



Overview of Medical Discrimination Law

All emphasis added by the author. The following is not to be interpreted or used as legal advice, merely as legal citations with occasional amateur commentary.

Court decisions rely not only on the letter of the law, but also on legal precedent and previous rulings (case law). Case law can be extremely extensive and important and, aside from a single case, is not explored here.

It's important to remember that your interpretation of the law may differ substantially from the current legal interpretation established by many years of judicial decisions.

We also provide an [overview of medical exemptions](#) included in the mask orders & state guidance for businesses.

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Hierarchy of Law

It's important to note that governors and their underlings DO NOT MAKE LAW. Gubernatorial proclamations are not laws. Neither are Health Department orders. A bill becomes law when it is ratified by both houses of congress and signed by the chief executive. Executive orders & gubernatorial proclamations do not go through the legislative process, and are not laws.

The order of importance is:

1. US Constitution
2. Federal Law
3. State Constitution
4. State Law
5. State Executive Branch Proclamations & Orders
6. Corporate Policy

No statute or edict lower down the list may violate existing law higher up the list.

[U.S. Constitution, Article VI](#)

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

State law cannot contradict Federal. Federal law takes precedence in all cases.

Federal Law

U.S. Constitution, 1st Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the **freedom of speech**, or of the press; or the **right of the people peaceably to assemble**, and to petition the Government for a redress of grievances.”

Preventing entry to a public place based on medical status interferes with the ability to assemble. Masks can hinder the ability to speak, sometimes quite significantly.

U.S. Constitution, 5th Amendment

“No person shall... be deprived of life, liberty, or property, without due process of law...”

Assuming you to be a dangerous plaguebearer and barring you from a store without evidence restricts your liberty without due process. Forced business closures deprive citizens of life, liberty, and eventually property when they can't pay their mortgages.

U.S. Constitution, 14th Amendment, Section 1

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Assumption of medical threat without evidence violates due process again (see 5th Amendment). Enforcing racial discrimination clauses but not medical is not providing equal protection under the law.

Civil Rights Act of 1964

Title II - Public Accommodations

“42 U.S.C. §2000a (a) All persons shall be entitled to the **full and equal** enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of race, color, **religion**, or national origin.

42 U.S.C. §2000a(b) Each of the following establishments is a place of public accommodation within this title if its operations affect commerce, or if discrimination or segregation by it is **supported by State action**:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests....

(2) any restaurant... or other facility principally engaged in selling food for consumption on the premises...

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection..."

Having someone else pick out your products for you is not full and equal. See "Storms v Fred Meyer" below. The current mask mandates and lockdowns are supported by State action.

Title VII - Unlawful Employment Practices

"SEC. 2000e-2. [Section 703] (a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, **religion**, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, **religion**, sex, or national origin."

Americans With Disabilities Act

Section 12132 - Discrimination

"...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or **activities of a public entity**, or be subjected to discrimination by any such entity."

No one can be excluded from public government meetings because of a medical disability.

Section 12181 - Public accommodations & services operated by private entities

"(7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce

(A) an inn, hotel, motel, or other place of lodging...;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, **grocery store**, clothing store, hardware store, **shopping center**, or other sales or rental establishment;

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(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional **office of a health care provider**, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.”

Section 12182 - Prohibition of discrimination by public accommodations

“No individual shall be discriminated against on the basis of disability in the **full and equal enjoyment** of the goods, services, facilities, privileges, advantages, or accommodations of **any place of public accommodation** by any person who owns, leases (or leases to), or operates a place of public accommodation.”

Public accommodation is defined just above. Being unable to browse and choose items for yourself or benefit from in-store sales is not full and equal.

Sec. 36.208 - Direct threat

“(b) In determining whether an individual poses a direct threat to the health or safety of others, **a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence**, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.”

Sec. 12202 - State immunity

“A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter...”

States can't violate this law.

Federal Law - Crimes

18 U.S. Code § 242 - Deprivation of rights under color of law

“Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the **deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States...** shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both...”

Depriving a person of their lawful rights is a crime. The WA DOH mask order is not law, explicitly provides exemptions, and state and federal laws mandate equal accommodation for people with exemptions. Thus any person (including a police officer) enforcing a restriction which violates the exemptions provided by law is subject to punishment under this law.

They may also be subject to additional punishments for violating other laws at the same time, such as practicing medicine without a license, impersonation, harassment, and so forth. See the “Washington State Law - Crimes” section below.

Washington State Law

Washington Constitution Article 1

Section 1

“All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to **protect and maintain individual rights.**”

Section 2

“The Constitution of the United States is the supreme law of the land.”

No state law may contradict or override the US Constitution.

Section 3

“No person shall be deprived of **life, liberty, or property, without due process** of law.”

Also guaranteed by US Constitutional Amendments 5 & 14.

Section 4

“The right of petition and of the people peaceably to assemble for the common good shall never be abridged.”

Also guaranteed by the US Constitution, 1st Amendment.

Section 5

“Every person may **freely speak**, write and publish on all subjects, being responsible for the abuse of that right.”

Also guaranteed by the US Constitution, 1st Amendment.

Section 11

“Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and **no one shall be molested or disturbed in person or property on account of religion;** but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state.”

RCW 49.60.030 - Freedom from discrimination

“(1) The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged

veteran or military status, sexual orientation, or the **presence of any sensory, mental, or physical disability** or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the **full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;**”

“(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court...”

RCW 49.60.215 - **Unfair practices of places of public resort**

“It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination... or the **refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement**, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, citizenship or immigration status, sexual orientation, sex, honorably discharged veteran or military status, status as a mother breastfeeding her child, **the presence of any sensory, mental, or physical disability**, or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.”

Washington State Law - Crimes

RCW 18.71.021 - License Required

“No person may practice or represent himself or herself as practicing medicine without first having a valid license to do so.”

Wearing a mask is a medical intervention and may not be recommended to an individual without a medical license. Temperature checks are medical diagnostic procedures.

RCW 9A.60.040 - Criminal Impersonation

“(1) A person is guilty of criminal impersonation in the first degree if the person:
(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or
(b) Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.
(2) Criminal impersonation in the first degree is a class C felony.”

A store employee or owner does not have the right to enforce the law or act as a Police Officer, and enforcing store policies that violate the other laws mentioned in this document is unlawful.

RCW 9A.40.040 - Unlawful imprisonment

“(1) A person is guilty of unlawful imprisonment if he or she knowingly restrains another person.
(2) Unlawful imprisonment is a class C felony.”

RCW 0A.84.030 - Disorderly conduct

“(1) A person is guilty of disorderly conduct if the person:
(a) Uses abusive language and thereby intentionally creates a risk of assault;
(b) Intentionally disrupts any **lawful assembly or meeting of persons** without lawful authority;
(c) Intentionally **obstructs vehicular or pedestrian traffic** without lawful authority”

Blocking entry into a store is obstructing pedestrian traffic. A store employee may not enforce law or impersonate a public servant (see above)

RCW 9A.46.020 - Harassment

“(1) A person is guilty of harassment if:
(a) Without lawful authority, the person knowingly threatens:
(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or
(ii) To cause physical damage to the property of a person other than the actor; or

- (iii) To subject the person threatened or any other person to **physical confinement or restraint**; or
- (iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and
- (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication."

[RCW Chapter 9A.52](#) - **Burglary & Trespass**

[RCW 9A.52.010](#) - **Definitions**

"The following definitions apply in this chapter:

(2) "Enters or remains unlawfully." A person "enters or remains unlawfully" in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public...

(3) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property."

[RCW 9A.52.090](#) - **Criminal trespass - Defenses**

"In any prosecution under RCW [9A.52.070](#) and [9A.52.080](#), it is a defense that:

(2) The premises were at the time open to members of the public and the actor complied with all **lawful conditions** imposed on access to or remaining in the premises; or

(3) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain; or...

If a business is violating the law by imposing conditions on your entry, you are not trespassing.

[RCW 9A.52.070](#) - **Criminal trespass in the first degree**

"(1) A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains **unlawfully** in a building."

-Corporate policy is invalid if it is unlawful.

[RCW 9A.52.080](#) - **Criminal trespass in the second degree**

"(1) A person is guilty of criminal trespass in the second degree if he or she knowingly enters or remains **unlawfully** in or upon premises of another under circumstances not constituting criminal trespass in the first degree."

Case of Storms v Fred Meyer

Docket number [55288-1-I](#), decided Sep 28, 2005

A woman (Storms) with psychiatric conditions and a service dog was refused in-store shopping because of her dog. The store told her to leave and then brought her an item she was trying to buy instead of allowing her to do her own shopping. Storms lost the initial case but an appellate court reversed the decision, ruling in her favor.

Excerpts from the appellate analysis:

“The main issue here is whether Brandy [the dog] was an animal trained for the purpose of accommodating Storms' disability.”

Commentary - The case hinged on whether the dog was specifically trained as a service dog, NOT whether the denial of in-person service constituted an unequal accommodation under the law.

“...the defendants' violated [RCW 49.60.215](#) by not allowing Storms to do her own shopping within the store because she was accompanied by a service animal. The trial court specifically found that Storms “was not allowed to shop on her own or select her purchase.” This could certainly qualify as an act resulting in a “restriction” based on the use of a service animal by a disabled person prohibited under [RCW 49.60.215](#).”

Commentary - After the appellate court deemed the dog a service animal, they concluded that she had been unlawfully restricted by the store on the basis of a status covered by the cited law. The same law also mandates equal accommodations regardless of “...the presence of any sensory, mental, or physical disability...” as explained in the “Washington State Law” section above.

It is recommended to read the whole case if you are considering legal action against a discriminator.