Chapter 49.44 RCW
VIOLATIONS—PROHIBITED PRACTICES

Sections

Blind persons or individuals with disabilities, discriminating against in public employment: RCW 70.84.080.

Discrimination—Unfair practices: RCW 49.60.180 through 49.60.200.

RCW 49.44.010 Blacklisting—Penalty. Every person in this state who shall wilfully and maliciously, send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who

shall wilfully and maliciously "blacklist" or cause to be "blacklisted" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall wilfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than three hundred sixty-four days, or by both such fine and imprisonment. [2011 c 96 § 42; 1899 c 23 § 1; RRS § 7599.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Interference with or discharge from employment of member of organized militia: RCW 38.40.040, 38.40.050.

RCW 49.44.020 Bribery of labor representative. Every person who shall give, offer, or promise, directly or indirectly, any compensation, gratuity, or reward to any duly constituted representative of a labor organization, with intent to influence him or her in respect to any of his or her acts, decisions or other duties as such representative, or to induce him or her to prevent or cause a strike by the employees of any person or corporation, shall be guilty of a gross misdemeanor. [2010 c 8 § 12036; 1909 c 249 § 424; RRS § 2676.]

RCW 49.44.030 Labor representative receiving bribe. Every person who, being the duly constituted representative of a labor organization, shall ask or receive, directly or indirectly, any compensation, gratuity, or reward, or any promise thereof, upon any agreement or understanding that any of his or her acts, decisions, or other duties as such representative, or any act to prevent or cause a strike of the employees of any person or corporation shall be influenced thereby, shall be guilty of a gross misdemeanor. [2010 c 8 § 12037; 1909 c 249 § 425; RRS § 2677.]

RCW 49.44.040 Obtaining employment by false letter or certificate. Every person who shall obtain employment or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, shall be guilty of a misdemeanor. [1909 c 249 § 371; RRS § 2623.]

RCW 49.44.050 Fraud by employment agent. Every employment agent or broker who, with intent to influence the action of any person thereby, shall misstate or misrepresent verbally, or in any writing or advertisement, any material matter relating to the demand for labor, the conditions under which any labor or service is to be performed, the duration thereof or the wages to be paid therefor, shall be guilty of a misdemeanor. [1909 c 249 § 372; RRS § 2624.]

Discrimination—Unfair practices of employment agencies: RCW 49.60.200.

False advertising: RCW 9.04.010.

RCW 49.44.060 Corrupt influencing of agent. Every person who shall give, offer, or promise, directly or indirectly, any compensation, gratuity, or reward to any agent, employee, or servant of any person or corporation, with intent to influence his or her action in relation to his or her principal's, employer's, or master's business, shall be guilty of a gross misdemeanor. [2010 c 8 § 12038; 1909 c 249 § 426; RRS § 2678.]

RCW 49.44.080 Endangering life by refusal to labor. Every person who shall wilfully and maliciously, either alone or in combination with others, break a contract of service or employment, knowing or having reasonable cause to believe that the consequence of his or her so doing will be to endanger human life or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, shall be guilty of a misdemeanor. [2010 c 8 § 12039; 1909 c 249 § 281; RRS § 2533.]

Injunctions in labor disputes: Chapter 49.32 RCW.

Labor unions—Injunctions in labor disputes: RCW 49.36.015.

RCW 49.44.085 Provision requiring an employee to waive right to publicly pursue cause of action is unenforceable. A provision of an employment contract or agreement is against public policy and is void and unenforceable if it requires an employee to waive the employee's right to publicly pursue a cause of action arising under chapter 49.60 RCW or federal antidiscrimination laws or to publicly file a complaint with the appropriate state or federal agencies, or if it requires an employee to resolve claims of discrimination in a dispute resolution process that is confidential. [2018 c 120 § 1.]

RCW 49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions. It shall be an unfair practice:

(1) For an employer or licensing agency, because an individual is forty years of age or older, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: PROVIDED, That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of

employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the executive director of the Washington state human rights commission or the director of labor and industries through the division of industrial relations.

(2) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination respecting individuals forty years of age or older: PROVIDED, That nothing herein shall forbid a requirement of disclosure of birthdate upon any form of application for employment or by the production of a birth certificate or other sufficient evidence of the applicant's true age after an employee is hired.

Nothing contained in this section or in RCW 49.60.180 as to age shall be construed to prevent the termination of the employment of any person who is physically unable to perform his or her duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; nor shall anything in this section or in RCW 49.60.180 be deemed to preclude the varying of insurance coverages according to an employee's age; nor shall this section be construed as applying to any state, county, or city law enforcement agencies, or as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors. [1993 c 510 § 24; 1985 c 185 § 30; 1983 c 293 § 2; 1961 c 100 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Unfair practices, discrimination because of age: RCW 49.60.180 through 49.60.205.

RCW 49.44.100 Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty. (1) It shall be unlawful for any person, firm or corporation not directly involved in a labor strike or lockout to recruit and bring into this state from outside this state any person or persons for employment, or to secure or offer to secure for such person or persons any employment, when the purpose of such recruiting, securing or offering to secure employment is to have such persons take the place in employment of employees in a business owned by a person, firm or corporation involved in a labor strike or lockout, or to have such persons act as pickets of a business owned by a person, firm or corporation where a labor strike or lockout exists: PROVIDED, That this section shall not apply to activities and services offered by or through the Washington employment security department.

(2) Any person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 277; 1961 c 180 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

RCW 49.44.120 Requiring lie detector tests—Penalty. (1) It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: PROVIDED, That this section shall not apply to persons making application for employment with any law enforcement agency or with the juvenile court services agency of any county, or to persons returning after a break of more than twenty-four consecutive months in service as a fully commissioned law enforcement officer: PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

(2) Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

(3) Any person violating this section is guilty of a misdemeanor.

(4) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(5) Nothing in this section may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under this section for purposes of any civil action or injunctive relief. [2007 c 14 § 1; 2005 c 265 § 1; 2003 c 53 § 278; 1985 c 426 § 1; 1973 c 145 § 1; 1965 c 152 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

RCW 49.44.135 Requiring lie detector tests—Civil penalty and damages—Attorneys' fees. In a civil action alleging a violation of RCW 49.44.120, the court may:

(1) Award a penalty in the amount of five hundred dollars to a prevailing employee or prospective employee in addition to any award of actual damages;

(2) Award reasonable attorneys' fees and costs to the prevailing employee or prospective employee; and

(3) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of RCW 49.44.120 reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. [1985 c 426 § 3.]

RCW 49.44.140 Requiring assignment of employee's rights to inventions—Conditions. (1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates

(i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable.

(2) An employer shall not require a provision made void and unenforceable by subsection (1) of this section as a condition of employment or continuing employment.

(3) If an employment agreement entered into after September 1, 1979, contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work preformed [performed] by the employee for the employer. [1979 ex.s. c 177 § 2.]

RCW 49.44.150 Requiring assignment of employee's rights to inventions—Disclosure of inventions by employee. Even though the employee meets the burden of proving the conditions specified in RCW 49.44.140, the employee shall, at the time of employment or thereafter, disclose all inventions being developed by the employee, for the purpose of determining employer or employee rights. The employer or the employee may disclose such inventions to the department of employment security, and the department shall maintain a record of such disclosures for a minimum period of five years. [1979 ex.s. c 177 § 3.]

RCW 49.44.160 Public employers—Intent. The legislature intends that public employers be prohibited from misclassifying employees, or taking other action to avoid providing or continuing to provide employment-based benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

Chapter 155, Laws of 2002 does not mandate that any public employer provide benefits to actual temporary, seasonal, or part-time employees beyond the benefits to which they are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification. Public employers may determine eligibility rules for their own benefit plans and may exclude categories of workers such as "temporary" or "seasonal," so long as the definitions and eligibility rules are objective and applied on a consistent basis. Objective standards, such as control over the work and the length of the employment relationship, should determine whether a person is an employee who is entitled to employee benefits, rather than the arbitrary application of labels, such as "temporary" or "contractor." Common law standards should be used to determine whether a person is performing services as an employee, as a contractor, or as part of an agency relationship.

Chapter 155, Laws of 2002 does not modify any statute or policy regarding the employment of: Public employee retirees who are hired for postretirement employment as provided for in chapter 41.26, 41.32, 41.35, or 41.40 RCW or who work as contractors; or enrolled students who receive employment as student employees or as part of their education or financial aid. [2002 c 155 § 1.]

Construction—2002 c 155: "This act shall be construed liberally for the accomplishment of its purposes." [2002 c 155 § 3.]

Severability—2002 c 155: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 155 § 4.]

RCW 49.44.170 Public employers—Unfair practices—Definitions—Remedies. (1) It is an unfair practice for any public employer to:

(a) Misclassify any employee to avoid providing or continuing to provide employment-based benefits; or

(b) Include any other language in a contract with an employee that requires the employee to forgo employment-based benefits.

(2) The definitions in this subsection apply throughout chapter 155, Laws of 2002 unless the context clearly requires otherwise.

(a) "Employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. This definition shall be interpreted consistent with common law.

(b) "Employment-based benefits" means any benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

(c) "Public employer" means: (i) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and (ii) the state, state institutions, and state agencies. This definition shall be interpreted consistent with common law.

(d) "Misclassify" and "misclassification" means to incorrectly classify or label a long-term public employee as "temporary," "leased," "contract," "seasonal," "intermittent," or "part-time," or to use a similar label that does not objectively describe the employee's actual work circumstances.

(3) An employee deeming himself or herself harmed in violation of subsection (1) of this section may bring a civil action in a court of competent jurisdiction. [2002 c 155 § 2.]

Construction—Severability—2002 c 155: See notes following RCW 49.44.160.

RCW 49.44.180 Genetic screening. It shall be unlawful for any person, firm, corporation, or the state of Washington, its political subdivisions, or municipal corporations to require, directly or indirectly, that any employee or prospective employee submit genetic information or submit to screening for genetic information as a condition of employment or continued employment.

"Genetic information" for purposes of this chapter, is information about inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination. "Genetic information" for purposes of this chapter, does not include: (1) Routine physical measurements, including chemical, blood, and urine analysis, unless conducted purposefully to diagnose genetic or inherited characteristics; and (2) results from tests for abuse of alcohol or drugs. [2020 c 76 § 18; 2004 c 12 § 1.]

RCW 49.44.190 Noncompetition agreements for broadcasting industry employees—Restrictions—Trade secrets protected. (1) If an employee subject to an employee noncompetition agreement is terminated without just cause or laid off by action of the employer, the noncompetition agreement is void and unenforceable.

(2) Nothing in this section restricts the right of an employer to protect trade secrets or other proprietary information by lawful means in equity or under applicable law.

(3) Nothing in this section has the effect of terminating, or in any way modifying, any rights or liabilities resulting from an employee noncompetition agreement that was entered into before December 31, 2005.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Employee" means an employee of a broadcasting industry employer other than a sales or management employee.

(b) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations.

(c) "Employee noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees not to compete, either alone or as an employee of another, with the employer in providing services after termination of employment.

(d) "Broadcasting industry" means employers that distribute or transmit electronic signals to the public at large using television (VHF or UHF), radio (AM, FM, or satellite), or cable television technologies, or which prepare, develop, or create programs or messages to be transmitted by electronic signal using television, radio, or cable technology. [2005 c 176 § 1.]

RCW 49.44.200 Personal social networking accounts—Restrictions on employer access—Definitions. (1) An employer may not:

(a) Request, require, or otherwise coerce an employee or applicant to disclose login information for the employee's or applicant's personal social networking account;

(b) Request, require, or otherwise coerce an employee or applicant to access his or her personal social networking account in the employer's presence in a manner that enables the employer to observe the contents of the account;

(c) Compel or coerce an employee or applicant to add a person, including the employer, to the list of contacts associated with the employee's or applicant's personal social networking account;

(d) Request, require, or cause an employee or applicant to alter the settings on his or her personal social networking account that affect a third party's ability to view the contents of the account; or

(e) Take adverse action against an employee or applicant because the employee or applicant refuses to disclose his or her login information, access his or her personal social networking account in the employer's presence, add a person to the list of contacts associated with his or her personal social networking account, or alter the settings on his or her personal social networking account that affect a third party's ability to view the contents of the account.

(2) This section does not apply to an employer's request or requirement that an employee share content from his or her personal social networking account if the following conditions are met:

(a) The employer requests or requires the content to make a factual determination in the course of conducting an investigation;

(b) The employer undertakes the investigation in response to receipt of information about the employee's activity on his or her personal social networking account;

(c) The purpose of the investigation is to: (i) Ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or (ii) investigate an allegation of unauthorized transfer of an employer's proprietary information, confidential information, or financial data to the employee's personal social networking account; and

(d) The employer does not request or require the employee to provide his or her login information.

(3) This section does not:

(a) Apply to a social network, intranet, or other technology platform that is intended primarily to facilitate work-related information exchange, collaboration, or communication by employees or other workers;

(b) Prohibit an employer from requesting or requiring an employee to disclose login information for access to: (i) An account or service provided by virtue of the employee's employment relationship with the employer; or (ii) an electronic communications device or online account paid for or supplied by the employer;

(c) Prohibit an employer from enforcing existing personnel policies that do not conflict with this section;

(d) Prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law, or rules of self-regulatory organizations; or

(e) Apply to a background investigation in accordance with RCW 43.101.095. However, the officer must not be required to provide login information.

(4) If, through the use of an employer-provided electronic communications device or an electronic device or program that monitors an employer's network, an employer inadvertently receives an employee's login information, the employer is not liable for possessing the information but may not use the login information to access the employee's personal social networking account.

(5) For the purposes of this section and RCW 49.44.205:

(a) "Adverse action" means: Discharging, disciplining, or otherwise penalizing an employee; threatening to discharge,

discipline, or otherwise penalize an employee; and failing or refusing to hire an applicant.

(b) "Applicant" means an applicant for employment.

(c) "Electronic communications device" means a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices.

(d) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or other activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. "Employer" includes an agent, a representative, or a designee of the employer.

(e) "Login information" means a user name and password, a password, or other means of authentication that protects access to a personal social networking account. [2021 c 323 § 24; 2013 c 330 § 1.]

RCW 49.44.205 Violations of RCW 49.44.200—Civil action—Remedies. An employee or applicant aggrieved by a violation of RCW 49.44.200 may bring a civil action in a court of competent jurisdiction. The court may:

(1) Award a prevailing employee or applicant injunctive or other equitable relief, actual damages, a penalty in the amount of five hundred dollars, and reasonable attorneys' fees and costs; and

(2) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of RCW 49.44.200 reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. [2013 c 330 § 2.]

RCW 49.44.211 Prohibited nondisclosure and nondisparagement provisions—Retaliation by employer prohibited—Penalties—Construction. (1) A provision in an agreement by an employer and an employee not to disclose or discuss conduct, or the existence of a settlement involving conduct, that the employee reasonably believed under Washington state, federal, or common law to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or sexual assault, or that is recognized as against a clear mandate of public policy, is void and unenforceable. Prohibited nondisclosure and nondisparagement provisions in agreements concern conduct that occurs at the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises. Prohibited nondisclosure and nondisparagement provisions include those contained in employment agreements, independent contractor agreements, agreements to pay compensation in exchange for the release of a legal claim, or any other agreement between an employer and an employee.

(2) This section does not prohibit the enforcement of a provision in any agreement that prohibits the disclosure of the amount paid in settlement of a claim.

(3) It is a violation of this section for an employer to discharge or otherwise discriminate or retaliate against an employee for disclosing or discussing conduct that the employee reasonably believed to be illegal harassment, illegal discrimination, illegal retaliation, wage and hour violations, or sexual assault, that is recognized as illegal under state, federal, or common law, or that is recognized as against a clear mandate of public policy, occurring in the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises.

(4) It is a violation of this section for an employer to request or require that an employee enter into any agreement provision that is prohibited by this section.

(5) It is a violation of this section for an employer to attempt to enforce a provision of an agreement prohibited by this section, whether through a lawsuit, a threat to enforce, or any other attempt to influence a party to comply with a provision in any agreement that is prohibited by this section.

(6) This section does not prohibit an employer and an employee from protecting trade secrets, proprietary information, or confidential information that does not involve illegal acts.

(7) An employer who violates this section after June 9, 2022, is liable in a civil cause of action for actual or statutory damages of $10,000, whichever is more, as well as reasonable attorneys' fees and costs.

(8) For the purposes of this section, "employee" means a current, former, or prospective employee or independent contractor.

(9) A nondisclosure or nondisparagement provision in any agreement signed by an employee who is a Washington resident is governed by Washington law.

(10) The provisions of this section are to be liberally construed to fulfill its remedial purpose.

(11) As an exercise of the state's police powers and for remedial purposes, this section is retroactive from June 9, 2022, only to invalidate nondisclosure or nondisparagement provisions in agreements created before June 9, 2022, and which were agreed to at the outset of employment or during the course of employment. This subsection allows the recovery of damages only to prevent the enforcement of those provisions. This subsection does not apply to a nondisclosure or nondisparagement provision contained in an agreement to settle a legal claim. [2022 c 133 § 2.]

Intent—2022 c 133: "The legislature recognizes that there exists a strong public policy in favor of the disclosure of illegal discrimination, illegal harassment, illegal retaliation, wage and hour violations, and sexual assault, that is recognized as illegal under Washington state, federal, or common law, or that is recognized as against a clear mandate of public policy, that occurs at the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises. Nondisclosure and nondisparagement provisions in agreements between employers and current, former, prospective employees, and independent contractors have become routine and perpetuate illegal conduct by silencing those who are victims or who have knowledge of illegal discrimination, illegal harassment, illegal retaliation, wage and hour violations, or

sexual assault. It is the intent of the legislature to prohibit nondisclosure and nondisparagement provisions in agreements, which defeat the strong public policy in favor of disclosure." [2022 c 133 § 1.]

RCW 49.44.220 Prohibited acts with respect to an employee's participation or nonparticipation in an employee assistance program. (1)(a) It is unlawful for an employer to obtain individually identifiable information regarding an employee's participation in an employee assistance program. Individually identifiable information gathered in the process of conducting an employee assistance program must be kept confidential.

(b) Subsection (1)(a) of this section does not apply to:

(i) Authorized disclosures under RCW 41.04.730;

(ii) Disclosures to an employer regarding an employee's attendance in an employee assistance program, which the employee was required to attend as a condition of continued employment; and

(ii) [(iii)] Disclosures that are:

(A) Made to prevent or lessen a perceived threat to the health or safety of an individual or the public; or

(B) Permitted or required under RCW 18.225.105, 70.02.050, or 71.05.120.

(2) An employee's participation or nonparticipation in an employee assistance program must not be a factor in a decision affecting an employee's job security, promotional opportunities, corrective or disciplinary action, or other employment rights. [2022 c 11 § 1.]

RCW 49.44.230 Searches of employee personal vehicles. (1) Except as provided in subsection (2) of this section:

(a) An employer or an employer's agent may not search the privately owned vehicles of employees located on the employer's parking lots or garages or located on the access road to the employer's parking lots or garages.

(b) An employee may possess any of the employee's private property within the employee's vehicle, unless possession of such property is otherwise prohibited by law.

(c) An employer must not require, as a condition of employment, that an employee or prospective employee waive the protections of (a) or (b) of this subsection.

(2) This section does not apply:

(a) To vehicles owned or leased by an employer;

(b) To lawful searches by law enforcement officers;

(c) When the employer requires or authorizes the employee to use the employee's personal vehicle for work-related activities and the employer needs to inspect the vehicle to ensure the vehicle is suited to conduct the work-related activities;

(d) When a reasonable person would believe that accessing vehicles of an employee is necessary to prevent an immediate threat to human health, life, or safety;

(e) When an employee consents to a search of his or her privately owned vehicle by the business owner, owner's agent, or a licensed private security guard based on probable cause that the employee unlawfully possesses: (i) Employer property; or (ii) a controlled substance in violation of both federal law and the employer's written

policy prohibiting drug use. The employee's consent must be given immediately prior to the search, and the employer may not require that the employee waive consent as a condition of employment. Upon consent, the employee has the right to select a witness to be present for the search;

(f) To security inspections of vehicles on state and federal military installations and facilities;

(g) To vehicles located on the premises of a state correctional institution, as defined in RCW 9.94.049; or

(h) To specific employer areas subject to searches under state or federal law.

(3) For purposes of this section, the terms "probable cause" and "private property" have their usual meaning under state and federal law.

(4) An employer may not take any adverse action against an employee for exercising any right under this section. An adverse action means any action taken or threatened by an employer against an employee for exercising the employee's rights under this section, and may include, but are not limited to:

(a) Denying the use of, or delaying, wages or other amounts owed to the employee;

(b) Terminating, suspending, demoting, or denying a promotion;

(c) Reducing the number of work hours for which the employee is scheduled;

(d) Altering the employee's preexisting work schedule;

(e) Reducing the employee's rate of pay; and

(f) Threatening to take, or taking, action based upon the immigration status of an employee or an employee's family member. [2023 c 252 § 1.]

RCW 49.44.240 Discrimination based upon cannabis use—— Exceptions. ***(Effective January 1, 2024.)*** (1) It is unlawful for an employer to discriminate against a person in the initial hiring for employment if the discrimination is based upon:

(a) The person's use of cannabis off the job and away from the workplace; or

(b) An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

(2) Nothing in this section:

(a) Prohibits an employer from basing initial hiring decisions on scientifically valid drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites;

(b) Affects the rights or obligations of an employer to maintain a drug and alcohol free workplace, or any other rights or obligations of an employer required by federal law or regulation; or

(c) Applies to testing for controlled substances other than preemployment, such as postaccident testing or testing because of a suspicion of impairment or being under the influence of alcohol, controlled substances, medications, or other substances.

(3) This section does not apply to an applicant seeking:

(a) A position requiring a federal government background investigation or security clearance;

(b) A position with a general authority Washington law enforcement agency as defined in RCW 10.93.020;

(c) A position with a fire department, fire protection district, or regional fire protection service authority;

(d) A position as a first responder not included under (b) or (c) of this subsection, including a dispatcher position with a public or private 911 emergency communications system or a position responsible for the provision of emergency medical services;

(e) A position as a corrections officer with a jail, detention facility, or the department of corrections, including any position directly responsible for the custody, safety, and security of persons confined in those facilities;

(f) A position in the airline or aerospace industries; or

(g) A safety sensitive position for which impairment while working presents a substantial risk of death. Such safety sensitive positions must be identified by the employer prior to the applicant's application for employment.

(4)(a) This section does not preempt state or federal laws requiring an applicant to be tested for controlled substances. This includes state or federal laws requiring applicants to be tested, or the way they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or as required by a federal contract.

(b) Employers may require an applicant to be tested for a spectrum of controlled substances, which may include cannabis, as long as the cannabis results are not provided to the employer. Such policies are fully subject to subsection (1) of this section.

(5) For the purposes of this section, "cannabis" has the meaning provided in RCW 69.50.101. [2023 c 359 § 2.]

Finding—Intent—2023 c 359: "The legislature finds that the legalization of recreational cannabis in Washington state in 2012 created a disconnect between prospective employees' legal activities and employers' hiring practices. Many tests for cannabis show only the presence of nonpsychoactive cannabis metabolites from past cannabis use, including up to 30 days in the past, that have no correlation to an applicant's future job performance. Applicants are much less likely to test positive or be disqualified for the presence of alcohol on a preemployment screening test compared with cannabis, despite both being legally allowed controlled substances. The legislature intends to prevent restricting job opportunities based on an applicant's past use of cannabis." [2023 c 359 § 1.]

Effective date—2023 c 359: "This act takes effect January 1, 2024." [2023 c 359 § 3.]