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October 31, 2024

Coming Soon: Judicial and Agency Interpretations of Washington's Pay Disclosure Law



Washington's Equal Pay and Opportunity Act (EPOA) is a hot topic in Washington state, with well over 100 class-action lawsuits filed under the law in the past 18 months.

In short, the [EPOA requires](#) employers to disclose pay ranges and benefits information in their job postings. The EPOA allows applicants to sue for damages, penalties, and attorneys' fees.

In the proposed EPOA class actions, one of the primary issues is whether an applicant must be a bona fide or good faith individual who intends to gain employment, or if anyone who completes the job application, including those who complete the application for the purpose of filing a lawsuit for damages, can be an applicant.

We may soon get an answer to that question. In *Branson, et al. v. Washington Fine Wines & Spirits, LLC*, Judge John H. Chun (U.S. District Court for the Western District of Washington) certified a question to the Supreme Court of Washington, which asks the state's highest court to answer the following:

"What must a plaintiff prove to be deemed a 'job applicant' within the meaning of RCW 49.58.110(4)? For example, must they prove that they are a 'bona fide' applicant?"

The Supreme Court of Washington recently accepted the certified question, and the parties have already completed their briefing. Oral argument on the certified question is February 13, 2025. The next stage of the process is for interested parties, trade groups, and associations to seek the Supreme Court of Washington's approval to submit *amicus curiae* briefing.

There is also activity on the agency side of the EPOA. The Washington Department of Labor and Industries (L&I) is in the process of drafting rules interpreting the EPOA. L&I released its first draft of its proposed rules

on September 5, 2024, which defined "applicant" as "an individual, including existing employees, who submits in good faith an application for a job posting with the intent of gaining employment." On October 30, 2024, L&I released updated rules which remove the definition of "applicant."

L&I is accepting public comments through November 22, 2024. The agency is also hosting a feedback session to respond to questions and receive comments on November 7 at 10:00 a.m. PT. Information about submitting a public comment or attending the feedback session can be found [here](#).

## **Takeaways**

Clarity may be coming on the EPOA and what it means to be an applicant. Companies with an opinion on, or interest in, the outcome of that question may participate through *amicus curiae* activity or at the agency level by submitting comments to L&I.

Companies should continually refine their EPOA compliance strategy and regularly audit their postings with the assistance of trusted counsel.

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