



VIRES LAW GROUP

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Filing with local EEOC and State FEPA Offices on Covid-19 Vaccination Status Discrimination

This memo is designed to assist you in filing your claims of unlawful conduct against your employer, using federal law claims under Title VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act (“ADA”), as amended, as the guide. Please note that if your state also has civil rights laws regarding religious protection and protection against discrimination and retaliation for disability in the workplace, you should add these claims when you file. If your state has a Fair Employment Practice Agency (“FEPA”) and agreement with the federal Equal Employment Opportunity Commission (“EEOC”), your claims will be dual-filed by the EEOC with the state office (and vice versa). For a listing of FEPAs to determine whether your state has dual-filing see **Appendix A** hereto. You can also contact your state’s FEPA to ask about your state’s workplace protection laws.

We recommend filing with the EEOC and allowing it to make the dual filing notice with the FEPA in your state based on our experience with EEOC claims filed concerning Covid-19 discrimination issues. Thus far, both local-level investigators and higher level authorities in the EEOC have been largely consistent in agreeing that claimants alleging religious and other discrimination and retaliation by their employer based on their unvaccinated status have valid claims to pursue. *However, in contrast, we have evidence of at least three major state FEPAs that are not only denying all claims related to Covid-19 as having no “reasonable cause” or basis in law to proceed, but even going so far as colluding with employers to deny employee claims.*

Note that you have a time limit in which you need to make your claims before the EEOC. We do not think many of you will have any concerns with the deadlines because discrimination and harassment in many cases is ongoing. However, you should be aware that if there are specific instances of adverse action against you, each instance has its own 180-300 day deadline, eg: if you were first demoted, then terminated – the deadline to file your claims based on the demotion differ in time from the deadline for filing based on the termination. If your state does not have a FEPA, generally, you need to file a “charge” at the EEOC within 180 calendar days from the day the discrimination took place. If your state does have a FEPA, you are allowed 300 calendar days to file with the EEOC.



Outline of Claims:

A. Religious Discrimination

There are several “protected classes” under Title VII. However, note that your medical status as *unvaccinated* is not a protected class in the context of Covid-19 vaccination mandates and “protocols” for unvaccinated employees. Rather, we focus here on claims under Title VII related to discrimination against you for your sincerely held religious beliefs which led you to decide not to receive a Covid-19 vaccination.

You may have a claim under Title VII if you refused Covid-19 vaccination and made your employer aware of this fact because of a sincerely held religious belief against taking the shots. The most obvious evidence of this would be if you filed a request for a religious exemption to taking the shot.

Your employer is required to do an individualized assessment of your application for exemption, and approve your exemption, unless the employer can prove that accommodations to work-around your receiving the vaccination would be an “undue hardship” for the company or that your exemption request is somehow fraudulent. We note that, in the case of Covid-19 vaccinations, it is basically not possible for your employer to show an undue hardship to accommodate your religious beliefs, given both the current data indicating that vaccinations provide zero protection from infection or transmissibility of Covid-19 and the fact that “accommodations” are basically the pre-vaccine protocols used for over a year before mandates were implemented.

If you have been terminated from your job because of your beliefs - in the Covid-19 vaccination mandate context, usually this is due to having been denied a religious exemption - you have a fairly straightforward claim of discrimination based on your religious beliefs. However, short of termination based on your beliefs, if you have been turned down for promotion, demoted, or lost wages due to your religious beliefs and consequent refusal to receive the Covid-19 shots, you also likely have a claim for discrimination in violation of Title VII.

In some cases, other harassment by your employer against you, such as being transferred to another position, enduring ongoing insulting and offensive language labeling you because of your religious beliefs, being singled out, ostracized, and isolated because of your beliefs, etc, may be sufficient facts to establish that you are suffering discrimination for your religious beliefs in violation of Title VII. To be actionable, the conduct that constitutes harassment against you must either be conduct you are required to endure to continue employment or it must rise to such a severe or pervasive degree as to establish a “hostile” work environment to the “reasonable person.”



By way of example, in the Covid-19 vaccination mandate/policy context, we have heard of employers requiring unvaccinated employees not to use any restroom facilities that other employees use and to use portable toilets placed outside specifically for use by the unvaccinated; unvaccinated individuals being placed for a period of time on unpaid leave prior to termination; irrational and arbitrary policies designed to identify visually and clearly those who are unvaccinated – with disciplinary measures if employees object or refuse to be so marked; sudden increases in or repetitive punitive actions or disciplinary measures for other non-material matters beginning after the employee disclosed their unvaccinated status or refused to disclose their vaccinated status; denying unvaccinated employees access to Human Resources to discuss their complaints regarding their disparate treatment; managers and supervisors calling the unvaccinated “unclean” and other derogatory words; and the relegation of all unvaccinated employees to separate lunch periods to avoid intermingling of the unvaccinated with vaccinated employees specifically during break times.

B. Retaliation under Title VII

It is also unlawful under Title VII for an employer to retaliate against you for exercising your rights under Title VII. Thus, your employer is prohibited from taking “adverse employment action” against you either for objecting to or complaining about their unlawful or discriminatory action under Title VII or for making a claim against your employer for their unlawful conduct, either in an official complaint or procedure or an informal complaint.

Again, as with a discrimination claim under Title VII, adverse employment action in the form of retaliation against you for exercising your rights includes termination, refusal to promote, demotion, and decrease in wages or salary. Other conduct may rise to an actionable level for retaliation if “a reasonable employee would have found the action materially adverse,” meaning that the retaliatory conduct would dissuade a reasonable employee from exercising his or her rights in opposing the employer’s perceived unlawful discrimination either formally or informally.

C. Discrimination Due to Being Perceived as Disabled

It is important to note in discussing this claim that we do not consider non-vaccination for Covid-19 a disability, nor are you required to claim disability when you allege that your employer has discriminated against you in violation of the ADA. It is prohibited under the ADA for your employer to discriminate against you not only for any disability so defined, *but also* for a *perceived* disability. If an employer regards you “as having an impairment” to the performance of your work or life activity and discriminates against you based on that perception, you may have a claim under the ADA.



Under a claim of this kind, you are not alleging an impairment or disability, but as an employee, you are alleging that the *employer perceives* you as being disabled by an impairment that is not temporary and is not a minor matter. While there is currently debate over whether a Covid-19 infection is “transitory and minor” as a legal matter, there are sufficient facts to assert that Covid-19 is not fleeting or minor, and indeed, other contagious diseases have been found to be a disability under the law. Most importantly, however, an employer that is engaging in severe restrictions and discriminatory behavior and protocols against you and other employees, while characterizing these as “Covid-19 measures”, certainly does not perceive Covid-19 as either transitory or minor.

An employer is required to make an individualized risk assessment, even as to a perceived disability, with regard to the employer’s ability to continue your employment and make accommodations for you. In the Covid-19 vaccination context, we have observed zero individualized risk assessments, and instead, it appears that blanket, arbitrary determinations of risk – based on perceived disability - are the common employer response.

In cases where you have been terminated based on your unvaccinated status, the argument under the ADA is essentially that your employer made an incorrect and unlawful determination that you could not perform your job duties because you are disabled in your medical status as a Covid-19 unvaccinated person and would therefore put the employer (co-workers, guests, customers, etc) at unacceptable risk, such that your perceived disability led to your termination.

In cases where you are suffering other adverse employment actions, including harassment (see above under Title VII claims) the argument regarding this claim is that your suffering unlawful harassment and discrimination is due to your employer’s view that you are disabled because of your unvaccinated medical status.

Things we have seen with regard to this claim are absurd and “augmented” protocols that are unrelated to previous pre-vaccination Covid-19 protocols; protocols that emphasize isolation and ostracization of unvaccinated employees (analogous to treatment of “lepers”); and prohibiting unvaccinated employees from performing essential functions of their job solely because they are unvaccinated – essential functions which they were fully able and allowed to perform during the pandemic, but prior to the existence of the Covid-19 vaccines.

D. Discrimination Due to Medical Condition/Disability

We are not addressing in detail in this memo scenarios where employees have requested an exemption from Covid-19 vaccination on medical grounds and have been denied and/or suffered adverse employment actions as a result. Some such cases may indeed constitute discrimination in violation of ADA protections and/or Title VII. In other cases, the nature or basis for the request for the



medical exemption is not a disability within the meaning of the law, ie: natural immunity, pregnancy, etc.

However, it is important to note in this memo that, if you have requested a medical exemption from a Covid-19 vaccination due to a disability within the meaning of the law, and you have been denied accommodation and/or have otherwise suffered adverse employment action, as we have outlined in this memo, do not fail to include these facts and this claim to your inquiry to the EEOC and ensure that the facts and your claim under the ADA are present in your charge before you submit it. This claim must be brought before the agency before you will be able to assert such a claim before a court.

E. Retaliation under ADA

It is prohibited under the ADA for an employer to retaliate against you for opposing or objecting to your employer's unlawful conduct pursuant to the ADA. It is also prohibited for an employer to "coerce, intimidate, threaten or interfere" with your exercise or enjoyment of your rights under the ADA or with your assisting any other individual in the exercise or enjoyment of rights under the ADA.

Much like under Title VII, if you have (1) objected to your employer's treatment of you after you disclosed your unvaccinated status; or (2) complained to or assisted someone in complaining to their employer or union in order to raise an objection to the employer; or (3) have filed any formal complaint against your employer over the employer's treatment of you/them as if disabled, *and* as a result of this objection or other protected activity, your employer takes action against you, you may have a claim of retaliation under the ADA.

F. Disparate Impact under Title VII, Equal Protection

Claiming that a Covid-19 vaccination mandate or protocol for the unvaccinated results in a disparate impact on a protected class of employees may be a possible claim, but it may be difficult to prove. In order to make this claim, you generally must show that the protocol in question *causes* a significant disparate impact on the class of employees, including you, who are members of a protected group. In federal law the "protected group" refers to a group with a shared characteristic - race, color, religion, sex, or national origin – against whom discrimination based on this characteristic is prohibited. Under state law, many states have added other protected classes to their civil rights anti-discrimination law, like age, gender identity, and civil/marital status, to name a few.

The most likely style of this claim we have seen in the Covid-19 vaccination mandate and protocols context is that the protocol for the unvaccinated or a vaccination mandate itself disparately impacts those of sincere religious belief because they are statistically more likely to refuse to comply with the mandate -



also in many cases, religious exemptions are statistically being denied at higher rates than other exemptions requested - and therefore the policy/protocol is disproportionately terminating or otherwise adversely affecting employees on the basis of their religion.

Steps to filing:

1. Go to the EEOC Public Portal <https://publicportal.eeoc.gov/Portal/Login.aspx> ; click “Filing with EEOC” and continue by answering the preliminary questions, which include entering the date of the adverse action against you OR the last date of harassment against you, following the prompts.
2. At the “Reason” page, we believe your claims – based on the guidance above – may allow you to click one or more of the boxes in the list:
 - a. Disability
 - b. Religion
 - c. Retaliation – I complained to my employer about job discrimination ****If you filed a grievance, complained to your union to pursue a complaint, or filed with the EEOC or state agency regarding your discrimination, or you assisted another employee regarding their claim against the employer, you may also need to check another “Retaliation” box.***
3. You will be prompted to set up your account with a “Sign In” page.
4. Prepare a written statement describing your personal experience of discrimination and/or retaliation by your employer in summary form, but with sufficient detail to provide a clear narrative of the facts of your case, your damages suffered as a result of your employer’s unlawful conduct against you, and your request of the agency to investigate and provide you relief.
5. File the statement as prompted in your Public Portal account. ***Note, your filing an online inquiry is *not* a timely filing of your formal charge. You must go through the intake interview and sign and submit a charge to meet the deadlines.***
6. You will be prompted to set up/accept a date for an intake interview with an EEO officer who will go over your submitted inquiry claim(s) and make a determination whether the agency has sufficient information to move forward with a charge against your employer or provide you with a Right to Sue letter. ***If you are within 60 days until your deadline to submit a timely charge to the EEOC, you may contact the local office and also make a note of the timing urgency in your inquiry, so that the officer that reviews your inquiry can assist you in filing a timely charge.***
7. At the interview, the officer will seek to verify your statements and may have additional questions for you based on your submitted inquiry statement. You will then be informed whether the officer confirms that your claims are those which the agency is tasked to address through its statutory enforcement authority.



8. The officer will prepare a written charge based on your inquiry and your interview information, and you will be prompted by email to visit the Public Portal, log in, and carefully review the charge.
9. Make sure that all facts are accurately represented and the other basic information regarding you, your contact information, etc are correct before you e-sign the document as prompted. ***You may want to have counsel review the charge before you e-sign and submit.***
10. Once you sign and submit the charge, it is in process with the agency.
11. At this point, if you seek to enter legal counsel on your behalf in the agency proceeding, you may enter their information in the Public Portal and/or your counsel may provide notice directly to the agency of their representation in the matter.
12. If you are seeking to move forward with judicial review of your employer's unlawful conduct, you MUST await a Right to Sue letter from the agency before a court will allow you to bring your claims for damages before the court. ***If you seek injunctive relief immediately – to stop certain discrimination and harassment against you – we can discuss your options on this with you.***
13. If you want to sue expeditiously, you may request the agency to provide you with the Right to Sue letter in expedited fashion. The agency is not obligated to provide you with the Right to Sue letter unless it has determined it cannot complete its investigation within a 180-day period OR 180 days have lapsed since you submitted your signed charge, and the agency has not completed its investigative process.
14. After your charge is filed, the EEOC may suggest mediation, which is entirely voluntary.
15. ***If you pursue Agency action rather than an immediate lawsuit:*** note that the agency will conduct its investigation, requesting documents and responses from your employer and providing you with a lengthy casefile regarding your claims. This may be very valuable to a later lawsuit, though you must consider statutes of limitations regarding your claims for filing your lawsuit. Additionally, the EEOC, if it determines that your employer has violated law, will issue you and the employer a Letter of Determination regarding the agency's finding of violation. The agency may seek to resolve your claims through "conciliation," which is essentially a voluntary settlement process moderated by the agency. The agency's authority has limits, and a settlement on your claims may not be reached through conciliation. In a few cases, the agency itself may bring a lawsuit against your employer for violation of law.
16. ***If you obtain your Right to Sue and proceed to a lawsuit:*** you have a deadline of 90 calendar days to bring your complaint before a court and file against your employer. Civil litigation will seek to obtain documents and



- evidence prior to a trial on the claims you bring. Civil litigation may also result in summary judgment or settlement prior to trial.
17. In court, you may be awarded relief of monetary damages, including potentially punitive damages, and you may also be awarded attorney's fees, expert witness fees, and court costs.

We hope this helps you pursue your claims against your employer for unlawful conduct and retaliation against you for taking your stand regarding your choice for your own body. We are available to counsel you in this process and perhaps represent you in civil litigation, upon doing a full assessment of your claims in our office.

If you have any questions, please feel free to call our office.

Other resources:

<https://www.eeoc.gov/field-office>

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K>



APPENDIX A

Contact information for Fair Employment Practice Agencies in the USA

ALABAMA

Alabama Department of Human Resources
Office of Equal Employment & Civil Rights
334-242-1550

www.dhr.state.al.us/eeo

ALASKA

Alaska State Commission on Human Rights
800A Suite 204
Anchorage, AK 99501-3669
907-276-4692

www.gov.state.ak.us/aschr/aschr.htm

ARIZONA

Arizona State Attorney General
Civil Rights Division
402 W Congress South Bldg. #215
Tucson, AZ 85701
520-628-6500

www.attorney-general.state.az.us/civil_rights/

CALIFORNIA

A. Department of Justice, Civil Rights Enforcement Section
Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 322-3360

caag.state.ca.us/civilrights/

B. California Dept. of Fair Employment and Housing
2014 T St. Suite 210
Sacramento, CA 95814
916-227-2878



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www.dfeh.ca.gov/

COLORADO

Colorado Civil Rights Division

1560 Broadway Suite 1050

Denver, CO 80202

303-894-2997

800-262-4845 in state

www.dora.state.co.us/civil-rights

CONNECTICUT

Connecticut Commission on Human Rights and Opportunities

21 Grand St.

Hartford, CT 06106

860-541-3400

800-477-5737

www.state.ct.us/chro

DELAWARE

Delaware Human Relations Division

820 French St. 4th Floor

Wilmington, DE 19801

302-577-5050

www.state.de.us/sos/human.htm

DISTRICT OF COLUMBIA

District of Columbia, Office of Human Rights

441 4th St. NW Suite 970N

Washington, DC 20001

phone: 202-727-3900

fax: 202-724-3786

ohr.dc.gov/



FLORIDA

Florida Commission on Human Relations
Building F Suite 240
325 John Knox Rd.
Tallahassee, FL 32399-4149
850-488-7082
800-342-8170
fchr.state.fl.us/

GEORGIA

Georgia Human Relations Commission
225 Peachtree St. NE Suite 207
Atlanta, GA 30303
404-656-6046
www.ganet.org/ghrc

HAWAII

Hawaii Civil Rights Commission
830 Punchbowl St. Room 411
Honolulu, HI 96813
808-586-8636
www.state.hi.us/hcrc

IDAHO

Idaho Human Rights Commission
1109 Main St. 4th Floor
P.O. Box 83720
Boise, ID 83720
208-334-2873
www.state.id.us/ihrc



ILLINOIS

Illinois Dept. of Human Rights
100 W Randolph St. Suite 10-100
Chicago, IL 60601
312-814-6200
800-662-3942
www.state.il.us/dhr

INDIANA

Indiana Civil Rights Commission
100 N Senate Ave. Room N103
Indianapolis, IN 46204
317-232-2600
800-628-2909
www.state.in.us/icrc

IOWA

Iowa Civil Rights Commission
211 E Maple St.
Grimes State Office Bldg.
Des Moines, IA 50309-1858
515-281-4121
800-457-4416
www.state.ia.us/government/crc

KANSAS

Kansas Human Rights Commission
900 SW Jackson St. Suite 851-S
Topeka, KS 66612-1258
785-296-3206
www.ink.org/public/khrc

KENTUCKY



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Office of Equal Employment Opportunity and Contract Compliance
Capitol Annex, Room 370
Frankfort, KY 40601
Telephone: (502) 564-2874
Facsimile: (502) 564-1055
www.state.ky.us/agencies/finance/descript/eeoc.htm

LOUISIANA

Louisiana Commission on Human Rights
1001 N. 23rd St., Suite 262
Baton Rouge, Louisiana 70802
Phone: (225) 342-6969
Fax: (225) 342-2063
TDD: 1-888-248-0859
www.gov.state.la.us/depts/lchr.htm

MAINE

Maine Human Rights Commission
51 State House Station
Augusta, ME 04333-0051
207-624-6050
www.state.me.us/mhrc/

MARYLAND

Maryland Human Rights Commission
6 St. Paul St. 9th Floor
Baltimore, MD 21202-1631
410-767-8600
800-637-6247 in state
www.mchr.state.md.us

MASSACHUSETTS

Massachusetts Commission Against Discrimination
1 Ashburton Pl., Room 601
Boston, MA 02108-1518



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617-727-3990

www.state.ma.us/mcad/

MICHIGAN

Michigan Department of Civil Rights

Victor Bldg. Suite 700

201 N Washington Square

517-335-3165

www.mdcr.state.mi.us/mdcr/

MISSOURI

Missouri Commission Human Rights

Department of Labor and Industrial Relations

P.O. Box 1129

3315 W Truman Blvd.

Jefferson City, MO 65102-3325

573-751-3325

www.dolir.state.mo.us/hr

MONTANA

Dept. of Labor and Industry, Human Rights Commission

P.O. Box 1728

Helena, MT 59620

406/444-4344

800-542-0807 in state

dli.state.mt.us/decisions/hrcdec.htm

NEBRASKA

Nebraska Equal Opportunity Commission

301 Centennial Mall South

P.O. Box 94934

Lincoln, NE 68509

402-471-2024

800-642-6112

www.nol.org/home/NEOC/



NEVADA

Dept. of Employment Training and Rehabilitation
Nevada Equal Rights Commission
1515 E. Tropicana Ave. Suite 590
Las Vegas, NV 89119-6522
702-486-7161
detr.state.nv.us

NEW HAMPSHIRE

New Hampshire Human Rights Commission
2 Chenell Dr.
Concord, NH 03301
603-271-2767
www.state.nh.us/hrc

NEW JERSEY

New Jersey Dept. of Law and Public Safety
Division on Civil Rights
140 E Front St.
P.O. Box 090
Trenton, NJ 08625-0090
609-292-4605
www.state.nj.us/lps/dcr

NEW MEXICO

New Mexico Human Rights Division
Dept. of Labor
1596 Pacheco St.
Santa Fe, NM 87502
505-827-6838
800-566-9471
www3.state.nm.us/dol



NEW YORK

New York State Division of Human Rights
55 W 125th St.
New York, NY 10027
212-961-8400
www.nysdhr.com

NORTH CAROLINA

North Carolina Human Relations Commission
217 W Jones St. 4th Floor
Raleigh, NC 27603
919-733-7996
www.doa.state.nc.us/hrc/homepage.htm

NORTH DAKOTA

North Dakota Dept. of Labor, Division of Human Rights
State Capital
600 East Blvd.
Bismarck, ND 58505
701-328-2660
800-582-8032
www.state.nd.us/labor/Division of Human Rights.htm

OHIO

Ohio Civil Rights Commission
111 E Broad St. Suite 301
Columbus, OH 43205
614-466-5928
www.state.oh.us/crc

OKLAHOMA



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Oklahoma Civil Rights Commission
2101 N Lincoln Blvd.
Oklahoma City, OK 73105
405-521-2360
www.onenet.net/~ohrc2

OREGON

Oregon Civil Rights Division
Bureau of Labor and Industry
800 NE Oregon St. #32 Suite 1070
Portland, OR 97232
503-731-4075
www.boli.state.or.us/civil

PENNSYLVANIA

Pennsylvania Human Relations Commission
301 Chestnut Street, Suite 300
Harrisburg, PA 17101
Voice: (717) 787-4410
Telephone: (717) 783-9308 or (717) 787-4087
www.phrc.state.pa.us/

RHODE ISLAND

Rhode Island Commission for Human Rights
10 Abbott Park Pl.
Providence, RI 02903-3768
401-222-2661
www.state.ri.us/manual/data/queries/stdept_idc?id=16

SOUTH CAROLINA

South Carolina Human Affairs Commission
P.O. Box 4490
2611 Forest Dr. Suite 200
Columbia, SC 29240
803-737-7800



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www.state.sc.us/schac/

SOUTH DAKOTA

South Dakota Dept. of Commerce and Regulation
Division of Human Rights
118 W Capital Ave.
Pierre, SD 57501
605-773-4493

www.state.sd.us/dcr/hr

TENNESSEE

Tennessee Human Rights Commission
530 Church Street, Suite 400
Cornerstone Square Building
Nashville, TN 37243-0745
Phone: 615-741-5825

www.state.tn.us/humanrights/

TEXAS

Texas Commission on Human Rights
P.O. Box 13493
6830 Highway 290 East, Suite 250
Austin, TX 78711
512-437-3450

www.state.tx.us/agency/344.html

UTAH

Utah Anti-Discrimination Division
P.O. Box 146640
Salt Lake City, UT 84114-6640
801-530-6801

laborcommission.utah.gov/



VERMONT

Vermont Human Rights Commission
135 State St. Drawer 33
Montpelier, VT 05633-6301
802-828-2480
www.hrc.state.vt.us/

VIRGINIA

Council on Human Rights
Suite 1202 Washington Bldg.
1100 Bank St.
Richmond, VA 23219
804-225-2292
800-633-5510
www.chr.state.va.us

WASHINGTON

Washington State Human Rights Commission
P.O. Box 42490
711 S Capital Way #402
Olympia, WA 98504-2490
360-753-6770
800-233-3247
www.wa.gov/hrc

WEST VIRGINIA

West Virginia Human Rights Commission
1321 Plaza East Room 108A
Charleston, WV 25301
304-558-2616
888-676-5546
www.state.wv.us/wvhrc



WISCONSIN

Wisconsin Equal Rights Division
Dept. of Workforce Development
P.O. Box 8928
201 E Washington Ave. Room 407
Madison, WI 53708-8928
608-266-6860
www.dwd.state.wi.us/er

WYOMING

Wyoming Department of Employment Labor Standards
Fair Employment Program
1510 E. Pershing, West Wing, Suite 2015
Cheyenne, WY 82002
<http://wydoe.state.wy.us/doe.asp?ID=247>