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## Class Action Alert: Pay Transparency Class Actions Are Mounting in Washington

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This month, dozens of class action lawsuits have been filed in Washington, based on alleged violations of Washington's Equal Pay and Opportunity Act. Employers recruiting or planning to recruit for any position in Washington—even a position that could be performed remotely by a Washington resident—may become a target if they do not properly disclose the wage scale/salary range and a general description of benefits for the position.

### Is this a new law?

These class action lawsuits are in response to an amendment to Washington's Equal Pay and Opportunity Act that went into effect on January 1, 2023. See [RCW 49.58.110](#).

### Who does the law apply to?

All employers with 15 or more employees engaging in any business, industry, profession, or activity in Washington are subject to the law. Per guidance from the State of Washington Department of Labor and Industries ("L&I"), the "15 or more employees" threshold includes employees outside of Washington, if the employer has at least one Washington-based employee. Similarly, "engaging in business" in Washington includes employers that do not have a physical presence in Washington, but engage in business in Washington or recruit for jobs that could be filled by a Washington-based employee (*i.e.*, a remote position).

### What information must employers disclose in a job posting?

Employers must disclose in each posting for each job opening the wage scale or salary range and a general description of all the benefits and other compensation for a specific available position to be offered to the hired applicant.

Per L&I guidance, the wage scale or salary range should provide the applicant with the employer's most reasonable and genuinely expected range of compensation for the job. Employers should not use open-ended phrases, such as "and up" or "up to." In other words, employers should provide firm bottom and top ranges for the position.

A "general description of all benefits" includes, but is not limited to, health care benefits, 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.

### What constitutes a job "posting"?

A "posting" means "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.” Practically speaking, a “posting” covers anything from a formal job posting on the employer’s website to third-party recruiters’ postings. Posting may even include employees’ social media posts stating that their employer is looking to hire for a specific position.

### **What are the repercussions for not complying with Washington’s Pay Transparency Law?**

Applicants and employees can either file a complaint with L&I or file a civil lawsuit against a non-compliant employer. If L&I determines that a violation occurred, the director may issue a citation and notice of assessment and order the non-compliant employer to pay the complainant actual damages, statutory damages equal to the actual damages or \$5,000, whichever is greater, interest of 1% per month on all compensation owed, payment to the department of the costs of investigation and enforcement, and any other appropriate relief. The director may also order payment to L&I a civil penalty not to exceed \$500 for the first violation. For a repeat violation, the civil penalty may not exceed \$1,000 or 10% of the damages, whichever is greater.

In the case of a civil lawsuit, the employee can seek actual damages, statutory damages equal to the actual damages or \$5,000, whichever is greater, interest of 1% per month on all compensation owed, and costs and reasonable attorneys’ fees. The court may also order reinstatement and injunctive relief. The employee or applicant must bring the claim within three years of the alleged violation.

This new law has already become a favorite for class action plaintiffs lawyers. Typical class allegations include individuals who applied for a job opening in the State of Washington, from January 1, 2023 (when the law went into effect) through the date notice is provided to the class, where the job posting did not disclose the wage scale or salary range for the position.

### **What can you do to protect your business?**

- Have one person responsible for reviewing all job postings (internally and externally) to ensure compliance.
- Know where your job postings are going. Different states have different rules on pay transparency and posting requirements.
- Monitor “informal” job postings, such as social media posts, for compliance.
- If your company does not have a policy on posting for job openings, consider implementing one.

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