

WASHINGTON STATE HUMAN RIGHTS COMMISSION

Internal Guidance on Citizenship and Immigration Status



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The Washington State Human Rights Commission enforces the Washington Law Against Discrimination (WLAD). The WLAD prohibits discrimination in the areas of employment, public accommodation, housing, credit and insurance on the basis of race, color, creed, national origin, citizenship or immigration status, age (in employment), sex (including pregnancy), disability, use of a trained dog guide or service animal, sexual orientation, gender identity, honorably discharged veteran and military status (in employment, credit, housing, and public accommodation), marital status (in employment, credit, insurance, housing), family status (in housing), or status as a breastfeeding mother (in public accommodation), or in retaliation for opposing discrimination.

Background:

The Washington State Legislature passed “An Act Related to Discrimination Based on Citizenship or Immigration Status.” These are new protected classes in the WLAD. The law goes into effect on June 11, 2020.

Neither citizenship nor immigration status is defined in the law. The Merriam-Webster Dictionary defines citizenship as “the status of being a citizen.” Citizen is defined as “a member of a state” and “a native or naturalized person who owes allegiance to a government and is entitled to protection from it.” Immigration is defined as “travel into a country for the purpose of permanent residence there.”

There are one million immigrants in Washington state; one in every seven people here is an immigrant. Immigrants make up a significant part of the state’s workforce at approximately 17%. There are 17,000 Deferred Action of Childhood Arrival (DACA) recipients in Washington as well as over 20,000 international college students. Some of these individuals are citizens of the U.S. and many are not citizens. These individuals will represent many different types of immigration statuses; there are people who intend to become citizens, people who are permanent residents, people who are here seasonally and intend to return to their country of origin, people here who are undocumented, people here on work or student visas, and many other scenarios.

In early 2017, Governor Inslee signed Executive Order 17-01, to reaffirm Washington’s commitment to tolerance, diversity and inclusiveness. State agencies are to provide services, as allowed by law, to all persons regardless of their citizenship or immigration status. State services are not to be provided on the condition of proving citizenship or immigration status, except when required by law. Agencies are not to collect information from the public or customers regarding a person’s immigration or citizenship status or place of birth, except as required by federal or state law or state agency policy; information collected from the public is limited to that necessary to perform agency duties. No agency can inquire into, or request specific documents, in order to ascertain a person’s immigration status for the sole purpose of identifying if a person has complied with federal civil immigration laws.

Enforcement:

Covered entities cannot discriminate against a person or give preference to a person because they are a native born citizen, a naturalized citizen, are not a citizen, or are in the process of becoming a citizen. Likewise, covered entities cannot discriminate against a person or give preference to a person because they are an immigrant, because they were born in the United States, because they intend to become a citizen or permanent resident, or because they intend to return to their country of origin.

Enforcement of anti-discrimination law based on citizenship and immigration status will be similar to enforcement based on national origin. As a practice the Human Rights Commission broadly defined national origin as including whether someone was born in the U.S. (and thus a citizen of the United States) or another country (and thus either a naturalized citizen or not a citizen). Also included under national origin was whether or not someone was originally from the U.S. or immigrated here (either seasonally or with intent to reside here permanently.)

Employment

In employment, an employer cannot make hiring, termination, promotional, layoff, or disciplinary decisions based on an employee's citizenship or immigration status (see exceptions below). An employer cannot subject an employee to an adverse employment action due to an employee's citizenship or immigration status (see exceptions below). An employer must take prompt and remedial action if the employer is put on notice that an employee is being subject to a hostile work environment (harassment) due to citizenship or immigration status (no exceptions).

Housing

A housing provider cannot deny housing to an otherwise qualified tenant (see exceptions below), demand a higher security deposit or rent, demand cash payments, or otherwise treat a person or family differently due to citizenship or immigration status. A housing provider cannot threaten to call ICE if a tenant makes a complaint about conditions of the dwelling. A housing provider cannot refuse to make repairs or delay repairs due to a tenant's citizenship or immigration status. A housing provider must take action if it is put on notice that a person is being harassed by another tenant due to their citizenship or immigration status.

In addition, if a prospective tenant cannot provide a social security number to a housing provider during the screening process, the housing provider should accept alternative ways of screening the tenant. There are a number of alternative documents that the housing provider can use during the tenant screening process to verify identification. These include, but are not limited to, a foreign passport, citizenship or consulate card, INS form I-864 Sponsorship verification, Certificate of Naturalization, resident card, military card, school ID or driver's license. To establish past rental history, an applicant

could provide utility records, information from a former landlord, or a copy of a past lease. To show ability to pay, an applicant can provide bank records, pay stubs, paid utility bills, or a letter from an employer. A housing provider should not require a higher security deposit or charge more in rent if the tenant cannot be screened through the provider's usual methods. A housing provider must also be consistent about the type of screening they are doing; a person who may not be a citizen or may be an immigrant cannot be subject to more rigorous screening processes than another applicant.

Place of Public Accommodation

A place of public accommodation cannot deny admission to its premises or otherwise deny equal treatment to a person based on perceived citizenship or immigration status. An employee of a place of public accommodation cannot threaten to call ICE or other law enforcement on a customer because of that customer's citizenship or immigration status, or perceived citizenship or immigration status.

A covered entity cannot demand proof of someone's citizenship status or (birth certificate, passport, consular report of birth abroad, certificate of naturalization, or certificate of citizenship) or deny equal treatment due to citizenship status. Likewise, it cannot ask about a person's immigration status or deny equal treatment due to immigration status. (However, see exceptions below.)

Exceptions:

It is a federal requirement that every employer in the U.S. must verify that each new employee can be legally employed in the U.S. This means that all employers and new employees must fill out an I-9 Form and an employee must provide documentation to their employer that shows their identity and their authorization to work in the U.S. There are many documents that employees can produce to show identity and authorization to work.¹

If an employee cannot provide the required documents, provides false documents, or if the employer cannot verify the authenticity of the documents through E-Verify², the employer can legally refuse to hire them, or can terminate their employment. The employer must require documentation from all new employees, not just employees that they suspect of being undocumented or of not being U.S. citizens. Any employee or prospective employee who fails to provide appropriate documentation must be treated in a consistent manner with others in a similar situation. If an employee is fired at a later

¹ For a full list of the documents that can be used to show identify and authorization to work, see <https://www.uscis.gov/i-9-central/acceptable-documents>.

² E-Verify is a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the U.S. by electronically matching information provided by employees on the Form I-9 against records available to the Social Security Administration and the Department of Homeland Security)

time when it is discovered that the documentation provided was false or was not adequate, all employees in a similar situation must be treated in a similar manner.

Federal or state law or regulation, or government contracts, may require some employers to hire only U.S. citizens or persons with certain citizenship or immigration status for certain positions (an example may be specific positions with military contractors, or other positions requiring a security clearance.) For these positions, it would not be discrimination to inquire about citizenship status or to hire only U.S. citizens.

There may also be some programs within certain places of public accommodation (job training programs, educational programs) that are reserved for U.S. citizens or those with a particular immigration status (such as DACA recipients). If these restrictions are put into place through state or federal law or regulation, it would not be discrimination to inquire about citizenship or immigration status or to only allow those with certain a status into those positions.

Federal Housing Programs require proof of citizenship or eligible immigration status. If a person is applying for housing with a housing provider that is part of such a program, it would not be illegal to ask about citizenship or immigration status or for these documents that prove such status.

If you need additional information regarding discrimination issues, please contact the WSHRC at 360-753-6770 or 800-233-3247 (TTY 800-300-7525). Additional information on discrimination and other civil rights issues can be found on our website at www.hum.wa.gov. **This document is intended as general guidance does not constitute legal advice; if you have a particular situation about which you need legal advice, you should contact your attorney.**