CLIENT ALERTS & INSIGHTS

EPOA Amendments to Help Washington Employers Mitigate Liability Amid Forthcoming Decision in Branson v. Washington

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Washington State employers are eagerly awaiting a state Supreme Court decision regarding whether, under the Equal Pay and Opportunities Act (EPOA), a "job applicant" must have a good-faith or bona fide intent to secure employment to recover for job postings that fail to include salary and benefits details. Branson v. Washington Fine Wines & Spirits, LLC. In the meantime, amendments to the EPOA took effect on July 27, 2025, offering employers new opportunities to mitigate their potential liability under the wage transparency law.

Washington's Equal Pay and Opportunities Act (EPOA)

Washington's EPOA, effective January 1, 2023, provides that employers with 15 or more employees "must disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant." RCW 49.58.110. Job postings include printed or electronic solicitations, by the employer or a third party, intended to recruit job applicants currently based or seeking employment in Washington.

Amendments to the EPOA

In May 2025, in response to the filing of hundreds of class action lawsuits, Washington passed legislation amending the EPOA. Substitute Senate Bill (SSB) 5408 went into effect on July 27, 2025, but is not retroactive.

- Employers who receive written notice from potential plaintiffs about non-compliant job postings now have five days to cure the EPOA violation and avoid damages or penalties. This grace period extends two years after the law's effective date (July 27, 2027). The law does not specify any process for sending or receiving this notice.
- Job postings that are scraped, digitally replicated, and published without employers' consent (e.g., ZipRecruiter and Indeed) are now exempt from the pay equity requirements.
- Employers may now comply with the EPOA by posting a fixed wage amount instead of the salary range or pay scale.
- Job applicants affected by noncompliant job postings may now seek one of two remedies:

1. Administrative remedies, including civil penalties up to $1,000, and statutory damages between $100 and $5,000 per violation; or

   Private civil action with statutory damages between $100 and $5,000 per violation and reasonable attorney's fees and costs.

The EPOA previously provided fixed statutory damages of $5,000 per applicant for a noncompliant job posting. Washington courts will now weigh the following factors to determine an appropriate statutory damage award: "whether the violation was committed willfully or the violation is a repeat violation; the size of the employer; and the amount necessary to deter future noncompliance."

Impacts on Future EPOA Class Action Litigation

According to the National Federation of Independent Business (NFIB), roughly half of the 215-plus EPOA class actions have been filed by nine plaintiffs, with one plaintiffs' firm filing 150 of the lawsuits. "All combined, this data reflects more than 215 employers in Washington facing at least $500 million in potential liability."

Even if the Washington Supreme Court declines to introduce an intent requirement for job seekers, these amendments will likely curb the rate of EPOA class actions by allowing employers to remediate violations and removing costly fixed penalties for noncompliance.