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**Documenting Discrimination on the Basis of Sexual Orientation
and Gender Identity in State Employment**

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Washington - Sexual Orientation and Gender Identity Law and Documentation of
Discrimination

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MEMORANDUM

From: Williams Institute
Date: September 2009
RE: **Washington – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

I. OVERVIEW

In 2006, the Washington legislature enacted a bill adding protection from discrimination based on sexual orientation and gender identity to its state civil rights law, initially passed in 1949.¹ Advocates had been trying to pass this legislation for 30 years, but were consistently met with strong opposition in the legislature.² The first bill protecting individuals from sexual orientation discrimination was introduced in Washington in 1977.³ In 1986, gay rights opponents in Washington introduced proposals that would ban gays and lesbians from working in schools and government offices. These proposals were defeated in committee.⁴

Opposition in the Senate to the 2006 anti-discrimination bill took a particularly negative tone. Two Washington Senators introduced an amendment, which they later withdrew, to clarify that “sexual orientation” does not include “bestiality, necrophilia, incest, adultery, pedophilia, or sadomasochism.”⁵ Senator Stevens used the term “labyrinth of perversion” to describe LGBT people.⁶ Senator Weinstein argued that this amendment was designed to “smear gays and lesbians” by implying that they participate in these types of behavior.⁷ Senator Benson expressed opposition to the bill on the ground that that “homosexuals don’t need protection” because they have “better education, nicer cars, and nicer homes” than most people.⁸ Senator Benton also opposed the bill on the ground that it would advance a “political agenda,” and argued that protecting behavior was a big mistake because, “who knows what other kinds of behavior the rest of society will be forced to tolerate.”⁹ Senator Oke said he cannot support the bill because it “endorses homosexuality” which he viewed as an “abomination to God.”¹⁰

¹ See ESHS 2661.

² See Chris McGann, *Gay Rights Highly Charged Political Issue*, SEATTLE POST-INTEL., May 7, 2005, at A1.

³ Chris McGann, *A Long-Awaited Win For Gay Rights-Senate OKs State Anti-Bias Bill*, SEATTLE POST-INTEL., Jan. 28, 2006, at A1 [hereinafter *A Long-Awaited Win*].

⁴ *Id.*

⁵ Wash. S.H.B. 2661 - Sen. Amend. 20 (2006) (introduced by Sens. Stevens & Hargrove, but later withdrawn).

⁶ Statement of Wash. Sen. Stevens, Wash. Sen. Fl. (Jan. 25, 2006).

⁷ Statement of Wash. Sen. Weinstein, Wash. Sen. Fl., (Jan. 25, 2006).

⁸ Statement of Wash. Sen. Benson, Wash. Sen. Financial Inst., Housing & Cons. Protection Comm. Statement (Jan. 24, 2006).

⁹ Statement of Wash. Sen. Benton, Wash. Sen. Financial Inst., Housing & Cons. Protection Comm. (Jan. 24, 2006).

¹⁰ Statement of Wash. Sen. Oke, Wash. Sen. Fl. (Jan. 27, 2006).

Senator Mulliken expressed concern that homosexuality would be taught in schools, stating that kindergartners would be subjected to the “promotion of a lifestyle not even preferred by those who live it.”¹¹ Ed Murray, the bill’s sponsor, tried to encourage support by highlighting derogatory comments made in 2005 by Lou Novak, the former president of the Puget Sound Rental Housing Association. While in the State House office building, Novak remarked, “[l]ooks like it’s anal-sex week” as a group from the Lifelong AIDS Alliance walked by.¹² After the Washington legislature passed the non-discrimination bill in 2006, opponents continued to fight it, launching a campaign to overturn it by referendum,¹³ but failed to collect the required number of signatures to put it on the ballot.¹⁴

Prior to 2006, several litigants in Washington state and federal courts attempted to bring sexual orientation and/or gender identity discrimination claims under federal or municipal laws. Since the bill went into effect, the state Human Rights Commission has received 20 complaints alleging sexual orientation and/or gender identity discrimination by public employers. The complaints have been filed against a wide range of state agencies, including the departments of corrections and of licensing and health care providers. Documented examples of discrimination on the basis of sexual orientation and gender identity by state and local governments in Washington include these complaints and several court cases:

- In *Smith*, a 2008 complaint to the Washington State Human Rights Commission, a gay male alleged employment discrimination based on sexual orientation. An employee of WorkSource Thurston County, a state agency that provides resources to job-seekers, alleged that his supervisor had treated him differently ever since she became aware of his sexual orientation. This supervisor allegedly restricted his work hours and deprived him of support staff. Smith also alleged that another coworker had made derogatory comments about his sexuality. The public employee alleged that he was asked if he had “personal relationships” with any of the customers that he served. The employee felt that he was being accused of soliciting sex from customers. He also alleged that he was being investigated for ethics violations concerning his partner’s interview at this workplace, even though he took no part in the selection process. The administrative disposition of this case was unavailable.¹⁵
- In *Spring*, a 2008 complaint to the Washington State Human Rights Commission, a transgender female alleged employment discrimination and harassment based on sexual orientation/gender identity. An employee of the Washington Department of Social & Health Services, she alleged that in a new employee orientation, her supervisor asked “what’s your real name? Robert or Roberta?” She also alleged

¹¹ Statement of Wash. Sen. Mulliken, Wash. Sen. Fl. (Jan. 27, 2006).

¹² Rebecca Cook, *Official Quits Over Anti-Gay Remarks*, SEATTLE TIMES, Mar. 4, 2005, at B3

¹³ Phuong Cat Le, *Anti-Bias Law Still At Risk – Initiative’s Failure Isn’t End of Opposition*, SEATTLE POST-INTEL., Jun.19, 2006, at B1.

¹⁴ See Referendum 65 (2006).

¹⁵ Wash. State Hum. Rights Comm’n Complaint, *Smith v. WorkSource Thurston County*, No. 34Ex-0238-08-9 (Sept. 3, 2008).

that her supervisor did nothing when she reported that she was being harassed by other employees. When she went home because of illness one day, her supervisor allegedly yelled: “I’m sick of your excuses. Get off the island.” The administrative disposition of this case was unavailable.¹⁶

- In a court case decided in 2008, an employee of the Snohomish County Center for Battered Women sued alleging that her supervisor created a hostile work environment by making racist and homophobic comments in violation of the state anti-discrimination law. The employee alleged that her supervisor once asked aloud why the domestic violence movement attracted so many lesbians and commented that she did not understand why “they” (the lesbians) “all had tattoos and dressed so poorly.” This supervisor later transferred one lesbian woman from her position, stating that she dressed poorly. The Court of Appeals held that no hostile work environment existed, noting that “that the supervisor’s allegedly discriminatory comments were not sufficiently severe and pervasive to alter the terms and conditions of Pedersen’s employment.” Pedersen v. Snohomish County Ctr. for Battered Women, 2008 Wash. App. LEXIS 1040 (Wash. Ct. App. May 5, 2008).
- In *Collins*, a 2007 complaint to the Washington State Human Rights Commission, an employee of the Washington Department of Corrections alleged employment discrimination based on sex and sexual orientation. She alleged that she was subjected to hostile treatment by subordinate staff and colleagues because of her sexual orientation. She alleged that a colleague told other staff that she was a lesbian who “hated men” and that male members of her staff would not get ahead working for her. When she complained about this colleague’s comments, she was told to “pick her battles wisely” and “take the high road.” She also alleged that one supervisor suggested that she use the men’s restroom instead of the women’s and another challenged her ability to manage her subordinates.¹⁷
- In *Day*, a 2007 complaint to the Washington State Human Rights Commission, a lesbian cook and driver who worked at the Economic Opportunity Commission alleged discrimination based on sexual orientation. She alleged that after she questioned her supervisor about pay discrepancies in the workplace, her supervisor said “don’t you make enough money for (female name of her partner)”? She alleged that she was treated differently by supervisors after this conversation. She was moved to a different worksite, avoided by supervisors, and not given timely updates about trainings.¹⁸
- In *McGlumphy*, a 2007 complaint to the Washington State Human Rights Commission, a lesbian truck driver employed by the Washington Department of

¹⁶ Wash. State Hum. Rights Comm’n Complaint, *Spring v. Wash. State Dep’t of Social & Health Svc’s*, No. 27EX-0186-08-9 (Aug. 22, 2008).

¹⁷ Wash. State Hum. Rights Comm’n Complaint, *Collins v. Wash. State Dep’t of Corr.*, No. 34ESX-0319-07-8 (Oct. 20, 2007).

¹⁸ Wash. State Hum. Rights Comm’n Complaint, *Day v. Economic Opp. Comm’n*, No. 06EX-0647-06-7 (Feb. 26, 2007).

Social and Health Services, alleged employment discrimination based on sex and sexual orientation. She alleged offensive and hostile environment in which employees are allowed to participate in making inappropriate comments about gays and lesbians. Her shift supervisor used the term “homo” and other employees made offensive jokes about a man stereotyped to be “gay.” Her employment was terminated on January 5, 2007.¹⁹

- In *Hayes*, a 2007 complaint to the Washington State Human Rights Commission, a lesbian operations assistant for the City of Tieton alleged employment discrimination based on sexual orientation. She alleged that when the Mayor of Tieton discovered she was a lesbian, the Mayor forbade her from going to City Hall to collect mail, making copies, and also was forbade from meter reading. Her request for a pay raise was also denied. She was the fired on August 23, 2006 and the official reason given was that she lied about requesting time off.²⁰
- In *Miller*, a 2006 complaint to the Washington State Human Rights Commission, an openly gay public safety officer at Washington University Harborview Medical Center alleged employment discrimination based on sex, sexual orientation and retaliation. The officer was subjected to constant verbal harassment by an administrator. He was called a “faggot” and other demeaning remarks related to his sexual preference. He alleged that the administrator made several attempts to sabotage his employment. He lodged an internal complaint, but the administrator continued to supervise him.²¹
- In a case decided in 2005, one member of a couple who were volunteer firefighters brought suit when his application to be a full-time firefighter was rejected. The couple began living together in early 2003 and were married in Canada in 2004. He filed his claim not as a sexual orientation discrimination claim, but a claim that he had suffered sex discrimination in violation of Title VII. A United States District Court did not accept his argument, finding that any discrimination based on the relationship of the two men would be sexual orientation discrimination, which is not actionable under Title VII. Haladay v. Thurston County Fire Dist. No. 1, 2005 WL 3320861 (W.D.Wash., Dec 7, 2005).
- In 2001, a lesbian brought an action against her former employer, a public hospital district, for wrongful termination based on sexual orientation under 42 U.S.C. section 1983 and the federal equal protection clause. Davis’s co-Plaintiff and her immediate supervisor, Nan Miguel, was terminated for opposing the hospital’s discriminatory treatment of Davis. The director of the radiology department at the hospital where Davis worked made several derogatory comments to her throughout the course of her employment. On a number of

¹⁹ Wash. State Hum. Rights Comm’n Complaint, *McGlumphy v. Wash. State Dep’t of Social & Health Svc’s*, No. 27ESX-0610-06-7 (Feb. 9, 2007).

²⁰ Wash. State Hum. Rights Comm’n Complaint, *Hayes v. City of Tieton*, No. 39EX-0365-06-7 (Oct. 30, 2006).

²¹ Wash. State Hum. Rights Comm’n Complaint, *Miller v. Univ. of Wash./Harbor View Med. Ctr.*, No. 17EXZ-0876-06-7 (May 29, 2007).

occasions, he called her a “fucking faggot,” a “fucking dyke,” and a “queer.” He also said “I don’t think that fucking faggot should be doing vaginal exams and I’m not working with her.” One time when she did not come to work, her department director remarked that it was gay pride week and “she was probably off marching somewhere.” When her supervisor sent a memo to an administrator objecting to the department director’s behavior, the hospital responded by reducing her hours to three-quarters time. She later filed a grievance against the hospital and copied information from patient files to show that her reduction in hours was the result of the department director’s animus toward her. The hospital later fired her and Miguel. The Washington Court of Appeals held that she had raised material issues of fact with respect to whether the hospital and the doctor were “state actors” under section 1983 and remanded the case for trial on Davis’s 1983 claims. The Court refused to find, however, that her discharge violated a clear mandate of Washington public policy, which at that time did not have a state law prohibiting sexual orientation discrimination.²² The hospital eventually settled with Davis for \$75,000.²³ Miguel v. Guess 112 Wn. App. 536, (Wash. Ct. App. 2002).

- In 1997, a gay man, brought an action against his employer alleging that he was unlawfully terminated based on his sexual orientation in violation of public policy and Seattle Municipal Code section 14.04.²⁴ He had been employed by Puget Sound Broadcasting Company as a radio host. On one occasion, the Company accused him of airing an abundance of shows with “gay themes” before they terminated him. The Washington Court of Appeals held for the Broadcasting Company, noting that the radio show host “did not cite any constitutional, statutory, or regulatory provision establishing that discharging an employee based on his sexual orientation contravened a clear mandate of public policy.” Webb v. Puget Sound Broad. Co., 138 Lab. Cas. (CCH) P58, 612 (Wash. Ct. App. Dec. 28, 1998).
- In 1996, a county firefighter was subjected to a hostile work environment based on his sexual orientation.²⁵

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and polices involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments

²² Miguel v. Guess, 51 P.3d 89 (Wash. Ct. App. 2002).

²³ ACLU, *Following ACLU Lawsuit, Lesbian Illegally Fired from Washington Hospital Received Generous Settlement* (Oct. 8, 2003), <http://www.aclu.org/lgbt/discrim/12359prs20031008.html>.

²⁴ § 14.04 of the Seattle Municipal Code declares that it is the policy of the city of Seattle to “assure equal opportunity to all persons, free from restrictions because of ... sexual orientation ...” SEATTLE MUN. CODE § 14.04.

²⁵ Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

against LGBT people. Part IV discusses state laws and policies outside the employment context.

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

1. Scope of Statute

In January 2006, the legislature amended the Washington Law Against Discrimination (“WLAD”) to prohibit discrimination based on sexual orientation and gender identity in employment, housing, public accommodations, granting credit, and insurance.²⁶ Before 2006, the WLAD provided protection based on race, creed, color, national origin, families with children, sex, marital status, age, military status and mental or physical disability.²⁷ WLAD defines “[s]exual orientation” as “heterosexuality, homosexuality, bisexuality, and gender expression or identity.”²⁸ Gender expression or identity is defined as “having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.”²⁹

The WLAD, which covers public and private employers, employment agencies and labor organizations, makes it unlawful for an employer to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment based on sexual orientation or gender identity.³⁰ Additionally, employers may not print or circulate statements, advertisements or publications that contain discriminatory content.³¹ Employers who retaliate against whistleblowers are also held responsible under the law, as are individuals who aid and abet unfair employment practices.³² The law states that employers are not required “to establish employment goals or quotas based on sexual orientation.”³³

There are several exemptions in the WLAD. First, it only prohibits employers from discriminating on the basis of sexual orientation or gender identity if they have eight or more employees.³⁴ Second, the law does not apply to “any religious or sectarian organization not organized for private profit.”³⁵ Third, persons employed in the domestic service profession are not protected under the law.³⁶ Finally, public and private employers may defend against a discrimination claim by arguing that a “bona fide occupational qualification” for the particular position is that it be held by someone who is not a member of a protected group.³⁷ In housing, the law only covers “multifamily

²⁶ See ESHB 2661; WASH. REV. CODE § 49.60.030(1)(a)-(f).

²⁷ § 49.60.010.

²⁸ § 49.60.040(15).

²⁹ *Id.*

³⁰ § 49.60180(1)-(3).

³¹ § 49.60.180(4).

³² §§ 49.60.210, 49.60.220.

³³ § 49.60.180(1).

³⁴ § 49.60.040(3).

³⁵ *Id.*

³⁶ § 49.60.040(4).

³⁷ § 49.60.180(1).

dwellings” consisting of four or more dwelling units.³⁸ Finally, the law states that employers are not required “to establish employment goals or quotas based on sexual orientation.”³⁹

2. Enforcement and Remedies

Individuals alleging discrimination on the basis of sexual orientation or gender identity may either file a complaint with the Washington State Human Rights Commission (“WHRC”) or initiate a civil action in Washington Superior Court.⁴⁰ Employment discrimination complaints must be filed within six months of the alleged discriminatory conduct.⁴¹ In housing discrimination cases, complainants have up to one year to file an action.⁴² Complaints alleging whistleblower retaliation must be filed within two years.⁴³

Once an individual files a complaint, the WHRC will investigate the matter to determine if there is reasonable cause for believing that an unfair practice has been or is being committed.⁴⁴ If the Commission finds reasonable cause, then it “shall immediately endeavor to eliminate the unfair practice by conference, conciliation, and persuasion.”⁴⁵ In the event that the matter is not resolved by these informal methods, the chairperson of the Commission will request that an administrative law judge be appointed to conduct a formal hearing.⁴⁶ If the administrative law judge finds that unlawful discrimination has occurred, then he or she must serve an order on the respondent requiring them to “cease and desist . . . and to take such affirmative action, including (but not limited to) hiring [and] reinstatement or upgrading of employees, with or without back pay. . . .”⁴⁷ The administrative law judge may also impose any additional remedy that could be ordered by a court, provided that damage awards for humiliation or mental suffering are limited to \$ 20,000 or less.⁴⁸ If an employer fails to comply with the administrative law judge’s order, then the aggrieved individual or the Commission may seek appropriate temporary relief or a restraining order in Washington Superior Court.⁴⁹

³⁸ § 49.60.040(21).

³⁹ § 49.60.180(1).

⁴⁰ §§ 49.60.030(1)(a), 49.60.350.

⁴¹ § 49.60.230(2).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ § 49.60.240.

⁴⁵ § 49.60.250(1)

⁴⁶ *Id.*

⁴⁷ § 49.60.250(5).

⁴⁸ *Id.*

⁴⁹ § 49.60.260(1).

B. Attempts to Enact State Legislation

Washington has a long legislative history of bills that would both protect LGBT from and subject them to employment discrimination. The first bill protecting individuals from sexual orientation discrimination was introduced in Washington in 1977.⁵⁰ In 1986, gay rights opponents introduced proposals that would ban gays and lesbians from working in schools and government offices. These proposals were defeated in committee.⁵¹

In the early 1990s, an openly gay state senator, Cal Anderson, took the lead in championing various versions of a sexual orientation anti-discrimination bill.⁵² Supporters achieved a near victory in 1994 when the bill passed the House and missed passage in the Senate by a single vote.⁵³ From 1996-2006, Senator Ed Murray, also openly gay, emerged as another strong leader on gay rights issues, sponsoring sexual orientation and/or gender identity anti-discrimination bills for ten consecutive years.⁵⁴ In 1997, gay rights supporters suffered a setback when Washington voters rejected a ballot initiative prohibiting unfair employment practices on the basis of sexual orientation.⁵⁵ This initiative was defeated despite being relatively narrow in scope. It did not require partner benefits or preferential treatment, and also exempted religious organizations and businesses with fewer than eight employees.⁵⁶

In 2005, a bill prohibiting sexual orientation and gender identity discrimination passed the House but was defeated in the Senate by a vote of 25-24. Senator Jim Hargrove, emphatically explained: “I believe homosexuality is wrong. Therefore, I cannot give government protection to this behavior.”⁵⁷

In 2006, the House again voted to pass the bill prohibiting sexual orientation and gender identity discrimination by a margin of 61-37. The bill finally passed the Senate as well.⁵⁸

For example, two Washington Senators introduced another amendment, which they later withdrew, clarifying that “sexual orientation” does not include “bestiality, necrophilia, incest, adultery, pedophilia, or sadomasochism.”⁵⁹ Senator Stevens used the

⁵⁰ *A Long-Awaited Win*, *supra* note 3.

⁵¹ *Id.*

⁵² WASHINGTON STATE HUMAN RIGHTS COMMISSION: ONE YEAR REPORT ON SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION, Appendix A History of ESHB 2661: The Cal Anderson Bill (July 2007) (hereinafter ONE YEAR REPORT).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Chris McGann, *Eyman to File Signatures Monday Latest Referendum Would Repeal Newly Enacted Gay Rights Law*, SEATTLE POST-INTEL., June 2, 2006, at B2.

⁵⁶ Wash. Ballot Initiative Meas. 677 (2005).

⁵⁷ *Id.*

⁵⁸ *A Long-Awaited Win*, *supra* note 3.

⁵⁹ Wash. S.H.B. 2661 - Sen. Amend. 20 (2006) (introduced by Sens. Stevens & Hargrove, but later withdrawn).

term “labyrinth of perversion” to describe the lifestyles of those who “move away from traditional means of procreation.”⁶⁰ Senator Weinstein argued that this amendment was designed to “smear gays and lesbians” by implying that they participate in these types of behavior.⁶¹ Senator Benson expressed opposition to the bill on the ground that sexual orientation is not an immutable characteristic deserving special protection. He further argued that “homosexuals don’t need protection” because they have “better education, nicer cars, and nicer homes” than most people.⁶² Senator Benton also opposed the bill on the ground that it would advance a “political agenda,” and argued that protecting behavior was a big mistake because, “who knows what other kinds of behavior the rest of society will be forced to tolerate.”⁶³ Senator Oke’s statements lent a religious dimension to the debate. He said he cannot support the bill because it “endorses homosexuality” which he viewed as “morally wrong” and an “abomination to God.”⁶⁴ Senator Mulliken expressed concern that homosexuality would be taught in schools, stating that kindergartners would be subjected to the “promotion of a lifestyle not even preferred by those who live it.”⁶⁵ Ed Murray, the bill’s sponsor, tried to encourage support by highlighting derogatory comments made in 2005 by Lou Novak, the former president of the Puget Sound Rental Housing Association. While in the state House office building, Novak remarked, “[l]ooks like it’s anal-sex week” as a group from the Lifelong AIDS Alliance walked by.⁶⁶

On January 31, 2006, Governor Christine Gregoire signed bill 2661 into law, remarking that “a generation from now, citizens will wonder what took us so long.”⁶⁷ Opponents of the bill, led by conservative activist Tim Eyman, attempted to overturn it by referendum, but failed to collect the required number of signatures to put it on the ballot.⁶⁸

C. **Executive Orders, State Government Personnel Regulations & Attorney General Opinions**

1. **Executive Orders**

Governor Booth Gardner issued executive orders in 1985 and 1991 prohibiting state agencies and institutions of higher education from discriminating in employment solely on the basis of sexual orientation.⁶⁹ Governor Mike Lowry issued a subsequent order in 1993 echoing Gardner’s previous two orders.⁷⁰ The executive orders do not

⁶⁰ Statement of Wash. Sen. Stevens, Wash. Sen. Fl. (Jan. 25, 2006).

⁶¹ Statement of Wash. Sen. Weinstein, Wash. Sen. Fl., (Jan. 25, 2006).

⁶² Statement of Wash. Sen. Benson, Wash. Sen. Financial Inst., Housing & Cons. Protection Comm. Statement (Jan. 24, 2006).

⁶³ Statement of Wash. Sen. Benton, Wash. Sen. Financial Inst., Housing & Cons. Protection Comm. (Jan 24, 2006).

⁶⁴ Statement of Wash. Sen. Oke, Wash. Sen. Fl. (Jan 27, 2006).

⁶⁵ Statement of Wash. Sen. Mulliken, Wash. Sen. Fl. (Jan 27, 2006).

⁶⁶ Rebecca Cook, *Official Quits Over Anti-Gay Remarks*, SEATTLE TIMES, Mar. 4, 2005, at B3

⁶⁷ ONE YEAR REPORT, *supra* note 54.

⁶⁸ Phuong Cat Le, *supra* note 13.

⁶⁹ Wash. Exec. Order No. 91-06 (1991) (rescinding Exec. Order No. 85-09 (1985)).

⁷⁰ Wash. Exec. Order No. 93-07 (1993).

describe or reference any procedure under which an employee could file a complaint of discriminatory conduct. They do, however, direct the Washington State Human Rights Commission to “enforce all applicable federal and state laws pertaining to nondiscrimination . . . to ensure compliance with the content and spirit of [the orders].”⁷¹

2. State Government Personnel Regulations

Pursuant to the Washington Administrative Code and state statute, all directors of state agencies are required to publish statements affirming equal employment opportunity regardless of sexual orientation.⁷²

D. Local Legislation

Washington’s King County, as well as the cities of Seattle, Tacoma and Burien, all have anti-discrimination ordinances that mirror the Washington state anti-discrimination law.

1. King County

The King County ordinance covers both gender identity and sexual orientation, and applies only to public or private employers with eight or more employees.⁷³

2. City of Seattle

The Seattle ordinance covers both gender identity and sexual orientation and applies to all employers with one or more employees.⁷⁴

3. City of Tacoma

The Tacoma ordinance covers both sexual orientation and applies only to employers with eight or more employees.⁷⁵ In Tacoma, proponents of the anti-discrimination ordinance faced considerable opposition from lawmakers and the general public. The Tacoma City Council first passed an ordinance prohibiting sexual orientation discrimination in 1989, which voters overturned a few months later. In 1990, Tacoma voters again rejected an initiative aimed at reviving the anti-discrimination ordinance.⁷⁶ After the City Council passed a new ordinance in 2002, which included gender identity,

⁷¹ Wash. Exec. Order Nos. 85-09; 91-06; Exec. Order No. 93-07.

⁷² See WASH. CODE ANN. § 356-09-030; WASH. REV CODE §§ 41.06.040, 41.06.150

⁷³ See KING COUNTY ORD. §15399 (gender identity added in 2006).

⁷⁴ See SEATTLE MUN. CODE § 14.04 *et seq.* (enacted 1973, gender identity added in 1999).

⁷⁵ See TACOMA MUN. ORD. § 1.29.010 *et seq.* (enacted 2002).

⁷⁶ D. Parvaz, *Gays, Lesbians Await Tacoma Vote; Fourth Attempt to Ban Discrimination Expected to Pass*, SEATTLE POST-INTEL., Apr. 23, 2002, at B1.

opposition groups launched another initiative to repeal it, but were ultimately unsuccessful.⁷⁷

4. **City of Burien**

The Burien ordinance covers both sexual orientation and gender identity and applies to all employers with one or more employees.⁷⁸

5. **City of Duvall**

The City of Duvall protects city employees from discrimination based on sexual orientation.⁷⁹

6. **City of Spokane**

The City of Spokane protects city employees from discrimination based on sexual orientation.⁸⁰

7. **Snohomish County**

Snohomish County protects county employees from discrimination based on sexual orientation.⁸¹

8. **City of Des Moines**

The City of Des Moines protects city employees from discrimination based on sexual orientation.⁸²

9. **City of Olympia**

The City of Olympia protects city employees from discrimination based on sexual orientation.⁸³

10. **City of Vancouver**

The City of Vancouver protects city employees from discrimination based on sexual orientation.⁸⁴

⁷⁷ Vanessa Ho, *Fate of Tacoma's Gay Rights Law is on Tuesday's Ballot*, SEATTLE POST-INTEL., Oct. 31, 2002, at B1.

⁷⁸ See BURIEN MUN. CODE § 8.50.010 *et seq.* (gender identity added in 2004).

⁷⁹ DUVALL MUN. CODE § 4.12.

⁸⁰ SPOKANE COUNTY CODE § 1.17A.180.

⁸¹ SNOHOMISH COUNTY CODE § 3.57.010.

⁸² DES MOINES MUNICIPAL CODE § 2.12.110.

⁸³ OLYMPIA MUNICIPAL CODE § 01.24.010.

⁸⁴ Vancouver Equal Employment Opportunity Statement (1989), *available at* <http://vancouver.ca/eoo/sexualharassmentpolicy.htm>.

III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE AND LOCAL GOVERNMENTS

A. Case Law

1. State and Local Government Employees

Pedersen v. Snohomish County Center for Battered Women, 2008 Wash. App. LEXIS 1040 (Wash. Ct. App. May 5, 2008).

Pedersen sued her former employer, the Snohomish County Center for Battered Women, alleging that her supervisor created a hostile work environment by making racist and homophobic comments in violation of the state anti-discrimination law. Pedersen alleged that her supervisor once asked aloud why the domestic violence movement attracted so many lesbians and commented that she did not understand why “they” (the lesbians) “all had tattoos and dressed so poorly.” This supervisor later transferred one lesbian woman from her position, stating that she dressed poorly. The Court of Appeals held that no hostile work environment existed, noting that “that the supervisor’s allegedly discriminatory comments were not sufficiently severe and pervasive to alter the terms and conditions of Pedersen’s employment.”⁸⁵

Bray v. King County, 2007 U.S. Dist. LEXIS 52976 (W.D. Wash. July 22, 2007).

Plaintiff Lynne Bray, sued her former employer, the King County Department of Transportation, claiming that her supervisors unlawfully discriminated against her based on her sexual orientation in violation of 42 U.S.C. section 1983. Bray claimed that after her supervisors were informed that she is a lesbian, they began treating her differently. Bray alleged that her supervisors changed her assignments to “alienate her from the crew.” Bray was later terminated for misconduct. The district court granted King County’s motion for summary judgment, holding that Bray failed to produce evidence that her termination was the result of a County policy, custom or practice that allows for discrimination based on sexual orientation.⁸⁶

Haladay v. Thurston County Fire Dist. No. 1, 2005 WL 3320861 (W.D. Wash., Dec 7, 2005).

In *Haladay v. Thurston County Fire District No. 1*, the Court held that sexual orientation discrimination, as such, is not sex discrimination under Title VII of the Civil Rights Act of 1964. The lawsuit was filed by David Haladay and Matthew Dare, a same-sex couple who began living together in early 2003 and married in Canada in 2004. The lawsuit claimed that Haladay was discriminated against due to a disability in connection with his application to become a volunteer fire-fighter, and that Dare, a longtime volunteer fire-fighter, had been discriminated against in his application for a full-time fire-fighting position because of his relationship with Haladay. Dare resisted the

⁸⁵ *Pedersen v. Snohomish County Ctr. for Battered Women*, 2008 Wash. App. LEXIS 1040 (Wash. Ct. App. May 5, 2008).

⁸⁶ *Bray v. King County*, 2007 U.S. Dist. LEXIS 52976 * 21 (W.D. Wash. July 22, 2007).

characterization of his claim as a sexual orientation discrimination claim, insisting instead that he had suffered sex discrimination in violation of Title VII. The court did not accept his argument, finding that any discrimination based on the relationship of the two men would be sexual orientation discrimination, which is not actionable under Title VII.⁸⁷

Miguel v. Guess, 112 Wn. App. 536 (Wash. Ct. App. 2002).

In 2001, Mary Jo Davis, a lesbian, brought an action against her former employer, a public hospital district, for wrongful termination based on sexual orientation under 42 U.S.C. section 1983 and the federal equal protection clause. Davis's co-Plaintiff and her immediate supervisor, Nan Miguel, was terminated for opposing the hospital's discriminatory treatment of Davis. Dr. Guess, the director of the radiology department at the hospital, made several derogatory comments to Davis throughout the course of her employment. On a number of occasions, Dr. Guess called Davis a "fucking faggot," a "fucking dyke," and a "queer." He also said "I don't think that fucking faggot should be doing vaginal exams and I'm not working with her." One time when Davis did not come to work, Dr. Guess remarked that it was gay pride week and "she was probably off marching somewhere." When Nan Miguel, Davis's supervisor, sent a memo to an administrator objecting to Dr. Guess's behavior, the hospital responded by reducing Davis's hours to three-quarters time. Davis later filed a grievance against the hospital and copied information from patient files to show that her reduction in hours was the result of Dr. Guess's animus toward her. The hospital later fired Davis and Miguel. The Washington Court of Appeals held that Davis raised material issues of fact with respect to whether the hospital and the doctor were "state actors" under section 1983 and remanded the case for trial on Davis's 1983 claims. The Court refused to find, however, that Davis's discharge violated a clear mandate of Washington public policy.⁸⁸ The hospital eventually settled with Davis for \$75,000.⁸⁹

In 1996, Nan Miguel testified about the hospital's discrimination against Mary Jo Davis before the House Committee on Small Business, Subcommittee on Government Programs in support of H.R. 1863 (ENDA). She testified that before she even decided to hire Davis, Dr. Guess told her that some of the technologists thought Davis was gay, and he advised Miguel not to hire her. Miguel recounted instances in which Dr. Guess was "exceedingly rude" to Davis—refusing to review her cases, refusing to evaluate her performance so she understood what was expected of her, and campaigning to drive her out of the hospital. Miguel was fired shortly after Davis filed her grievance at the hospital.⁹⁰

Webb v. Puget Sound Broad. Co., 138 Lab. Cas. (CCH) P58, 612 (Wash. Ct. App. Dec. 28, 1998).

⁸⁷ *Haladay v. Thurston County Fire Dist. No. 1*, 2005 WL 3320861 (W.D. Wash., Dec 7, 2005).

⁸⁸ *Miguel v. Guess*, 112 Wn. App. 536, 554-58 (Wash. Ct. App. 2002).

⁸⁹ ACLU, *Following ACLU Lawsuit, Lesbian Illegally Fired from Washington Hospital Received Generous Settlement* (Oct. 8, 2003), <http://www.aclu.org/lgbt/discrim/12359prs20031008.html>.

⁹⁰ H.R. Hrg. 104-87, pp. 157-160, Prepared Testimony of Nan Miguel, *Hearing before the House Committee on Small Business, Subcommittee on Government Programs re: H.R. 1863: The Employment Non-Discrimination Act*, Wed. Jul. 17, 1996, 104th Congress, 2nd Session.

In 1997, Webb, a gay man, brought an action against his employer alleging that he was unlawfully terminated based on his sexual orientation in violation of public policy and Seattle Municipal Code section 14.04.⁹¹ Webb was employed by Puget Sound Broadcasting Company as a radio host. On one occasion, the Company accused him of airing an abundance of shows with “gay themes” before they terminated him. The Washington Court of Appeals held for the Broadcasting Company, noting that Webb “did not cite any constitutional, statutory, or regulatory provision establishing that discharging an employee based on his sexual orientation contravened a clear mandate of public policy.”⁹² The Court further concluded that the WLAD did not violate the equal protection clauses of the federal or state constitutions because it did not “exclude homosexuals from coverage or protect only heterosexuals from discrimination.”⁹³

Gaylord v. Tacoma Sch. Dist., 88 Wn.2d 286 (Wash. 1977).

In 1977, James Gaylord, a teacher with the Tacoma School District, was terminated after admitting to the Vice Principal that he was a homosexual. The Supreme Court of Washington upheld the trial court’s finding that Gaylord’s termination was proper, holding that “homosexual conduct by a teacher could reasonably be expected to interfere with his fitness for the job or his ability to discharge its responsibilities.” The Court concluded that the repeal of Washington’s sodomy law does not deprive sodomy of its immoral character.⁹⁴ This case has not been overruled and relies, in part, on a Washington statute stating that, “[i]t shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality. . . .”⁹⁵

2. Private Employers

Sturchio v. Ridge, 86 Empl. Prac. Dec. (CCH) P. 42, 67 (E.D. Wash. June 23, 2005).

Sturchio, a transgender woman formerly employed by the Spokane Border Patrol, alleged that her employer unlawfully discriminated against her on account of gender in violation of Title VII. Sturchio alleged that after her transition to female, her employer forbade her from wearing dresses to work and using the women’s restroom. She also alleged that her employer ordered her to refrain from discussing personal issues with other employees. The district court held that the Spokane Border Patrol did not violate Title VII, noting that, “there was no evidence that any action taken by the Border Patrol was retaliatory or based on a discriminatory motive.”⁹⁶

Jane Doe v. Boeing Co., 121 Wn.2d 8 (Wash. 1993).

⁹¹ The Seattle Municipal Code declares that it is the policy of the city of Seattle to “assure equal opportunity to all persons, free from restrictions because of ... sexual orientation” § 14.04.

⁹² *Webb v. Puget Sound Broad. Co.*, 138 Lab. Cas. (CCH) P58,612 *8 (Wash. Ct. App. Dec. 28, 1998).

⁹³ *Id.*

⁹⁴ *Gaylord v. Tacoma Sch. Dist.*, 88 Wn.2d 286, 295-98 (Wash. 1977).

⁹⁵ WASH. REV. CODE § 28A.405.030.

⁹⁶ *Sturchio v. Ridge*, 86 Empl. Prac. Dec. (CCH) P. 42, 67 (E.D. Wash. June 23, 2005).

Jane Doe, a biological male who was planning to have sex reassignment surgery, sued her former employer, The Boeing Company, after she was terminated for wearing “excessively feminine” attire in violation of company directives. Doe alleged that her gender dysphoria was a handicap which the Company failed to accommodate under the WLAD. The Supreme Court of Washington held that gender dysphoria is not a “handicap” under the law and that Boeing nonetheless reasonably accommodated Doe by allowing her to wear unisex clothing at work.⁹⁷

B. Administrative Complaints

Smith v. Work Source, Sept. 3, 2008.

In *Smith*, a gay male alleges employment discrimination based on sexual orientation. Dennis Smith alleged that he was asked questions about customers that he served if he had “personal relationships” with any of them. Smith felt that he was being accused of soliciting sex from customers. Smith alleged that he was being investigated for ethics violations concerning his partner’s interview at this workplace, even though he took no part in the selection process. Smith alleged that his supervisor has treated him differently ever since she became aware of his sexual orientation. This supervisor allegedly restricted his work hours and deprived him of support staff. Smith also alleged that another coworker has made derogatory comments about his sexuality. The administrative disposition of this case is unavailable.⁹⁸

Spring v. Wash. Dep’t of Soc. & Health Serv., Aug. 20, 2008.

In *Spring*, a transgender female alleged employment discrimination and harassment based on sexual orientation/gender identity. Roberta Spring alleged that in a new employee orientation, her supervisor asked “what’s your real name? Robert or Roberta?” Spring also alleged that her supervisor did nothing when she reported that she was being harassed by other employees. When Spring went home because of illness one day, her supervisor allegedly yelled: “I’m sick of your excuses. Get off the island.” The administrative disposition of this case is unavailable.⁹⁹

Collins v. Wash. Dep’t of Corr., Oct. 29, 2007.

In *Collins*, a lesbian alleged employment discrimination based on sex and sexual orientation. J.C. Collins alleged that she was subjected to hostile treatment by subordinate staff and colleagues because of her sexual orientation. She alleged that a colleague told other staff that she was a lesbian who “hated men” and that male members of her staff would not get ahead working for her. When Collins complained about this colleague’s comments, she was told to “pick her battles wisely” and “take the high road.” Collins alleged that one supervisor challenged her ability to manage her subordinates and another

⁹⁷ *Doe v. Boeing Co.*, 121 Wn. 2d 8 (Wash. 1993).

⁹⁸ Wash. State Hum. Rights Comm’n Complaint, *Smith v. WorkSource Thurston County*, No. 34Ex-0238-08-9 (Sept. 3, 2008).

⁹⁹ Wash. State Hum. Rights Comm’n Complaint, *Spring v. Wash. State Dep’t of Social & Health Svc’s*, No. 27EX-0186-08-9 (Aug. 22, 2008).

supervisor suggested that she use the men's restroom instead of the women's. The administrative disposition of this case is unavailable.¹⁰⁰

Day v. Econ. Opp. Comm'n, Feb. 21, 2007.

In *Day*, a lesbian cook/driver alleged discrimination based on sexual orientation. Sandi Day alleged that after she questioned her supervisor about pay discrepancies in the workplace, her supervisor said "don't you make enough money for Joanne (Day's partner)"? Day alleged that she was treated differently by supervisors after this conversation. She alleges that she was moved to a different worksite, avoided by supervisors, and not given timely updates about trainings. The administrative disposition of this case is unavailable.¹⁰¹

McGlumphy v. Wash. Dep't of Soc. & Health Serv., Feb. 6, 2007.

In *McGlumphy*, a lesbian truck driver alleged employment discrimination based on sex and sexual orientation. Bethanie McGlumphy alleged offensive and hostile environment in which employees are allowed to participate in making inappropriate comments about gays and lesbians. Shift supervisor uses the term "homo." Employee made offensive joke about man stereotyped to be "gay." McGlumphy's employment was terminated on January 5, 2007. The administrative disposition of this case is unavailable.¹⁰²

Hayes v. City of Tieton, Nov. 25, 2006.

In *Hayes*, a lesbian operations assistant alleges employment discrimination based on sexual orientation. Tiffani Hayes alleged that when Mayor discovered she was a lesbian, she forbade her to go to City Hall for collecting mail, making copies, and also was forbade from meter reading. Hayes' request for a pay raise was denied. Hayes was fired on August 23, 2006 and the official reason given was that she lied about requesting time off. The administrative disposition of this case is unavailable.¹⁰³

Miller v. Harborview Med. Center-UW Med., July 4, 2006.

In *Miller*, an openly gay public safety officer alleged employment discrimination based on sex, sexual orientation and retaliation. Tyler Joseph Miller was subjected to constant verbal harassment by an administrator. He was called a "faggot" and other demeaning remarks related to his sexual preference. The administrator made several attempts to sabotage Miller's employment. Miller lodged an internal complaint, but

¹⁰⁰ Wash. State Hum. Rights Comm'n Complaint, *Collins v. Wash. State Dep't of Corr.*, No. 34ESX-0319-07-8 (Oct. 20, 2007).

¹⁰¹ Wash. State Hum. Rights Comm'n Complaint, *Day v. Economic Opp. Comm'n*, No. 06EX-0647-06-7 (Feb. 26, 2007).

¹⁰² Wash. State Hum. Rights Comm'n Complaint, *McGlumphy v. Wash. State Dep't of Social & Health Svc's*, No. 27ESX-0610-06-7 (Feb. 9, 2007).

¹⁰³ Wash. State Hum. Rights Comm'n Complaint, *Hayes v. City of Tieton*, No. 39EX-0365-06-7 (Oct. 30, 2006).

administrator retained rank, pay and continued to supervise. The administrative disposition of this case is unavailable.¹⁰⁴

C. Other Documented Examples of Discrimination

County Fire Department

In 1996, a county firefighter was subjected to a hostile work environment based on his sexual orientation.¹⁰⁵

¹⁰⁴ Wash. State Hum. Rights Comm'n Complaint, *Miller v. Univ. of Wash./Harbor View Med. Ctr.*, No. 17EXZ-0876-06-7 (May 29, 2007).

¹⁰⁵ Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

A. Housing & Public Accommodations Discrimination

Beaulieu v. Unemployment Claims TeleCenter-Spokane, Apr. 10, 1998.

In *Beaulieu*, a transsexual woman alleged discrimination in public accommodations based on sexual orientation/gender identity. Rikki Beaulieu alleged that during an unemployment benefits determination interview, a representative asked “don’t you think your hormones have caused all your problems at work?” The representative allegedly also questioned Beaulieu’s ability to perform her job responsibilities as a transsexual woman. As a result, Beaulieu was denied unemployment benefits.¹⁰⁶

C. HIV/AIDS Discrimination

In 1988, the Washington Legislature passed a bill prohibiting employment discrimination based on real or perceived HIV or hepatitis status. There are two main exemptions to this Act. First, employers may claim that the absence of HIV or hepatitis is a bona fide occupational qualification of the job in question. Second, the Act does not prohibit “fair discrimination” by insurance entities, health service contractors or health maintenance organizations.¹⁰⁷

D. Hate Crimes

As of 1993, Washington law prohibits “malicious harassment” and violence against individuals because of their sexual orientation (but not gender identity).¹⁰⁸ Prior to 1993, the Washington legislature repeatedly refused to add sexual orientation to an existing law against hate crimes.¹⁰⁹

E. Education

In 1999, Washington State University officials cancelled a June conference on issues facing gay and lesbian youth because they said they could not “provide a safe and supportive environment” for the attendees. One e-mail announcement for the event that said organizers were hoping for a large turnout was used by conservative state legislators,

¹⁰⁶ Wash. State Hum. Rights Comm’n Complaint, *Beaulieu v. Unemployment Claims TeleCenter- Spokane*, No. 32PX-0777-07-8 (Apr. 10, 2008).

¹⁰⁷ WASH. REV. CODE § 49.60.172, 49.60.174.

¹⁰⁸ § 9A. 36.080.

¹⁰⁹ *A Long-Awaited Win*, *supra* note 3.

including Sen. Val Stevens, as evidence “that recruitment of children into the lifestyle was central to the homosexual agenda.” Rep. Marc Boldt asked, “What will the university’s position be if an AIDS-free child goes there, only to return HIV-infected?” Sen. Harold Hochstatter said he considered it to be WSU’s official promotion of a “lethal lifestyle,” and Rep. Bob Sump chided WSU for “inviting children to the university for a public celebration of immorality,” saying he anticipated the “opportunity next legislative session to trim away” WSU’s budget. Sump also said he planned to use his powers in the State House to defund WSU’s Gay/Lesbian/Bisexual/Alliance because it helped organize the event and was a “recruitment center” for gay youth.¹¹⁰

Johnson v. Othello High Sch., July 23, 2007.

In *Johnson*, Bryan Johnson alleged, on behalf of his minor son, Jared Johnson, that his son was subjected to gender based harassment over the course of the school year, and that other students wrote “Jared is a faggot and a homo” on his sons’ backpack. The father alleged that school took no action to stop the harassment.¹¹¹

Iversen v. Kent Sch. Dist., C97-1194 (D. Wash. 1999).

In 1997, the ACLU represented Mark Iversen in a lawsuit against the Kent School District in which he alleged that the school district did not respond adequately to incidents of harassment based on his perceived sexual orientation. Iversen was subjected to years of verbal and physical abuse by classmates before being brutally beaten in 1996 by eight classmates who yelled epithets such as “faggot” and “queer” while they attacked him. The ACLU and the Kent School District reached a settlement in 1999.¹¹²

F. Health Care

Case v. Wash. Dep’t of Soc. & Health Serv., Apr. 17, 2007.

In *Case*, a transsexual (male-to-female) alleged discrimination in public accommodations based on gender identity. Stephanie Case alleged that she was denied access to treatment for chronic back impairment and psychiatric disorders, despite demonstrating medical necessities, because she is a transsexual.¹¹³

In re Shuffield (2006).

¹¹⁰ PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 224 (1999 ed.).

¹¹¹ Wash. State Hum. Rights Comm’n Complaint, *Johnson v. Othello High School*, No. 01PX-0080-07-8 (July 23, 2007).

¹¹² See *Iversen vs. Kent Sch. Dist.*, C97-1194 (D. Wash. 1999); see also The Cost of Harassment: A Fact Sheet for Lesbian, Gay, Bisexual and Transgender High School Students (ACLU Lesbian & Gay Rts. Project Feb. 9, 2007), available at <http://www.aclu.org/lgbt/youth/11898res20070209.html>.

¹¹³ Wash. State Hum. Rights Comm’n Complaint, *Case v. Wash. State Dep’t of Social & Health Svc’s*, No. 17PX-0801-06-7 (Mar. 17, 2007).

In 2006, Jonathan Shuffield was denied a medical prescription because he is gay, in violation of the WLAD.¹¹⁴ Shuffield's doctor claimed that his religious beliefs entitled him to withhold care from Shuffield that he would normally provide to heterosexual patients. Lambda Legal represented Shuffield in negotiations with his former doctor; he received a settlement.¹¹⁵

G. Gender Identity

Colson v. Wash. Dep't of Licensing, Nov. 17, 2006.

In *Colson*, a male-to-female transsexual alleged discrimination in public accommodations based on gender identity. Joyce Colson claimed that her application for a gender change on her license was severely delayed, which was contrary to the Department's policies and procedures.¹¹⁶

Campbell v. Wash. Dep't of Licensing, Oct. 30, 2006.

In *Campbell*, a transgender (male-to-female) alleged discrimination in public accommodations based on gender identity Michael (Michelle) Campbell claimed that she attempted to change her driver's license from male to female but was denied because she had not undergone sex reassignment surgery, despite submitting letters of support from physician and therapist.¹¹⁷

Adora v. Wash. Dep't of Labor & Ind.

In *Adora*, a transsexual male alleged insurance discrimination based on sexual orientation and gender identity. Anya Adora claimed that his employer falsified medical information regarding her gender dysphoria and continued to use this false information to deny him industrial insurance benefits.¹¹⁸

H. Parenting

Washington courts will not consider a parent's sexual orientation in custody and visitation determinations unless it is shown to harm the child.¹¹⁹ Additionally, a same-

¹¹⁴ See WASH. REV. CODE § 49.60.215. Washington's Law Against Discrimination prohibits discrimination based on sexual orientation and gender identity in public accommodations, which includes medical care providers.

¹¹⁵ See Lambda Legal, Summary: In re Shuffield (2007), available at <http://www.lambdalegal.org/in-court/cases/in-re-shuffield.html> (last visited Sept. 7, 2009).

¹¹⁶ Wash. State Hum. Rights Comm'n Complaint, *Colson v. Wash. Dep't of Licensing*, No. 34PX-0419-06-7 (Nov. 17, 2006).

¹¹⁷ Wash. State Hum. Rights Comm'n Complaint, *Campbell v. Wash. State Dep't of Licening*, No. 34PX-0363-06-7 (Oct. 30, 2006).

¹¹⁸ Wash. State Hum. Rights Comm'n Complaint, *Adora v. Wash. State Dep't of Labor & Ind.*, No. 34IX-0231-06-7 (Sept. 18, 2006).

¹¹⁹ See WASH. REV. CODE § 26.10.100.

sex co-parent with no legal or biological relationship to a child may petition a court to be legally recognized as the child's *de facto* parent.¹²⁰

I. Recognition of Same-Sex Couples

1. Marriage, Civil Unions & Domestic Partnership

In 1998, the Washington legislature enacted the Defense of Marriage Act, which defines marriage as a union between a man and a woman, over the veto of then Governor Gary Locke.¹²¹ In 2006, the Washington Supreme Court upheld the Defense of Marriage Act, ruling that it did not violate the Washington Constitution.¹²²

In 2007, Governor Christine Gregoire signed a comprehensive domestic partnership bill. Under the bill, registered domestic partners have the same rights as married couples to visit health care facilities, make health care decisions, authorize autopsies, dispose of remains, make organ donation decisions and administer the estates of their deceased partners.¹²³

2. Benefits

Additionally, the Washington Public Employee Benefits Board grants eligibility for health care benefits to same-sex and transgender partners of state employees.¹²⁴

Rinaldo v. Wash. Health Care Auth., Aug. 23, 2008.

In *Rinaldo*, a lesbian alleged discrimination based on sexual orientation in applying for insurance. Angela Rinaldo and her partner applied as a family unit for coverage through her employer's Basic Health Plan but were denied coverage as a family. The employer stated that Basic Health didn't recognize them as domestic partners¹²⁵

DeGroen v. City of Bellevue (2007).

In 2007, Lambda Legal filed a lawsuit against the City of Bellevue on behalf of three gay public employees. In their complaint, the employees alleged that Bellevue violated the equal protection clause of the state constitution by providing family benefits to spouses and children of married city employees but denying these benefits to the family members of its gay and lesbian employees.¹²⁶ A few months later, the ACLU

¹²⁰ See *In re L.B.*, 122 P.3d 161 (Wash. 2005).

¹²¹ See WASH. REV. CODE § 26.04.010; *A Long-Awaited Win for Gay Rights*, supra note 3.

¹²² See *Andersen v. King County*, 158 Wn. 2d 1 (Wash. 2006).

¹²³ WASH. REV. CODE § 26.60.

¹²⁴ See Press Release, Pub. Employee Benefits Program, PEBB Announces Changes to Domestic Partner Eligibility (July 17, 2008), available at <http://www.pebb.hca.wa.gov/press/pebb-announces-changes-to-domestic-partner-eligibility.html>.

¹²⁵ Wash. State Hum. Rights Comm'n Complaint, *Rinaldo v. Wash. State Health Care Auth.*, No. 34IX-0219-08-9 (Aug. 23, 2008).

¹²⁶ See *DeGroen v. City of Bellevue*, Case No. 07-2-12286-9 SEA (Pl. Complaint).

dropped the lawsuit after the Bellevue City Council approved an equal family benefits plan for lesbian, gay and other unmarried employees in committed relationships.¹²⁷

¹²⁷ See Lambda Legal, Summary: DeGroen v. City of Bellvue, <http://www.lambdalegal.org/in-court/cases/degroen-v-city-of-bellevu.html> (last visited Sept. 6, 2009).