination and harassment might include the examples mentioned above (failure to promote, pay discrimination, unevenly harsh punishment, sexual harassment, verbal abuse, and violent threats).

There are also some types of discrimination and harassment that are specific to LGBTQ+ people. Under the Washington Law Against Discrimination, for example, requiring someone to use a restroom inconsistent with their gender expression or gender identity qualifies as discrimination.¹ Similarly, intentionally misgendering someone, “out”-ing someone, or asking them unwanted personal questions about their sexual orientation or gender identity is harassment under Washington law.²

What to do if you are being discriminated against or harassed at work:

Educating yourself, paying attention, and connecting with resources can help. Private employment attorneys may be willing to take your case. Government agencies and nonprofits may also be able to help.

How to Advocate for Yourself

- When encountering harassment or discrimination, try to remain calm (even though it’s hard, and unfair). Use very clear language expressing your objections, like “I don’t like that,” “I don’t think that’s funny,” or “I feel uncomfortable.”
- If you have a coworker or supervisor that is affirming of your sexual orientation or gender identity, or if your workplace has an LGBTQ+ affinity group, you may want to ask them for help.
- Keep a journal of discriminatory or harassing things. Include what happened, who you told, and what the result was. It will probably not feel good, but it will help you by giving you a place to keep information until you decide what you want to do. Keep your journal private.
- Review a copy of your workplace policy handbook and look for your employer’s procedures for reporting discrimination. If you don’t have a copy of your handbook, request one from Human Resources or a supervisor. Even if you do not believe the procedures will be followed, or you don’t agree with them, it’s still important that you use the process your employer has laid out.
- Write an email to your Human Resources representative, union officers, or supervisor, or report the discrimination using your employer’s process. Make sure you clearly explain the issues you are having. Include dates, times, what was said, and who else was present. Make sure you focus on how the discrimination or harassment is harming your ability to do your job, and clearly explain how it is related to your sexual orientation or gender identity; do not assume your employer will get there on their own.
- If the discrimination or harassment continues, or if you begin to experience retaliation after you make your report, continue to document in your journal, and continue to report to human resources or a supervisor.
- At **any** point in this process, reach out to QLaw Foundation or another legal resource for help.

Government Resources

- Washington Human Rights Commission Complaint Portal: <https://www.hum.wa.gov/file-complaint>
- Equal Opportunity Employment Commission's Complaint Filing Portal: <https://www.eeoc.gov/how-file-charge-employment-discrimination>

Non-Profit Resources

- QLaw Foundation's LGBTQ+ Legal Clinic: <https://www qlawfoundation.org/lgbtq-legal-clinic.html>
- Lavender Rights Project: <https://www.lavenderrightsproject.org/contact>
- Ingersoll Gender Center: <https://ingersollgendercenter.org/resources/support-request-form/>

Educational Resources

- Washington Law Help Articles on Employment Discrimination: <https://www.washingtonlawhelp.org/issues/employment-farm-worker-rights/discrimination>
- EEOC Summary of Cases supporting LGBTQ+ protections under our current laws: <https://www.eeoc.gov/wysk/examples-court-decisions-supporting-coverage-lgbt-related-discrimination-under-title-vii>
- Washington Human Rights Commission's Guide to Sexual Orientation and Gender Identity Discrimination and WLAD: <https://www.hum.wa.gov/sites/default/files/public/publications/Updated%20SO%20GI%20Guide.pdf>
- Washington Administrative Code on Sexual Orientation and Gender Identity under WLAD: <https://app.leg.wa.gov/wac/default.aspx?cite=162-32>
- Washington Law Against Discrimination: <https://apps.leg.wa.gov/rcw/default.aspx?cite=49.60>

The information contained in this document is not legal advice. If you have questions about the rights outlined in this resource or have experienced health care discrimination and would like to consult with a lawyer about your situation, please make an appointment at QLaw Foundation's free LGBTQ+ Legal Clinic at www.qlawfoundation.org or by calling 206-235-7235.