

**WAC 296-123-020 Wage discrimination prohibited.** (1) Any employer in this state who discriminates in any way in providing compensation based on a person's gender, perceived gender, or membership or perceived membership in a protected class between similarly employed employees of the employer is guilty of a misdemeanor. If any employee receives less compensation because of discrimination on account of the person's gender, perceived gender, or membership or perceived membership in a protected class in violation of this section, that employee is entitled to the remedies in RCW 49.58.060 and 49.58.070 and associated rules. In such action, however, the employer shall be credited with any compensation which has been paid to the employee upon account.

(2) For purposes of this section, employees are similarly employed if the individuals work for the same employer, the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

(3) (a) Discrimination within the meaning of this section does not include a differential in compensation based in good faith on a bona fide job-related factor or factors that:

(i) Are consistent with business necessity;

(ii) Are not based on or derived from a gender-based differential and are not based on or derived from the employee being a member of a protected class; and

(iii) Account for the entire differential. More than one factor may account for the differential.

(b) Such bona fide factors include, but are not limited to:

(i) Education, training, or experience;

(ii) A seniority system;

(iii) A merit system;

(iv) A system that measures earnings by quantity or quality of production; or

(v) A bona fide regional difference in compensation levels.

(c) A differential in compensation based in good faith on a local government ordinance providing for a minimum wage different from state law does not constitute discrimination under this section.

(d) An individual's previous wage or salary history is not a defense under this section.

(e) The employer carries the burden of proof on these defenses.

(4) A person may file a complaint or bring an action under this chapter asserting discrimination based on the person's membership in more than one protected class.

[Statutory Authority: RCW 49.58.090. WSR 25-11-081, s 296-123-020, filed 5/21/25, effective 7/1/25.]