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Washington Employers Soon Must Include Pay Ranges and Benefits Information in Job Postings

Washington Governor Jay Inslee, on March 30, 2022, signed into law amendments to the state's Equal Pay and Opportunity Act (EPOA Amendments), which soon will require most Washington employers to include pay ranges and benefits information in their job postings. The EPOA Amendments become effective on January 1, 2023. Because the EPOA Amendments only define high-level requirements, the Washington State Department of Labor & Industries (L&I) will likely issue further guidance. Below is a preliminary overview.

Overview

Previously, the EPOA required Washington employers to disclose the salary range of open job positions only if two conditions were met: (1) the employer made a job offer and (2) the applicant requested the salary range. Under the EPOA Amendments, however, employers must now *affirmatively include* pay and benefit information in their job postings, prior to interviewing an applicant or making an offer. Specifically, for each job "posting," an employer with 15 or more employees must disclose:

- The wage scale or salary range, and
- A general description of all of the benefits and other compensation.

"Posting" is broadly defined to include written or electronic job solicitations that are tied to a "specific available position," which itself is not defined or described. "Wage scale or salary range" and "benefits and all other compensation" are not defined or described. It is expected that L&I will provide guidance on these open issues.

Notably, the EPOA Amendments eliminated an exception in the EPOA which permitted employers to substitute salary-range information with a minimum pay disclosure. In other words, employers must now generate and provide a wage scale or salary range for all job solicitations, even where a range does not currently exist.

Remote Employees

L&I previously took the position that the EPOA applied to "applicants seeking employment with a Washington employer." This definition does not lend itself well to multijurisdictional employers with remote or hybrid workforces, and it is not yet clear how the EPOA Amendments apply to remote and hybrid solicitations.

Comparable Laws in Other Jurisdictions

Consistent with its tendency to be a "first mover" in employee-rights legislation, Washington joins only Colorado and New York City in requiring affirmative disclosure of pay ranges in job solicitations. For its law, Colorado issued guidance on the job benefits that must be disclosed, the level of clarity and accuracy for pay ranges, whether an employer may offer an applicant pay outside of the posted range, whether the law applies to remote-work solicitations, and more. Colorado's guidance is useful reference material for Washington employers in the absence of L&I guidance.

Enforcement

The EPOA may be enforced through complaints to L&I or through a private action. For example, under the existing EPOA, if an employer refuses to provide an applicant the salary range, the applicant could seek statutory damages of \$5,000 plus attorneys' fees. It is not yet clear if an applicant, under the EPOA Amendments, could cherry-pick noncompliant job listings for the purpose of seeking the same statutory damages and attorneys' fees. Given the potential consequences, employers should be vigilant about compliance.

Takeaways

Washington employers should prepare to include salary ranges and benefits information in all of their Washington job listings. Perkins Coie will continue to monitor and report EPOA developments, including whether L&I publishes interpretive guidance. Employers should also seek the advice of counsel as they prepare to revise or overhaul their Washington job solicitations and hiring practices.

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