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Washington Law Limits Employer's Right to Plaintiff's Medical Records in Discrimination Cases

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Effective June 7, 2018, employers defending claims brought under Washington's Law Against Discrimination face a very constricted ability to be entitled to obtain a plaintiff's medical records only if the plaintiff: (1) alleges a specific diagnosable physical or psychiatric injury as a proximate result of the defendant's alleged conduct; (2) relies on the records or testimony of a health care provider or expert to support a claim for damages; or, (3) alleges failure to accommodate a disability or discrimination based on disability. Absent any of the above, the records will be considered privileged and not subject to disclosure. Further, even if one of the exceptions does apply, the law limits the available disclosure only to records relating specifically to the diagnosable injury or disability specifically at issue in the litigation, and, unless the court finds "exceptional circumstances," to records created in the two (2) year time period before the alleged unlawful conduct occurred.

This new Law will severely limit the ability to explore the plaintiff's pre-existing medical and mental health conditions. Consequently, it will limit the ability of defense counsel to argue that other issues in the plaintiff's life (as opposed to the employer's actions) may be the reason for a diagnosed mental health condition. Ultimately, without this information, juries likely would award a higher amount of compensatory damages.

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