

Chapter 12.18
FAIR EMPLOYMENT PRACTICES

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12.18.010 Statement of purpose - findings. This chapter is an exercise of the police power of King County for the protection of the public welfare, health, peace and safety of the residents of King County and in fulfillment of the state Constitution. The King County council hereby finds and declares that practices of employment discrimination against any person on the basis of race, color, age, gender, marital status, sexual orientation, religion, ancestry, national origin, disability or use of a service or assistive animal by an individual with a disability constitute matters of local concern and are contrary to the public welfare, health, peace and safety of the residents of King County. (Ord. 15399 § 18, 2006: Ord. 7430 § 1, 1985).

12.18.013 Application of chapter. This chapter applies to King County if the county is acting as an employer. This chapter also applies to other employers, labor organizations and employment agencies acting in unincorporated King County. (Ord. 15399 § 19, 2006).

12.18.014 Liberal construction of chapter. This chapter shall be liberally construed for accomplishment of this chapter's policies and purposes. This chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation. Nothing in this chapter relating to gender-based discrimination affects the ability of an employer to require an employee to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of state or federal law, though an employer shall allow an employee to appear or dress consistently with the employee's gender identity. (Ord. 15399 § 20, 2006).

12.18.015 Effect of chapter on right to actions or pursuit of remedies. Nothing in this chapter shall be deemed to deny any persons the right to institute any action or to pursue any other available civil or criminal remedy for the violation of the person's civil rights. (Ord. 15399 § 21, 2006).

12.18.016 Effect of chapter on liability. Nothing in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of King County, or its officers or agents, for any injury or damage resulting from or by reason of any act or omission in connection with the implementation or enforcement of this chapter on the part of King County by its officers, employees or agents. (Ord. 15399 § 22, 2006).

12.18.017 Effect of chapter on statutes of limitation. Nothing in this chapter shall be construed to toll the statute of limitations for any claims under federal or state statute. (Ord. 15399 § 23, 2006).

12.18.018 Effect of chapter on actions by employer based solely upon job performance. Nothing in this chapter may be construed to prohibit or apply to actions directed against an employee taken in good faith by an employer based solely upon the job performance of the employee. (Ord. 15399 § 24, 2006).

12.18.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- A. "Age" means being eighteen years old or older.
- B. "Aggrieved person" includes a person who claims to have been injured by an unfair employment practice.
- C. "Charging party" means any person alleging an unfair employment practice under this chapter by filing a complaint with the office of civil rights.
- D.1. "Disability" means:
 - a. a physical or mental impairment that substantially limits one or more of a person's major life activities, either temporarily or permanently;
 - b. a person has a record of having such an impairment;
 - c. a person is regarded as having such an impairment; or
 - d. a person has any other condition that is a disability under the Washington state Law Against Discrimination, chapter 49.60 RCW, as it pertains to employment.
- 2. "Disability" does not include current, illegal use of a controlled substance, as defined in section 102 of 21 U.S.C. Sec.802 as it exists on April 16, 2006.

E. "Discrimination," "discriminate" or "discriminatory act" means any action or failure to act, whether by itself or as part of a practice, the effect of which is to adversely affect or differentiate between or among, individuals or groups of individuals, by reasons of race, color, age, gender, marital status, sexual orientation, religion, ancestry, national origin, disability or use of a service or assistive animal by an individual with a disability, unless based upon a bona fide occupational qualification.

F. "Employee" means any person who works for another in return for financial or other compensation, and does not include any individual employed by the individual's parents, spouse or child, or in the domestic service of any person.

G. "Employer" means King County or any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons in unincorporated King County, and includes neither any religious or sectarian organization not organized for private profit nor any governmental body other than King County.

H. "Employment agency" means any person who for compensation engages in recruiting, procuring, referral or placement of employees with an employer.

I. "Labor organization" means any organization existing for the purpose of:

1. Dealing with employers concerning grievances, terms or conditions of employment; or
2. Providing other mutual aid or protection in connection with employment.

J. "Marital status" means the presence or absence of a marital relationship and includes the status of married, separated, divorced, engaged, widowed, single or cohabiting.

K. "Party" includes the person making a complaint or upon whose behalf a complaint is made alleging an unfair employment practice, the person alleged or found to have committed an unfair employment practice and the office of civil rights.

L. "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers or groups of persons and includes King County.

M. "Respondent" means any person who is alleged to or found to have committed an unfair employment practice prohibited by this chapter.

N. "Service or assistive animal" means a dog guide, signal or hearing dog, seizure response dog, therapeutic companion animal or other animal that does work, performs tasks or provides medically necessary support for the benefit of an individual with a disability.

O. "Settlement discussions" or "conference, conciliation and persuasion" means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the charging party, the respondent and the office of civil rights.

P. "Sexual orientation" means heterosexuality, homosexuality, bisexuality and gender identity. As used in this definition, "gender identity" means having or being perceived as having a gender identity different from that traditionally associated with the sex assigned to that person at birth. Protection associated with "gender identity" includes self-image, appearance, behavior or expression. (Ord. 15399 § 25, 2006; Ord. 7430 § 2, 1985).

12.18.030 Unfair employment practices prohibited. It is an unfair employment practice and unlawful for any:

A. Employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;

B. Employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program or other occupational training program;

C. Employer, employment agency or labor organization to print, circulate or cause to be printed, published or circulated, any statement, advertisement or publication relating to employment or membership, or to use any form of application therefor, that indicates any discrimination unless based upon a bona fide occupational qualification;

D. Employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;

E. Employer, employment agency or a labor organization to retaliate by taking action against any person because that person:

1. Opposed any practice forbidden by this chapter;
2. Compiled or proposed to comply with this chapter or any order issued under this chapter; or
3. Filed a complaint, testified or assisted in any manner in any investigation, proceeding or hearing initiated under this chapter;

F. Publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the action is in violation of K.C.C. 12.18.030.C, or to segregate and separately designate advertisements as applying only to men or women unless the discrimination is based upon a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, enterprise or employment; and

G. Employer to prohibit any person from speaking in a language other than English in the workplace unless:

1. The employer can show that requiring employees speak only English at certain times is justified by business necessity; and
2. The employer informs employees of the requirement and the consequences of violating the requirement. (Ord. 15399 § 26, 2006: Ord. 9615 § 1, 1990: Ord. 7430 § 3, 1985).

12.18.040 Filing of a complaint.

A. A complaint alleging an unfair employment practice may be filed by:

1. Any aggrieved person;
2. A state, local or federal agency concerned with discrimination in employment, including the office of civil rights, if the agency has reason to believe that an unfair employment practice has been or is being committed; or
3. Any labor organization that has reason to believe that an unfair employment practice has been or is being committed.

B. A complaint alleging an unfair employment practice shall be in writing and signed by the charging party, and shall describe with particularity the unfair employment practice complained of, the location of the practice and the person alleged to have committed the unfair employment practice. The complaint must be filed with the office of civil rights within one hundred eighty days of the time of the alleged unfair employment practice or within one hundred eighty days of when the charging party, through exercise of due diligence, should have had notice or been aware of the occurrence. However, the office of civil rights shall not reject a complaint as insufficient because of failure to include all required information, if the office of civil rights determines that the complaint substantially meets the informational requirements necessary for processing.

C. Upon the receipt of a complaint, the office of civil rights shall serve upon the charging party notice acknowledging the filing.

D. The charging party or the office of civil rights may amend a complaint: to cure technical defects or omissions; to clarify and amplify allegations made in the complaint; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original complaint. For jurisdictional purposes, the amendments relate back to the date the original complaint was first filed. Either the charging party or the office of civil rights, or both, may amend a complaint for these reasons as a matter of right before service of notice of hearing on the matter, as provided under K.C.C. 12.18.070, and thereafter may amend a complaint only with permission of the hearing examiner, which permission shall be granted if justice will be served by the permission. All parties must be allowed time to prepare their cases with respect to additional or expanded allegations that the parties did not and could not have reasonably foreseen would be an issue at the hearing.

E. The charging party may also amend a complaint to include allegations of additional unrelated unfair employment practices that arose after filing of the original complaint. The charging party must file any amendments adding the allegations within one hundred eighty days of the time of the additional unfair employment practice or within one hundred eighty days of when the charging party, through exercise of due diligence, should have had notice or been aware of the additional discriminatory act, and before the issuance of findings of fact and a determination with respect to the original complaint by the office of civil rights. The amendments may be made at any time during the investigation of the original complaint if the office of civil rights will have adequate time to investigate the additional allegations and the parties will have adequate time to present the office of civil rights with evidence concerning the allegations before the issuance of findings of fact and a determination. (Ord. 15399 § 27, 2006; Ord. 7430 § 4, 1985).

12.18.050 Investigation of complaint.

A. Upon receipt of a complaint meeting the requirements of K.C.C. 12.18.040.C, the office of civil rights shall cause to be served or mailed, by certified mail, return receipt requested, a copy of the complaint to the respondent within twenty days after the filing of the complaint and shall promptly make an investigation of the complaint. Each respondent may file an answer to the complaint not later than twenty days after receipt of notice from the office of civil rights. If a respondent is unable to file a response within twenty days, the respondent may request an extension of time from the office of civil rights. The office of civil rights may grant the extension if good cause is shown.

B. The office of civil rights shall direct the investigation to ascertain the facts concerning the unfair employment practice alleged in the complaint and shall conduct the investigation in an objective and impartial manner.

C. During the investigation, the office of civil rights shall consider any statement of position or evidence with respect to the allegations of the complaint which the charging party or the respondent wishes to submit. A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsection A. of this section, to the person from the office of civil rights. The notice, in addition to meeting the requirements of subsection A. of this section, must explain the basis for the office of civil rights' belief that the person to whom the notice is addressed is properly joined as a respondent.

D. During the period beginning with the filing of the complaint and ending with the issuance of the findings of fact, the office of civil rights shall, to the extent feasible, engage in settlement discussions with respect to the complaint. Anything said or done in the course of the settlement discussions may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. A prefinding settlement agreement arising out of the settlement discussions must be an agreement between the respondent and the charging party and is subject to approval by the office of civil rights. Each prefinding settlement agreement is a public record. Failure to comply with the prefinding settlement agreement may be enforced under K.C.C. 12.18.080.

E. The office of civil rights shall seek the voluntary cooperation of all persons: to obtain access to premises, records, documents, individuals and other possible sources of information; to examine, record and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation. The office of civil rights may conduct discovery in aid of the investigation by the following methods or others: deposition upon oral examination or written questions; written interrogatories; requests for the production of documents or other evidence, for inspection and other purposes; physical and mental examinations; and requests for admissions. The office of civil rights may sign and issue subpoenas requiring the attendance and testimony of witnesses and the production of or access to evidence including books, records, correspondence, e-mail or documents in the possession or under the control of the person subpoenaed as are necessary for the investigation. The office of civil rights shall consult with the prosecuting attorney before issuing a subpoena under this section.

F. If an individual fails to obey a subpoena, or obeys a subpoena but refuses to testify if requested concerning any matter under investigation, the office of civil rights may invoke the aid of the prosecuting attorney, who may petition to the superior court for an order or other appropriate action necessary to secure enforcement of the subpoena. The petition shall:

1. Be accompanied by a copy of the subpoena and proof of service;
2. Set forth in what specific manner the subpoena has not been complied with; and
3. Ask for an order of the court to compel the witness to appear and testify or cooperate in the investigation of the unfair employment practice.

G. If the office of civil rights concludes at any time after the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the office of civil rights may invoke the aid of the prosecuting attorney, who may file a civil action for appropriate temporary, injunctive or preliminary relief pending final disposition of the case.

H. The office of civil rights shall reduce the results of the investigation to written findings of fact and make a finding that there either is or is not reasonable cause for believing that an unfair employment practice has been or is being committed.

I. If a finding is made that there is no reasonable cause, the finding shall be served on the charging party and respondent. Within thirty days after service of such a negative finding, the charging party may file a written request with the office of civil rights asking for reconsideration of the finding. The office of civil rights shall furnish the charging party with information regarding how to request reconsideration. The office of civil rights shall respond in writing within a reasonable time by granting or denying the request. (Ord. 15399 § 28, 2006; Ord. 7430 § 5, 1985).

12.18.060 Conference, conciliation and persuasion - orders.

A.1. If the office of civil rights makes the finding initially or on request for reconsideration that reasonable cause exists to believe that an unfair employment practice occurred, the office of civil rights shall endeavor to eliminate the unfair practice by conference, conciliation and persuasion which may include as a condition of settlement:

- a. elimination of the unfair employment practice;
- b. payment of back pay not in excess of the amount of monetary damage actually incurred;
- c. payment of other actual damages, including damages caused by emotional distress, humiliation and embarrassment;
- d. reinstatement;
- e. payment of attorneys' fees and costs;
- f. participation in training on fair employment laws; and
- g. such other requirements as may lawfully be agreed upon by the parties and the office of civil rights.

2. Any postfinding settlement agreement shall be reduced to writing and signed by all parties, with the approval of the office of civil rights. The office of civil rights shall then enter an order setting forth the agreement and furnish copies of the order to all affected parties. Each postfinding settlement agreement is a public record. Failure to comply with the postfinding agreement or order may be enforced under K.C.C. 12.18.080.

B.1. If the parties cannot reach agreement, the office of civil rights shall make a finding to that effect, incorporate the finding in the order and furnish a copy of the order to all affected parties. The order shall also include:

- a. a finding that an unfair employment practice occurred;
- b. the basis for the finding; and

c. an order requiring the respondent to cease and desist from the unfair practice and to take appropriate affirmative measures, which may include:

- (1) payment of back pay not in excess of the amount of monetary damage actually incurred;
- (2) payment of other actual damages, including damages caused by emotional distress, humiliation and embarrassment;
- (3) reinstatement;
- (4) payment of attorneys' fees and costs;
- (5) participation in training on fair employment laws; and
- (6) such other action as in the judgment of the office of civil rights will effectuate the purposes of this chapter, which may include the requirement for a report on the matter of compliance.

2. If the office of civil rights finds the respondent willfully or knowingly committed any unfair employment practice, the office of civil rights may further order the respondent to pay a civil penalty of up to one thousand dollars per violation, which penalty shall be paid to the King County treasury for deposit in the county general fund.

C. If the parties fail to reach an agreement for the elimination of any unfair employment practice in which the respondent is an executive department, division or office of the county, the King County executive may compel compliance by the executive department, division or office with any settlement agreement agreed to between any charging party and the office of civil rights. (Ord. 15399 § 29, 2006; Ord. 7430 § 6, 1985).

12.18.070 Hearing - appeal.

A.1. Any respondent or charging party, after by an order of the office of civil rights is made in accordance with K.C.C. 12.18.060.B, may request an appeal hearing before the hearing examiner by filing a written request for hearing within thirty days of the service of the order. The request for hearing shall be filed with the office of civil rights. The request for hearing must identify clearly and specifically:

- a. the errors that the appellant believes were made in the action or decision that is being appealed, or the procedural irregularities associated with that action or decision;
- b. specific reasons by the county's action should be reversed or modified; and
- c. the desired outcome of the appeal.

2. Unless the hearing examiner authorizes an amendment to the statement of appeal, the identification of errors and the statement of reasons for reversal or modification defines and limits the issues the examiner may consider.

B. Any order issued by the office of civil rights in accordance with procedures in this chapter becomes final thirty days after service of the order unless a written request for hearing is filed with the office of civil rights within the thirty-day period.

C. If the order of the office of civil rights is appealed, the hearing examiner shall conduct a hearing for the purpose of affirming, denying or modifying the order. There shall be a verbatim record kept of the hearing. The hearing examiner has such rule-making and other powers necessary for the conduct of the hearing as are specified by K.C.C. 20.24.170. The order of the office of civil rights shall not be presumed correct. The hearing examiner's decision shall be based upon a preponderance of the evidence. The hearing shall be conducted within a reasonable time after receipt of the request for appeal. Written notice of the time and place of the hearing shall be given at least ten days before the date of the hearing to each affected party and to the office of civil rights.

D. Each party may, among exercising other rights:

1. Call and examine witnesses on any matter relevant to the issues of the complaint;
2. Introduce documentary and physical evidence;
3. Cross-examine opposing witnesses on any matter relevant to the issues of the complaint;
4. Impeach any witness regardless of which party first called the witness to testify;
5. Rebut evidence against him or her; and
6. Represent himself or herself or be represented by anyone of his or her choice who is lawfully permitted to do so.

E. Following review of the evidence submitted, the hearing examiner presiding at the hearing shall enter written findings and conclusions and shall affirm or modify the order previously issued if the hearing examiner finds that a violation occurred. The hearing examiner shall reverse the order if the hearing examiner finds that a violation did not occur. The hearing examiner may grant as relief any relief that the office of civil rights could grant under K.C.C. 12.18.060.B. A copy of the hearing examiner's decision shall be delivered to all affected parties. The order of the hearing examiner is final unless reviewed by a court under K.C.C. 20.24.240.B. (Ord. 15399 § 30, 2006; Ord. 7430 § 7, 1986).

12.18.080 Enforcement by office of civil rights.

A. If the office of civil rights has reasonable cause to believe that a respondent breached a prefinding or postfinding settlement agreement executed under K.C.C. 12.18.050 or 12.18.060, or violated an order of the office of civil rights issued under K.C.C. 12.18.060 or an order of the hearing examiner issued in accordance with K.C.C. 12.18.070, the office of civil rights shall refer the matter to the prosecuting attorney for the filing of a civil action under subsection B. of this section for the enforcement of the agreement.

B. The prosecuting attorney may commence a civil action in superior court for appropriate relief with respect to a breach of a prefinding or postfinding settlement agreement executed under K.C.C. 12.18.050 or 12.18.060, or a violation of an order of the office of civil rights issued under K.C.C. 12.18.060 or an order of the hearing examiner issued under K.C.C. 12.18.070. This action may be commenced no later than ninety days after the referral of the alleged breach under subsection A. of this section. (Ord. 15399 § 31, 2006; Ord. 7430 § 8, 1985).

12.18.085 Enforcement by private persons.

A. An aggrieved person may commence a civil action in superior court not later than three years after the occurrence or termination of an alleged unfair employment practice or ninety days after a determination of reasonable cause is issued by the office of civil rights, whichever occurs last, to obtain appropriate relief with respect to the unfair employment practice.

B. A civil action may be filed under this section whether or not an administrative complaint has been filed under K.C.C. 12.18.040 and without regard to the status of such a complaint. However, if the office of civil rights obtained a prefinding or postfinding settlement or conciliation agreement with the consent of the aggrieved person, an action may not be filed under this section by the aggrieved person with respect to the alleged unfair employment practice that forms the basis for the complaint except for the purpose of enforcing the agreement. To preclude such a filing, the prefinding or postfinding settlement or conciliation agreement must include language that the aggrieved person knowingly waives any right to file a civil action based on the same alleged unfair employment practice.

C. Subject to subsection D. of this section, after the filing of a civil action involving the same claim or arising from the same facts and circumstances, whether under this chapter or similar law, the office of civil rights may administratively close a complaint of an unfair employment practice.

D. If a court dismisses a private cause of action without reaching the merits and on grounds that would not preclude pursuit of a complaint under this chapter, the charging party may request, within ninety days of the entry of the court's order of dismissal, that the office of civil rights reopen a previously filed case. Upon such a request, the office of civil rights may reopen a case that was administratively closed upon the filing of a civil action. If the office of civil rights closes a case based on a "no reasonable cause" finding, the case shall not be reopened except as provided through reconsideration under K.C.C. 12.18.050.

E. A charging party or aggrieved person may not secure relief from more than one governmental agency, instrumentality or tribunal for the same harm or injury.

F. An aggrieved person may not commence a civil action under this section with respect to an alleged unfair employment practice that forms the basis of a complaint if a hearing on the complaint has been convened under K.C.C. 12.18.070.

G. In a civil action under this section, if the court finds that a unfair practice occurred, the court may grant such relief as is available for violations of the Washington state Law Against Discrimination, chapter 49.60 RCW.

H. Upon timely application, the prosecuting attorney may intervene in the civil action if the prosecuting attorney determines that the case is of general public importance.

I. This section is intended to provide private judicial remedies for violations of this chapter that are as expansive as the powers granted by the Constitution and laws of the state of Washington. (Ord. 15399 § 17, 2006).

12.18.090 Authorization to implement procedures. The office of civil rights may implement such forms, administrative processes and operational procedures as are necessary to comply with this chapter. The forms, processes and procedures shall be adopted in compliance with K.C.C. chapter 2.98. (Ord. 15399 § 32, 2006: Ord. 7430 § 9, 1985).

12.18.095 Requirement to comply. King County shall include the requirement to comply with K.C.C. 12.18, as amended, in all contracts and agreements with recipients of grants and other funds through or from King County and with organizations which use King County buildings, facilities or property or which use property for which King County is responsible for capital improvements. (Ord. 9615 § 2, 1990).

12.18.097 Fair employment code compliance.

A. If a complaint filed under this chapter, office of civil rights shall initiate an investigation under this chapter.

B. If the office of civil rights determines that a violation of this chapter or any rules and regulations adopted under this chapter occurred, the office of civil rights shall issue an order in accordance with this chapter. For the enforcement of this chapter, if a conflict exists between this chapter and K.C.C. Title 23, this chapter controls over K.C.C. Title 23. (Ord. 15399 § 33, 2006: Ord. 13263 § 52, 1998).

12.18.100 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected. (Ord. 15399 § 34, 2006: Ord. 7430 § 10, 1985).