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Washington Legislature Loosens the Equal Pay Opportunity Act Vise on Employers

by Aaron Goldstein

The Washington State legislature recently passed SB 5408, amending the Equal Pay and Opportunity Act ("EPOA"). The EPOA was originally enacted to decrease the gender wage gap by requiring employers to include the salary range and scale for each posting. If an employer violated these disclosure requirements, applicants and/or employees were entitled to recover $5,000.00 in damages for each violation. This resulted in hundreds of lawsuits filed against employers by applicants and employees in and outside of Washington. Assuming the bill is signed, beginning July 27, 2025, the amendment will ease both the requirements for employers and the consequences for violations.

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Key Changes to the EPOA

Wage and Salary Disclosures

When a position pays a fixed wage, employers must disclose the fixed amount rather than a scale or range.

Third-Party Liability

Employers are no longer liable for third-party postings that are posted without the employer's authorization.

Grace Period to Correct Noncompliant Postings

For any posting from July 27, 2025 through July 27, 2027, if an employer receives written notice that a specific posting is noncompliant with the Act, the employer has five business days from the date of notice to correct the posting. If an employer corrects the posting within this time, and contacts any third-party posting company demanding the posting be corrected, the employer is not subject to administrative or civil penalties or other damages. Employers will only be allowed this grace period through July 27, 2027.

Liability for Statutory Damages

Job applicants or employees are entitled to statutory damages between $100.00 and $5,000.00 for each violation, plus reasonable attorneys' fees and costs. To determine statutory damages, a court will consider if the violation was committed willfully, the size of the employer, what amount will deter noncompliance, and the purpose of the Act. Individuals protected under the Act must bring a civil action within three years of the violation. This applies even if the applicant or employee filed a complaint with an administrative agency.