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III

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Section 1981: Federal Protection Against Race Discrimination In Contracts And Business Opportunities

Learn how 42 U.S.C. § 1981 may provide federal protection beyond traditional employment law

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Highlights:

- ✓ Section 1981 can reach certain contractual relationships involving vendors, contractors, business owners and customers.
- ✓ When race affects the ability to make, enforce, renew or change the terms of a contract, Section 1981 may provide a federal avenue for relief.
- ✓ Professionals and minority-owned businesses may have protections when racial bias interferes with negotiations, contracts, referrals or other qualifying business relationships.



Many people have heard of **workplace discrimination** laws like Title VII of the Civil Rights Act, but far fewer know about 42 U.S.C. § 1981, another federal civil rights law that can be just as powerful.

Section 1981 is built on the simple principle that everyone has the same right to make and enforce contracts, regardless of race. This law protects individuals from racial discrimination in contracts, business relationships and professional opportunities.

For people facing discrimination outside traditional employment, Section 1981 may provide the strongest legal remedy available. In many situations, Section 1981 fills critical gaps that other civil rights laws do not cover.

Below are some of the most common ways the law is used.

Discrimination in Business Relationships

Section 1981 frequently arises when racial discrimination affects contracts between businesses or professional service providers. In practice, many Section 1981 cases involve minority-owned businesses or vendors who are denied contracts or removed from business relationships because of race. Unlike many employment statutes, § 1981 protects entrepreneurs, vendors, contractors and business owners.

Examples may include:

- A company refusing to contract with a qualified minority-owned vendor while working with similarly situated nonminority vendors.

- A company terminating an existing subcontractor or vendor agreement after racial bias emerges.
- A minority-owned subcontractor being removed from a project while nonminority subcontractors remain.
- A company refusing to negotiate or continue negotiations after learning the race of the business owner.
- A company offering a minority-owned vendor worse pricing or contract conditions than similarly situated vendors.

Because these relationships are contractual in nature, courts have consistently held that they fall within the core protections of Section 1981.

For business owners and independent professionals, this statute may be one of the most important legal protections against race discrimination in the marketplace.

Discrimination Against Independent Contractors and Consultants

Section 1981 also protects individuals whose ability to pursue contract-based work relationships is limited by race discrimination.

Many professionals work as consultants, freelancers and independent contractors rather than employees. Because these relationships are contractual, Section 1981 often applies even when traditional employment discrimination laws, such as Title VII of the Civil Rights Act, do not.

These cases sometimes involve situations where:

- A consulting agreement is terminated after discriminatory comments.
- A company refuses to renew or extend an independent contractor agreement for discriminatory reasons.
- A contractor is treated differently (such as an hourly rate or other contract terms) from similarly situated contractors of another race.

Additionally, in some industries, participation in professional networks or trade organizations is an important gateway to obtaining contracts and referrals. When race discrimination interferes with access to those opportunities, Section 1981 may apply because it affects the individual's ability to enter into business relationships.

Discrimination in Customer or Consumer Transactions

Section 1981 can also apply to discriminatory treatment in consumer-facing businesses. For example, courts have allowed claims where businesses:

- Refuse service because of a customer’s race.
- Provide services on worse terms or subject customers to more burdensome conditions because of their race.
- Cancel or deny contracts for housing, services or membership opportunities based on race.

These cases often arise in situations where a business relationship already exists, such as when a customer has purchased a product or service and the business refuses to honor the transaction because of racial stereotypes.

For example, one scenario recognized by courts is where a passenger purchases an airline or train ticket – a contract for transportation – but is removed from the flight or train based on racially biased assumptions about the passenger's behavior or safety risk. In a similar vein, courts have allowed Section 1981 claims where racial stereotypes lead retail stores to refuse to complete a purchase or to eject customers from the premises when they attempt to buy goods or services.

Retail stores, banks, financial services companies and other businesses that enter contractual relationships with customers may all be subject to Section 1981.

If Race Discrimination Has Affected Your Business or Career

Race discrimination does not only occur in traditional workplaces. It can appear in contracts, partnerships, business opportunities and professional relationships. If you are a business owner, contractor or professional who believes race discrimination affected a contract or business opportunity, experienced employment counsel can advise you on the legal protections and potential recourse available to you under federal civil rights law.

Author Bio



Lacey McMullan is a Senior Counsel at [Joseph Greenwald & Laake](#) who represents plaintiffs in employment litigation involving federal and state wage and hour violations; age, race and gender discrimination; hostile work environments; False Claims Act whistleblower matters; class actions; and appeals.