

COMPLAINT AND INVESTIGATIONS CATEGORIES & DEFINITIONS

Categories (4): Civil Rights; Workplace Conduct; Work Performance; and External

CIVIL RIGHTS - Disparate treatment based on a persons protected status or protected activity in public service or employment		
Discrimination	Definition:	Unfavorable or unfair treatment of a person or class or persons in comparison to others who are not members of the protected class or are not perceived to be members of a protected class, or retaliation for complaints related to discrimination against a protected class. Discrimination as defined by the Human Rights Commission in Chapter 49.60 RCW can happen on the basis of age, sex, marital status, sexual orientation ¹ (heterosexuality, homosexuality, bisexuality, gender expression or identity), race, creed, color, national origin, genetic information, honorably discharged veteran or military status, or the presence of any sensory mental, or physical disability or the use of a trained guide or service animal by a person with a disability.
	Example:	An example would be disciplining or terminating an individual who is transgender or non-gender binary for not complying with expected gender norms in the workplace. Also a failure to offer or not attempting to offer a reasonable accommodation to an individual with a disability so they are able to perform the essential functions of their job.
Harassment	Definition:	Verbal, nonverbal, or physical conduct that threatens, intimidates, demeans, coerces or taunts another person (including sexual, racial or ethnic slurs) that interferes with the employee’s ability to perform their job.
	Example:	May include, but not limited to: egregious or repeated verbal abuse, such as the use of derogatory remarks, insults, and epithets; verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; or the gratuitous sabotage or undermining of a person's work performance. This can include bullying and other targeted disrespectful behavior based on an individual’s protected status. Impact should be given greater weight than intent.
Retaliation	Definition:	Adverse action(s) against individuals because they have reported instances of discrimination, harassment or allegations of such conduct, participated in or have been witnesses in any procedure to address a complaint of discrimination or harassment.

¹ Although typically discrimination based on the perception of an individual’s membership in a protected class would still be considered discrimination under the Washington Law against Discrimination, the court’s decision on the Davis vs. Fred’s Appliance Inc. case excluded the *perception* of a person’s sexual orientation from being covered by WLAD. See case here: <http://courts.mrsc.org/appellate/171wnapp/171wnapp0348.htm>.

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	Example:	May include: significant changes in behavior following report of civil rights violation; refusal to engage or cooperate; gratuitous sabotage or undermining of a person's work performance; or supervisor's increased scrutiny of work performance or behavior without reasonable cause.
Sexual Harassment	Definition	Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Although harassment that rises to the level of assault, rape or attempted rape is a crime, the employer also bears responsibility to investigate and address such allegations through an administrative process.
	Example:	An individual repeatedly tries to engage a co-worker in their sexual interest for the purpose of persuasion or personal interest in sexual favors.
WORKPLACE CONDUCT – Remarks or behavior in violation of established rules, or ethical standards of behavior in the workplace or off-duty		
Non-Discriminatory Harassment	Definition	Pervasive, egregious or repeated offensive remarks or behavior that can interfere with an individual's ability to perform their job duties but may not violate state and/or federal laws.
	Example:	May include: repeated infliction of insensitive remarks or actions that a reasonable person would find rude, intimidating, demeaning or humiliating, or the gratuitous sabotage or undermining of a person's work performance, also referred to as bullying or incivility.
Non-Discriminatory Retaliation	Definition	Revengeful or punitive acts toward an individual who disclosed or corroborated report of inappropriate workplace conduct that may not violate state and/or federal laws of discrimination.
	Example:	May include: significant change in behavior following report of inappropriate treatment or workplace conduct; refusal to engage or cooperate; gratuitous sabotage or undermining of a person's work performance; or supervisor's increased scrutiny of work performance or behavior without reasonable cause.
Policies & Established Rules	Definition	Violation of a written agency policy or established rules regarding workplace conduct and mandatory requirements.
	Example:	May include: ethics violations; safety violations; violations of drug & alcohol policies; misuse of state resources; and other (non-discriminatory) acts.
WORK PERFORMANCE – Failure to meet the performance standard; management-initiated actions		

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Coaching and Counseling	Definition	<u>Not tracked or referred for investigation.</u> Supervisory tool used for purposes of redirecting, correcting or improving work performance Not intended as disciplinary action or for placement in the personnel file.
	Example:	May include: written performance expectations, letter of counseling, corrective action plan or interim performance development plan evaluations.
Performance Issue	Definition	Work performance deficiencies or errors that are severe or pervasive, or failed attempts to improve performance standards and demonstrate required competencies to perform the work.
	Example:	May include: Showing a lack of effort or refusal to participate in corrective action; failing to meet performance goals: an employee who becomes disruptive to the work team; an employee who has purposefully altered information to misrepresent their volume of work or completion of assignments.
EXTERNAL – State, federal and local entities with independent authority to investigate. This list is not exhaustive, and in some cases, jurisdictions as well as the complaint categories may overlap. The examples provided represent only a sample of the most common scenarios.		
Law Enforcement Investigations	Definition	Allegations of criminal/misdemeanor behavior and possible violations of state or local laws.
	Examples:	May include: geographic (ex: Pierce County Sheriff), functional (ex: Secret Service for counterfeiting) or mixed jurisdictions, involving allegations of a criminal nature.
Civil Rights Investigations	Definition	Allegations of disparate treatment or unfair practices that are prohibited under local, state and/or federal law. These include discrimination, harassment, sexual harassment, and retaliation claims.
	Examples:	May include: Equal Employment Opportunity Commission and the Washington State Human Rights Commission. These two agencies, along with a number of smaller federal agencies (ex: Office of Civil Rights) and local agencies (ex: King County Civil Rights Office for employers in unincorporated King County) may investigate complaints regarding alleged civil rights violations.
Employment Practices	Definition	Alleged violation of local, state or federal laws regarding employment practices.
	Examples:	May include: Agencies empowered to investigate alleged violation of wage and hour laws, FLSA, FMLA, Unemployment Insurance, safety violations, and similar laws. These may be federal (ex: US Department of Labor), state (Department of Labor and Industries, Employment Security Department, etc.) or local (ex: City of SeaTac Ordinance Enforcement for minimum wage law).
Executive Ethics Board / State Auditor’s Office	Definition	Allegations of violation of Washington state Ethics law or other laws, typically generated through whistleblower reporting mechanisms, including specific protections for those who file complaints.

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	Examples:	May include: violations of the state ethics law (ex: misuse of state resources, accepting gifts, receiving special privileges, etc.). The State Auditor’s Office Whistleblower program investigates improper governmental actions, based on whistleblower complaints received from state employees.
Credentials: Licensures and Certifications	Definition	Allegations of practices or actions that violate standards for the license or certificate holder. Generally, the licensure is critical to the job function performed by the person holding the licensure/certification.
	Examples:	May include: a physician working for the state must have a valid physician’s license, and a semi-truck driver must possess a valid commercial driver’s license. For example, the Department of Licensing may investigate issues related to an individual’s driver’s license or commercial driver license, as well as a variety of other professional licenses; The Department of Health may investigate allegations affecting a registered nurse (or other health-care provider’s) license.