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December 02, 2022

Washington State Releases Guidance on New Job Posting Requirements



In April 2022, we wrote about the upcoming amendments to Washington's Equal Pay and Opportunity Act (EPOA). The EPOA amendments require most employers who engage in business in Washington state to include pay ranges and benefits information in their job postings. Unlike some other jurisdictions' pay disclosure laws, which are enforced by state agencies rather than by private lawsuits, the EPOA allows applicants to sue for damages, penalties, and attorneys' fees. The Washington Department of Labor and Industries (L&I) has now released [administrative guidance](#) on the EPOA amendments. Below are the high points. *Reminder: L&I guidance may be persuasive to courts but might not accurately or fully reflect the law.*

- **No grace period.** L&I established no enforcement grace period. Thus, employers should be prepared to comply with the new law on January 1, 2023.
- **Broadly defines employers.** The law covers any employer that "engages in any business, industry, profession, or activity" in Washington. The salary disclosure requirements apply to employers who have 15 or more employees. The guidance adds that such employers are covered only if they employ at least one employee who is Washington-based. Otherwise, according to L&I, all that is required for coverage is that the employer (1) engages in business in Washington or (2) recruits for jobs that could be filled by a Washington-based employee. L&I states that "[a]n employer cannot avoid disclosing wage and salary information requirements by indicating within a posting that the employer will not accept Washington applicants." There is a narrow exception for jobs tied to physical work sites outside of Washington, such as for waitstaff at a restaurant located outside of Washington.
- **Broadly defines applicants.** According to the guidance, an applicant is anyone, including a current employee, who applies for a posted position. The guidance does not address whether the person must be qualified for the position or have a genuine interest in the position.
- **"Posting" defined.** A posting is defined as "any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically, or with a printed hard copy, that includes qualifications for desired applicants." Section 7 of the guidance provides examples of solicitations that do

and do not qualify as job postings.

- **Clarifications for wage scale or salary range.** The guidance states that the salary range should be clear and without open-ended phrases like "\$60,000/per year and up." The guidance also clarifies that "wage scale or salary range" is the "reasonable and genuinely expected range of compensation." The guidance does not state whether there are consequences for hiring a person outside of the posted range. Job listings that can be filled with varying job titles (Accounting Analyst 1, Accounting Analyst 2, etc.) should list a range for each job title.
- **Jobs paid by commissions or piece rates.** Jobs that pay commissions "should include the rate or rate range (percentage or otherwise) that would be offered to the hired applicant." The example given states that commissions are "5-8% of net sale price per unit." Jobs paying by piece rate should include the piece rate range, e.g., \$.55-\$.75 per pound of strawberries picked.
- **"Benefits" defined.** L&I provides a list of benefits that should ordinarily be listed: healthcare benefits (medical insurance, vision insurance, dental insurance, life insurance, and disability insurance), retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, such as fringe benefits." Employers need not assign a monetary value to their benefits.
- **Stock, bonuses, profit-sharing.** Employers need not assign a value to compensation that is not a wage or salary. L&I suggests that a compliant reference to bonuses and stock could be: *"Hired applicant will be able to purchase company stock, receive annual bonuses, and can participate in profit-sharing."*
- **May link to more information.** The job posting may include a hyperlink to a description of benefit and compensation information. However, the guidance warns employers that they must "assure continuous compliance with the functionality of links."
- **Must keep posting updated.** In several places in the guidance, employers are cautioned to keep their posting updated if the salary range, benefits, or position change(s). At a minimum, therefore, employers should consider updating or taking down current job postings by the end of this month and should adopt systems for tracking the location of every potentially covered job posting they make after December 31, 2022.
- **Penalties, damages, private right of action.** [The law](#) entitles applicants to sue for "actual damages; statutory damages equal to the actual damages or five thousand dollars, whichever is greater; interest of one percent per month on all compensation owed; and costs and reasonable attorneys' fees." The guidance does not address remedies at all, including the important question of how the penalty provisions would apply to a noncompliant job posting that generated hundreds or thousands of applications.

Employers are encouraged to seek the advice of counsel as they prepare to revise or overhaul their Washington job solicitations and hiring practices.

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