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## **State Anti-Discrimination Protections for Independent Contractors**

Imagine a plumber who has just received a call from a potential customer who needs work done immediately. The plumber drives over to meet a potential customer with his tools, ready to work. When he arrives, the customer realizes that the plumber is Muslim, and refuses to hire him because of his religion. Because the plumber is an independent contractor, he may have no legal recourse.

Now imagine a rideshare driver. She is frequently sexually harassed by customers, and has made the rideshare company aware of the situation, but they have done nothing. Yet the rideshare company has misclassified the driver as an independent contractor, even though she should be considered an employee. The company's misclassification creates additional hurdles to pursuing a sexual harassment claim, potentially enabling the rideshare company to skirt its legal obligations.

As the way we work continues to evolve, the number of people working in ways that do not fit within traditional employer/employee frameworks is likely to grow. Yet the leading federal employment antidiscrimination law, Title VII of the Civil Rights Act of 1964, does not apply to independent contractors.<sup>1</sup> Several states have stepped up to—at least partially—fill this gap, though protections for independent contractors remain troublingly sparse. Among the states where some protections exist, there is little uniformity in terminology or extent of coverage. **This fact sheet summarizes state-level anti-discrimination protections for independent contractors. This information was identified through a 50-state survey of statutory text of state-level anti-discrimination laws and of the case law interpreting those laws as applied to independent contractors and other non-employees.**<sup>2</sup>

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<sup>1</sup> 42 U.S.C. § 2000e-2 (2020); E.E.O.C., COVERAGE, <https://www.eeoc.gov/employers/coverage.cfm> (last visited Dec. 4, 2019) (“People who are not employed by the employer, such as independent contractors, are not covered by the anti-discrimination laws.”); *see also, e.g., Levitin v. Northwest Community Hospital*, 923 F.3d 499, 501 (7th Cir. 2019) (“[Title VII] protects only employees.”); *Diggs v. Harris Hospital-Methodist Inc.*, 847 F.2d 270, 272 (5th Cir. 1988) (“[A] Title VII claim must necessarily involve an employment relationship.”); *Lutcher v. Musicians Union Local 47*, 633 F.2d 880, 883-84 (9th Cir. 1980) (“There must be some connection with an employment relationship for Title VII to apply.”).

<sup>2</sup> On file with A Better Balance. This research is current as of May 2020.



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## What is an independent contractor?

Generally speaking, an “independent contractor” is a person who performs work for someone else, but retains control over when, where, and how they work. This fact sheet uses the term “independent contractor” while recognizing that this term might be defined differently in different state laws, and that some states might use other terms, such as “freelancer,” to refer to the same or a similar group of people as this fact sheet intends to address.

This analysis focuses on assessing protections for those who work independently and are not the employee of anyone, not those who work as employees of a subcontractor or other hiring entity other than the one from whom the worker needs protection.<sup>3</sup> Many employers, however, wrongfully misclassify people as independent contractors despite the fact that they are legally entitled to the rights and protections of employees. In general, this analysis uses the term “independent contractor” to mean people who are truly independent contractors. However, strong anti-discrimination protections for independent contractors are important both so that true independent contractors are protected and so that employers have fewer incentives to misclassify their employees, which, for example, is a common problem in the gig economy.

## How did we determine which states do or do not have anti-discrimination protections for independent contractors?

As detailed below, we concluded eleven states and New York City<sup>4</sup> provide at least some protections against employment discrimination for independent contractors. States in which independent contractors are either explicitly protected in statute or have been clearly held to be protected in case law are considered states where independent contractors are protected.

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<sup>3</sup> See, e.g., *Conrad v. ARA Szabo*, 480 S.E.2d 801, 815-16 (W. Va. 1996) (allowing claims against an employer by an employee of a subcontractor to go forward). Note that one federal court case suggests that independent contractors are not covered by West Virginia’s anti-discrimination law. *Jackson v. West Virginia University Hospitals, Inc.*, No. 1:10CV107, 2011 WL 1485991, at \*5 (N.D.W. Va. Apr. 19, 2011) (suggesting that non-employees can bring claims only when they are suing an employer or a joint employer but not when they are an independent contractor).

<sup>4</sup> Note that the research done for this fact sheet did not include a full survey of municipal laws. In addition to the state-level (and D.C.) research discussed above, the research conducted for this fact sheet looked only at New York City.

In many of the states surveyed, independent contractors are *clearly* without protections, either because they are explicitly excluded by statute or because there is clear case law finding that they are excluded from coverage.<sup>5</sup> In many other states, independent contractors are *likely* without protections, either because the state statutes are interpreted by looking to federal law (and Title VII does not apply to independent contractors<sup>6</sup>) or because, based on courts' interpretation of cases involving similar, albeit distinct questions of coverage, it is likely that a court in that state would find that independent contractors are excluded from coverage if presented with the question.<sup>7</sup> In the rest of the states, coverage for independent contractors is *unclear*, because there is no statutory language or case law on point, and either state statutes are often interpreted independently of federal law<sup>8</sup> or case law points in multiple directions.<sup>9</sup>

Finally, this fact sheet does not consider factors other than independent contractor status that may impact the scope of coverage of the applicable state laws. For instance, many state laws apply only to employers of certain sizes (or to "employers" generally, where some of those who hire independent contractors may not be employer at all). Certain categories of employers may

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<sup>5</sup> See, e.g., *Ostrander v. Farm Bureau Mut. Ins. Co. of Idaho* 851 P.2d 946, 949 (Idaho 1993) ("As an independent contractor, Ostrander is not protected by the provisions of Title VII, the ADEA or the Idaho Human Rights Act"); OKLA. STAT. ANN. tit. 25, § 1301(1) (West 2020) (clearly stating in the statutory language that "[e]mployee shall not include independent contractors").

<sup>6</sup> See *supra* note 1.

<sup>7</sup> See, e.g., *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 17 (Iowa 2010) (focusing on whether there is an employer-employee relationship in considering whether a prisoner could bring suit against the prison under the state's anti-discrimination law).

<sup>8</sup> For example, Alaska's Supreme Court has noted, in regards to the Alaska Human Rights Act, that "while we look to federal discrimination law jurisprudence generally, AS 18.80.220 is intended to be more broadly interpreted than federal law to further the goal of eradication of discrimination." *Smith v. Anchorage School Dist.*, 240 P.3d 834, 842 (Alaska 2010) (internal citations omitted). Given that, and the fact that no cases were found specifically addressing independent contractor coverage under the Alaska Human Rights Act, it is unclear whether independent contractors have any protections.

<sup>9</sup> For example, a federal district court has analyzed Title VII and West Virginia Human Rights Act (WVHRA) claims together, and held that summary judgement for the defendant-employer could not be granted because there was a triable issue of fact as to the plaintiff's status as an employee, a joint employee, or independent contractor. *Jackson v. West Virginia University Hospitals, Inc.*, No. 1:10CV107, 2011 WL 1485991, at \*5 (N.D.W. Va. Apr. 19, 2011). The court noted that Title VII does not cover independent contractors and proceeded on both the state and federal claim accordingly, apparently assuming without discussing that WVHRA employed the same standard. *Id.* However, the Supreme Court of Appeals of West Virginia has also held, in a case allowing claims against a defendant-employer by an employee of a subcontractor (who was not jointly employed by the defendant-employer) to go forward, that the WVHRA "prohibits any person who is an employer from discriminating against any 'individual' regarding his or her employment opportunities irrespective of whether the individual is an employee of that employer." *Conrad v. ARA Szabo*, 480 S.E.2d 801, 815-16 (W. Va. 1996). That holding could suggest that independent contractors may be protected by the WVHRA. Accordingly, protections for independent contractors under the WVHRA are unclear.

also be exempt from the applicable law. As a result, there may be circumstances in which a particular independent contractor is the type of worker covered by the law, but is unable to benefit from the law's protections because the person with whom they contract is not an employer covered by the law.

## **States with Some Anti-Discrimination Protections for Independent Contractors**

The following eleven states and New York City<sup>10</sup> provide at least some protections against employment discrimination for independent contractors.

- California
- Illinois
- Louisiana
- Maryland
- Minnesota
- New Jersey
- New York City
- New York State
- Pennsylvania
- Rhode Island
- Vermont
- Washington

**California:** Persons providing services pursuant to a contract are protected from discriminatory harassment under California civil rights law.

- **Which independent contractors are protected against discrimination?** Persons providing services pursuant to a contract.
- **What anti-discrimination protections do independent contractors have?** They are protected from discriminatory harassment only. They are not protected from other forms of discrimination.

- **What is the legal authority for these protections?** This protection comes directly from the statutory text of California’s Fair Employment and Housing Act, the state’s anti-discrimination law. *See* CAL. GOV’T CODE § 12940 (j) (West 2020).

**Illinois:** Nonemployees, including contractors, are protected from discriminatory harassment under Illinois civil rights law.

- **Which independent contractors are protected against discrimination?** Nonemployees. The law defines “nonemployee,” as “a person who is not otherwise an employee of the employer and is directly performing services for the employer pursuant to a contract with that employer. ‘Nonemployee’ includes contractors and consultants.”
- **What anti-discrimination protections do they have?** They are protected from discriminatory harassment only. They are not protected from other forms of discrimination.
- **What is the legal authority for these protections?** This protection comes directly from the statutory text of the Illinois Human Rights Act, the state’s anti-discrimination law. 775 ILL. COMP. STAT. ANN. 5/2-102 (West 2020).

**Louisiana:** Insurance agents who are not employees are protected from discrimination on the same basis as employees, but many are not protected from discrimination.

- **Which independent contractors are protected against discrimination?** Insurance agents who are not employees. The employment discrimination law applies to “an insurer, as defined in R.S. 22:46, with respect to appointment of agents, regardless of the character of the agent’s employment,” and therefore is understood to include insurance agents within its coverage regardless of whether they are employees or independent contractors. LA. STAT. ANN. § 23:302 (2019).
- **What anti-discrimination protections do they have?** While the statute appears to only protect insurance agents who are not employees from discrimination in hiring, at least one court has interpreted the law to offer more expansive anti-discrimination protections

to insurance agents, though it remains unclear if they have all the same protections as employees.<sup>11</sup>

- **What is the legal authority for these protections?** This protection comes directly from the statutory text of the Louisiana Employment Discrimination Law, but has been interpreted more broadly by case law. LA. STAT. ANN. § 23:302 (2019). “Employer” includes insurers with respect to appointment of agents,<sup>12</sup> regardless of the agent’s employment status. However, in interpreting a similar though potentially more expansive earlier version of the Louisiana Employment Discrimination Law, a court has held that agents of insurers who are independent contractors have more than just protection from discrimination in hiring.<sup>13</sup>

**Maryland:** Independent contractors are protected from discrimination on the same basis as employees.

- **Which independent contractors are protected against discrimination?** Independent contractors. The law defines “employee” to include “an individual working as an independent contractor for an employer.”
- **What anti-discrimination protections do they have?** They have the same rights and protections from discrimination as employees.

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<sup>11</sup> While the statutory language specifies that “‘Employer’ shall also include an insurer, as defined in R.S. 22:46, with respect to appointment of agents, regardless of the character of the agent’s employment,” and could therefore be read to limit anti-discrimination protections for independent contractor insurance agents to protection from discrimination in *hiring*, a state court interpreting a previous version of this statutory provision allowed an insurance agent to bring a claim challenging the insurer’s limiting of his responsibilities during employment. *Guillory v. State Farm Ins. Co.*, 94-1405 (La. App. 4 Cir. 9/28/95); 662 So. 2d 104, 113 (holding finding that plaintiff, an independent contractor insurance agent, could bring an anti-discrimination claim under LA. STAT. ANN. § 23:1006, now incorporated into § 23:302(2)). However, that case involved an earlier version of the statute, which included more expansive language regarding employment discrimination by insurers with respect to agents; no cases were found assessing the impact of the change in language on independent contractor insurance agents’ ability to bring claims for discrimination other than in hiring.

<sup>12</sup> LA. STAT. ANN. § 23:1006, which previously contained a prohibition on intentional race discrimination in employment, including by insurers with regards to their agents, was reenacted and incorporated into the definition of “employer” in § 23:302 in 1999. S.B. 871, 1999 La. Sess. (enacted).

<sup>13</sup> See *Guillory*, 662 So. 2d at 113-16 (finding that plaintiff, an independent contractor insurance agent, could bring an anti-discrimination claim under LA. STAT. ANN. § 23:1006, now incorporated into § 23:302(2)).

- **What is the legal authority for these protections?** This protection comes directly from the statutory text of Maryland’s employment anti-discrimination law. MD. CODE. ANN., STATE GOVT § 20-601(c) (West 2019).

**Minnesota:** Those doing business or who have a contract with a person engaged in a trade or business or in the provision of a service are protected from intentional discrimination.

- **Which independent contractors are protected against discrimination?** Those doing business or who have a contract with a person engaged in a trade or business or in the provision of a service. The provisions of the Minnesota Human Rights Act relating to employees does not use the term “independent contractor,” “non-employee,” or any similar term. The provision of the Minnesota Human Rights Act relating to discrimination in contracting is framed in terms of how “a person engaged in a trade or business or in the provision of a service” treats a person with whom they do business or with whom they contract.
- **What anti-discrimination protections do they have?** They are protected from intentional discrimination by those with whom they do business.
- **What is the legal authority for these protections?** The provisions of the Minnesota Human Rights Act, the state’s anti-discrimination law, relating to employees do not apply to independent contractors, but the Minnesota Human Rights Act has a separate provision which provides that it is unlawful for a person to intentionally refuse to do business with, contract with, or discriminate in the terms, conditions or performance of a contract based on their protected status. MINN. STAT. ANN. § 363A.17 (West 2020).<sup>14</sup> Courts have held that this provision protects independent contractors in Minnesota from intentional discrimination in the making of contracts and in the terms, conditions, and performance of contracts.<sup>15</sup>

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<sup>14</sup> The statutory language reads as follows: “It is an unfair discriminatory practice for a person engaged in a trade or business or in the provision of a service: . . . (3) to intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person’s race, national origin, color, sex, sexual orientation, or disability, unless the alleged refusal or discrimination is because of a legitimate business purpose.”

<sup>15</sup> See *Wilson v. CFMOTO Powersports, Inc.*, No. 15–3192 (JRT/JJK), 2016 WL 912182 (D. Minn. Mar. 7, 2016) (noting, though not using the term “independent contractor,” that the plaintiff “does not need to show that he is an ‘employee’ for the purposes of his § 363A.17(3) claim”); *Kalema v. U.S. Oil Company*, No. 05–0323, 2006 WL 2289849 (D. Minn. Aug. 8, 2009) (finding that the plaintiff, who was undisputedly an independent contractor—the

**New Jersey:** Those whom a person, e.g., buys from, sells to, or contracts with are protected from discrimination in the making of contracts.

- **Which independent contractors are protected against discrimination?** Those whom a person, e.g., buys from, sells to, or contracts with. The provisions of the New Jersey Law Against Discrimination relating to employees does not use the term “independent contractor,” “non-employee,” or any similar term. The provision of the New Jersey Law Against Discrimination relating to discrimination in contracting is framed in terms of how a “person” treats “any other person” whom they, e.g., buy from, sell to, or contract with.
- **What anti-discrimination protections do they have?** They are protected from discrimination in the making of contracts only, not in the execution of contracts.
- **What is the legal authority for these protections?** The New Jersey Law Against Discrimination’s prohibitions on employment discrimination do not protect independent contractors. However, a separate section of the New Jersey Law Against Discrimination makes it unlawful for “any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of the [protected class status].” *N.J. STAT. ANN.* § 10:5-12 (West 2020). Courts have interpreted this provision to protect independent contractors in the making of contracts, but not in the ongoing execution of contracts.<sup>16</sup> Accordingly, for instance, this provision has been held to protect independent contractors from *quid pro quo* sexual harassment, but not from hostile work environment sexual harassment.<sup>17</sup>

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court uses the term independent contractor to refer to him— had alleged sufficient facts to create a reasonable inference of intentional discrimination and so could proceed on a § 363A.17 claim).

<sup>16</sup> See *Axakowsky v. NFL Productions, LLC*, No. 17-4730, 2018 WL 5961923 at \*7-8 (D.N.J. 2018) (noting that this provision covers only refusals to do business with a person—including an independent contractor—based on a protected characteristic); *Rowan v. Hartford Plaza Ltd.*, No. A-0107-11T3, 2013 WL 1350095 at \*10 (N.J. Super. Ct. App. Div. Apr. 5, 2013) (“*N.J.S.A.* 10:5–12(l) does not apply to discrimination during the ongoing execution of a contract. However, *N.J.S.A.* 10:5–12(l) prohibits refusal to contract with a person on the basis of a number of protected classifications . . . .”); *J.T.’s Tire Serv., Inc. v. United Rentals N. Am., Inc.*, 985 A.2d 211, 215-16 (N.J. Super. Ct. App. Div. 2010), *certif. denied*, 201 *N.J.* 441 (2010) (noting that this provision allows independent contractors to bring claims for discriminatory refusals to do business, including termination of contracts); *Rubin v. Chilton*, 819 A.2d 22, 24-25 (N.J. Super. Ct. App. Div. 2003) (finding that this provision prohibits termination of a contract with an independent contractor based on a protected characteristic).

<sup>17</sup> Compare *Axakowsky v. NFL Productions, LLC*, No. 17-4730, 2018 WL 5961923 at \*7-8 (D.N.J. 2018) (finding that plaintiff, as an independent contractor—note that the court uses the term “independent contractor”—could not



**New York City:** Independent contractors are protected from discrimination on the same basis as employees.

- **Which independent contractors are protected against discrimination?** All independent contractors. The law specifies that “The protections of this chapter relating to employees apply to interns, freelancers and independent contractors.”
- **What anti-discrimination protections do they have?** They have the same rights and protections from discrimination as employees.
- **What is the legal authority for these protections?** This protection comes directly from the statutory text of the New York City Human Rights Law, the city’s anti-discrimination law. *See* N.Y.C. Admin. Code § 8-107(23) (2019).

**New York State:** Non-employees, including contractors, are protected from discrimination on the same basis as employees.

- **Which independent contractors are protected against discrimination?** Non-employees. The law defines non-employee as “a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace.”
- **What anti-discrimination do they have?** They have the same rights and protections from discrimination as employees.
- **What is the legal authority for these protections?** This protection comes directly from the statutory text of the New York State Human Rights Law, the state’s anti-discrimination law. N.Y. EXEC. LAW § 296-d (McKinney’s 2019).

**Pennsylvania:** Some specifically-defined independent contractors are protected from discrimination on the same basis as employees, but many are not protected from discrimination.

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bring a NJLAD claim under the statute’s “creation and termination of contracts” subsection for hostile environment sexual harassment because causes of action for sexual harassment under that section are limited to cases of *quid pro quo* sexual harassment) with *J.T.’s Tire Serv., Inc. v. United Rentals N. Am., Inc.*, 985 A.2d 211, 215-16 (N.J. Super. Ct. App. Div. 2010) (finding that *quid pro quo* sexual harassment is actionable under the NJLAD’s section prohibiting discriminatory termination of contracts), *certif. denied*, 201 N.J. 441 (2010).

- **Which independent contractors are protected against discrimination?** Specifically defined independent contractors are covered. The law covers independent contractors, and defines “**independent contractor**” as “any person who is subject to the provisions governing any of the professions and occupations regulated by State licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department of State, or is included in the Fair Housing Act.” Other independent contractors are not covered.
- **What anti-discrimination protections do they have?** They have the same rights and protections from discrimination as employees.
- **What is the legal authority for these protections?** This protection comes directly from the statutory text of the Pennsylvania Human Relations Act, the state’s anti-discrimination law, which covers independent contractors but defines the term independent contractor narrowly. *See* 43 PA. STAT. AND CONST. STAT. ANN. § 954 (West 2020).<sup>18</sup>

**Rhode Island** Persons making and enforcing contracts are protected from discrimination.

- **Which independent contractors are protected against discrimination?** Persons making and enforcing contracts. The provisions of the Rhode Island Fair Employment Practices Act relating to employees does not use the term “independent contractor,” “non-employee,” or any similar term. The provision of the Rhode Island Civil Rights Act relating to discrimination in contracting state that “[a]ll persons within the state” have “the same rights to make and enforce contracts.”<sup>19</sup>
- **What anti-discrimination protections do they have?** They are protected from discrimination by those with whom they do business.
- **What is the legal authority for these protections?** The provisions of the Rhode Island Fair Employment Practices Act relating to employees do not apply to independent

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<sup>18</sup> Some of the protected independent contractors are listed in 63 PA. STAT. ANN (West 2020), the chapter of the state code dealing with professional licensing, though it may not be a complete list.

<sup>19</sup> This provision is enforceable. 42 R.I. GEN. LAWS ANN. § 42-112-2 provides that “A person whose rights under the provision of § 42-112-1 have been violated may commence a civil action for injunctive and other appropriate equitable relief, and for the award of compensatory and exemplary damages, within three (3) years after the occurrence of the alleged violation of this chapter. An aggrieved person who prevails in an action authorized by this section, in addition to other damages, is entitled to an award of the costs of the litigation and reasonable attorneys’ fees in an amount to be fixed by the court.”

contractors, but a different state law, the Rhode Island Civil Rights Act, provides that everyone in the state shall have broad civil right protections, including the same right to make and enforce contracts as every other person, regardless of protected class status. 42 R.I. GEN. LAWS ANN. § 42-112-1 (West 2020). Courts have held that this provision protects independent contractors in Rhode Island from discrimination because it provides “broad protection against all forms of discrimination in all phases of employment.”<sup>20</sup>

**Vermont:** Persons engaged to perform work or services are protected from sexual harassment. It is unclear whether independent contractors are protected from other forms of discrimination.

- **Which independent contractors are protected against discrimination?** Persons “engage[d] . . . to perform work or services.”
- **What anti-discrimination protections do they have?** They are protected from sexual harassment only. Since other state law anti-discrimination provisions do not speak clearly to independent contractor coverage, but apply to “employer[s]” treatment of “individual[s],” and since federal authority is not binding and Vermont courts have not directly spoken to whether “individuals” includes independent contractors, it is unclear whether independent contractors are protected from other forms of discrimination.
- **Where does this protection come from?** This protection comes directly from the statutory text of Vermont’s Fair Employment Practices Act, the state’s anti-discrimination law. VT. STAT. ANN. tit. 21, § 495dh(a)(2) (West 2020).

**Washington:** All independent contractors are protected from discrimination based on race, creed, color, national origin, 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.

- **Which independent contractors are protected against discrimination?** Independent contractors. The provisions of Washington’s Law Against Discrimination dealing most directly with employment discrimination does not use the term “independent contractor,” “non-employee,” or any other similar term. A broad provision of Washington’s Law Against Discrimination states that “[t]he right to be free from discrimination because of

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<sup>20</sup> See *Morrisette v. Honeywell Bldg. Sols. SES Corp.*, No. CA 10-12-ML, 2011 WL 3652428 (D.R.I. Aug. 17, 2011) (“Given the statute’s broad language, its protections apply to Morrisette even though he is an independent contractor and not an employee.”).

race, creed, color, national origin, 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.” (emphasis added).<sup>21</sup>

- **What anti-discrimination protections do they have?** They are protected from discrimination based on race, creed, color, national origin, 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.
- **Where does this protection come from?** One provision of Washington’s Law Against Discrimination provides that it is a civil right to be free from discrimination based on the above-listed categories, and that this right includes, but is not limited to, the right to hold employment without discrimination. WASH. REV. CODE. ANN. § 49.60.030 (West 2020). The Washington Supreme Court has held that these protections are not limited to discrimination in employment, and that therefore its protections extend to independent contractors as well.<sup>22</sup> However, the Washington Supreme Court has also held that other provisions of Washington’s Law Against Discrimination are not as generous, and contain provisions that are limited to employees and do not include independent contractors—for instance, the law’s prohibition on age discrimination.<sup>23</sup>

### **A Note on Areas for Further Research:**

As noted above, this analysis focused on protections for people who work independently, and are not employees of anyone. However, questions of misclassification, as well as questions of joint employer coverage and coverage for employees of subcontractors in the absence of a joint

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<sup>21</sup> This provision is enforceable. In 2014, the Washington Court of Appeals held in *Currier v. Northland Services* that “a rule promulgated by the Washington Human Rights Commission[] excludes independent contractors from the protections of RCW 49.60.180. This rule, however, provides only that independent contractors may not enforce the civil right guaranteed in RCW 49.60.030(1) by actions of the Washington Human Rights Commission. It does not prevent independent contractors from enforcing the broad protections of RCW 49.60.030(1) by private lawsuit.”

<sup>22</sup> *Marquis v. City of Spokane*, 922 P.2d 43 (Wash. 1996) (stating that “an independent contractor may bring an action for discrimination in the making or performance of a contract for personal services where the alleged discrimination is based on sex, race, creed, color, national origin or disability”).

<sup>23</sup> See *Killian v. Atkinson*, 50 P.3d 638, 643 (Wash. 2002) (declining to allow independent contractors to bring an age discrimination complaint under § 49.60.030 because “age” is not one of the listed protected categories in that statute and the statutory prohibitions against age discrimination elsewhere in state law are limited to employment).

employer relationship may overlap with questions of coverage for true independent contractors. Further research on the interaction between the rights of employees of subcontractors and other similar classes, and the rights of independent contractors, as well as how this coverage analysis overlaps with questions of classification and joint employment is warranted.

For instance, Michigan’s Supreme Court has held that since the state’s employment discrimination law, the Elliot-Larsen Civil Rights Act (ELCRA),<sup>24</sup> is directed towards “employers” treatment of “individuals,” an employee of the defendant’s subcontractor who is a nonemployee with respect to the defendant may bring a claim under ELCRA where the defendant is an entity classified as an employer under the act “affected or controlled a term, condition, or privilege of the nonemployee’s employment.”<sup>25</sup> In an unpublished, non-precedential decision, a state court of appeals posited that the Michigan Supreme Court’s holding could be broadened such that even a true independent contractor, such as the plaintiff, an insurance agent who had a contract with the defendant insurance agency, is not *automatically* precluded from bringing an ELCRA claim.<sup>26</sup> Rather, the Court held whether an independent contractor may bring a claim depends on the employer’s level of control over the plaintiff’s work.<sup>27</sup> This analysis is related to that used to determine whether an independent contractor is misclassified, and should be considered an employee for purposes of the application of employment law.

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<sup>24</sup> MICH. COMP. LAWS ANN. § 37.2202.

<sup>25</sup> *McClements v. Ford Motor Co.*, 702 N.W.2d 166, 173 (Mich. 2005).

<sup>26</sup> *Cook v. Farm Bureau Life Ins. Co. of Mich.*, No. 341330, 2019 WL 1460163 (Mich. Ct. App. Apr. 2, 2019).

<sup>27</sup> *Id.*