



WA-Peculiarities

An Employer's Guide to Labor & Employment Laws in the Evergreen State



2025 Edition



Introduction

Welcome to the inaugural edition of Seyfarth's "Washington Peculiarities: An Employer's Guide to Labor & Employment Laws in the Evergreen State." This Book provides a high-level overview of most employment laws in Washington.

Washington employment laws are different. While California is the most notorious state when it comes to states with highly-protective employment laws, Washington has similar and sometimes even more strict laws. For example, Washington has extensive leave laws, including the Washington Paid Family and Medical Leave Act and the Washington Paid Sick Leave Law, among many other leave laws. Washington has among the highest minimum wages in the nation and several Washington municipalities have adopted even higher minimum wages or even more generous paid sick leave laws. Washington has highly-specific meal period and rest break rules. Washington also has strict independent contractor and non-compete laws, placing significant restrictions on both. The State has restrictions prohibiting non-disparagement and non-disclosure provisions in all employment agreements. There are many, many other Washington and municipal laws that this Book explains.

A quick word about liability. A major difference between California and Washington is that Washington does not (yet) have the extraordinarily onerous penalty environment that California has. That said, liability for violations of Washington law still carry significant penalties. For example, courts have recently ruled that meal period and rest break violations carry with them penalties of up to two hours of pay. As a result, and because of other more recent laws like the Equal Pay and Opportunities Act, Washington is seeing a major uptick in wage-hour class actions.

It is our intent that, over time, we will add to this Book by including updates, new legislation, and additional case law. This is a new Book, and we have not included details into some state laws, such as workers' compensation or the Washington Long Term Cares Act. Additionally, at the time of publication, the Washington Legislature had just passed several new labor and employment laws that are only linked in this edition. We also have not included several municipal laws here that we will cover in future editions. Again, we will be adding these over time. In the meantime, we hope this provides Washington employers with a helpful resource to most of Washington's employment laws.

Author's Notes

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From A Declaration of Principles adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

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Glossary of Terms

We sometimes use the following shorthand references without specifically defining them.

Term	Definition
ADA	Americans with Disabilities Act
AGO	Office of the Washington Attorney General
APP	Accident Prevention Program
BIIA	Board of Industrial Insurance Appeals
C&N	Citations and notices
CBA	Collective bargaining agreement
CNR	Corrective Notice of Redetermination
DOL	US Department of Labor
DOSH	Division of Occupational Safety and Health
DVLA	Domestic Violence Leave Act
EPOA	Equal Pay and Opportunities Act
ERISA	Employee Retirement Income Security Act
ESD	Employment Security Department
Fair Chance Act	Washington Fair Chance Act; also called “Ban the Box”
FCRA	Fair Credit Reporting Act
FICA	Federal Insurance Contributions Act
FLSA	Fair Labor Standards Act
FMLA	Family and Medical Leave Act
IIA	Washington State Industrial Insurance Act
IWA	Industrial Welfare Act
L&I	Washington State Department of Labor & Industries
MWA	Minimum Wage Act
MWO	Seattle Minimum Wage Ordinance
Ninth Circuit	US Court of Appeals for the Ninth Circuit, covering Washington state
NLRA	National Labor Relations Act

Term	Definition
OLS	Seattle Office of Labor Standards
OSHA	Occupational Safety and Health Administration
PPE	Personal Protective Equipment
WLAD	Washington Law Against Discrimination
WA HSA	Washington Healthy Starts Act
LTCA	Washington Long-Term Care Act
WISHA	Washington Industrial Safety and Health Act
MWO	Seattle Minimum Wage Ordinance

1. Washington and Seattle Employment Law Agencies

Several state and municipal agencies implement and enforce employment laws and ordinances in Washington. These agencies provide guidance and resources to both employees and employers to assist with compliance. Below is a description of Washington and Seattle agencies that regulate and enforce employment laws.

1.1. State Agencies

1.1.1. Washington State Human Rights Commission (WSHRC)

The WSHRC administers and enforces the Washington Law Against Discrimination (WLAD). The WLAD “prohibits discriminatory practices in areas of employment” and “prohibits retaliation against persons who oppose a discriminatory practice, and those who file health care and state employee whistleblower complaints.”¹ The WLAD is discussed in detail in Chapter 9 Section 1.

Under the WLAD, the WSHRC enforces the WLAD. The WSHRC is composed of five Commissioners, appointed by the Governor with the advice and consent of the Senate.² The Commissioners provide policy direction, adopt regulations, review investigative findings, and issue Board Orders.

A person who claims to be aggrieved by alleged discrimination in their employment may file a complaint with the WSHRC against employers or their agents. While a person need not file a complaint with the WSHRC as a pre-requisite to filing a lawsuit under the WLAD, if an employee files such a complaint with the WSHRC, it must be filed within six months from the date of the alleged violation, unless the complaint relates to pregnancy discrimination (must be filed within one year from date of the alleged violation) or whistleblower retaliation (must be filed within two years).³

The employer is given the opportunity to respond to the complaint, and upon receipt of the employer's position, the WSHRC will review the submission. If the facts as stated by the employer in its complaint could constitute an unfair practice, the WSHRC will proceed with an investigation into the facts of the case.⁴

If an investigation reveals an unfair employment practice, then the WSHRC begins a conciliation process.⁵ If conciliation does not yield a settlement, then the WSHRC proceeds to a hearing before an administrative law judge.⁶ Administrative law judges' determinations are appealable to court.⁷

1.1.2. Washington Attorney General Office (AGO)

The AGO manages the largest public law office in the state and serves roughly 200 state agencies, boards, commissions, colleges, and universities.⁸ These agencies affecting labor and employment laws are set forth below.

¹ *About Us* – Washington State Human Rights Commission, available [here](#).

² RCW 49.60.050.

³ RCW 49.60.230.

⁴ RCW 49.60.240.

⁵ *Id.*

⁶ RCW 49.60.250.

⁷ RCW 49.60.260; RCW 49.60.270.

⁸ Washington State Office of the Attorney General – *Office Information*, available [here](#).

1.1.2.a. Washington Department of Labor & Industries (L&I)

The Labor and Industries Division of the AGO implements and enforces “the state’s industrial insurance program, workers’ compensation benefits, questions about fair wages and prevailing wage requirements, workplace conditions and safe work environments, contractor and building issues, crime victim claims, and other issues for workers and employers.”⁹

L&I often engages in extensive rulemaking for these laws. It also issues detailed administrative policies, which can be very helpful for Washington employers’ compliance efforts. L&I’s administrative policies for Washington labor and employment laws are available [here](#).

An employee can file complaints with L&I alleging violations of the following types of labor and employment laws and rules (or certain aspects of alleged violations of the following types of laws and rules):

- [Protected leave laws and rules](#), including paid sick leave, family care, paid family medical leave, domestic violence, pregnancy and disability leave, emergency services and military spousal leave;
- [Wage laws and rules](#), including alleged violations of minimum wage, overtime, paid sick leave wages, final paycheck, tip and service charge, and paycheck deduction laws and rules;
- [Rest break and meal period rules](#);
- [Child labor laws and rules](#);¹⁰
- [Uniform-related laws and rules](#);¹¹
- [Rideshare worker laws and rules](#);
- [Farm labor contractor laws and rules](#); and
- [Certain retaliation and termination laws and rules](#).

L&I investigates these above-listed complaints. Complaints can lead to employer education, settlement efforts, fines or penalties (depending on the statute at issue), or issuances of citations (depending on the statute at issue). For wage-hour type complaints (including paid sick leave complaints), employers and employees have 30 days to appeal L&I determinations. Appeals are conducted by L&I’s office of Administrative Hearings.

L&I, through the Division of Occupational Safety and Health Administration, also investigates workplace safety complaints. See Chapter 12 Section 2 for details about these investigations.

Finally, L&I administers Washington’s workers’ compensation laws and programs. Workers’ compensation insurance pays for approved medical, hospital, and related services due to workplace injuries or occupational illnesses and partial wage replacement for those who are unable to work because of their injuries or occupational illnesses. Employers can purchase coverage from L&I or can be self insured. This Book does not contain detail about workers’ compensation in Washington. [RCW Chapter 51](#) governs workers compensation in Washington. Employers interested in learning more should consult L&I resources. L&I’s website, available [here](#), contains detailed information about workers’ compensation claims, patient care, and insurance.

⁹ Washington State Office of the Attorney General – *Labor & Industries*, available [here](#).

¹⁰ Washington maintains detailed penalties for violations of its Child Labor laws. RCW 49.12.380-RCW 49.12.420.

¹¹ RCW 49.12.450.

1.1.2.b. Office of Civil Rights (OCR)

The Civil Rights Division of the AGO enforces Washington Healthy Starts Act (WA HSA), RCW 43.10.005. The OCR receives complaints from pregnant employees and investigates any potential violations of the WA HSA.

1.1.2.c. Workers' Compensation Advisory Committee (WCAC)

The WCAC consists of representatives from various sectors who advise L&I on worker's compensation issues.¹² There are ten representatives: three workers, three employers, one self-insurer, one worker of self-insurers, and two *ex officio* members. The two *ex officio* members are the chair of the Board of Industrial Insurance Appeals and a representative of L&I.¹³

WCAC conducts "a continuing study of any aspects of workers' compensation as the committee shall determine require their consideration and shall assist in the identification of priorities for safety and health investment projects as provided in chapter 49.17 RCW." WCAC reports its findings to L&I or the Board of Industrial Insurance Appeals.

1.1.2.d. L&I's Division of Occupational Safety and Health (DOSH)

The Washington State Plan (WISHA) under the federal Occupational Safety and Health Act (OSHA) was initially approved in 1973 under 38 FR 2422 and received State Plan Certification in 1982 under 47 FR 5889.¹⁴ WISHA applies to almost every employer and employee in Washington.¹⁵ DOSH is a division of L&I that is primarily responsible for enforcing WISHA.

1.1.3. Washington State Employment Security Department (ESD)

ESD manages the Washington Unemployment Insurance program (UI) under the Washington Employment Security Act ([Title 50 RCW](#)), Washington Paid Family and Medical Leave Act (WA PFMLA) ([Title 50A RCW](#)), and the Washington Cares Fund under the Washington Long-Term Care Act (WA LTCA) (Title 50B RCW at [RCW 50B.04](#)). All three laws involve employer and employee payroll taxes. For details about WA PFMLA, see Chapter 8 Section 1, including details about premiums, payroll taxes, and employer-required leave administration. This Book does not contain detail about unemployment compensation in Washington (UI) or the Washington Cares Fund (WA LTCA) because both laws involve primarily payroll-related taxes and insurance outside the scope of this Book. Some information about UI appeals are outlined below in this subsection. Employers interested in learning more should consult ESD's [unemployment tax website](#) or ESD's [Washington Cares Fund website](#), both of which contain guidance for Washington employers' compliance with UI and WA LTCA. ESD is also an agency that is highly involved with [WorkSource](#), Washington's workforce development system.

ESD is led by a Commissioner, appointed by the Governor. The agency engages in extensive [rulemaking](#) associated UI, WA PFMLA, and the WA LTCA. ESD's [rulemaking website](#) includes both rules under development by the agency and [past rulemaking and existing rules](#) that affect Washington employers. The Washington Administrative Code contains all of ESD's rules at [Title 192 WAC](#).

ESD hosts three committees comprised of community members who help set policies and initiatives for ESD: the Unemployment Insurance Advisory Committee (UIAC), the Agricultural and Seasonal Workforce

¹² RCW 51.04.110.

¹³ *Id.*

¹⁴ 29 CFR 1952.4

¹⁵ WAC 296-800-100.

Services Advisory Committee (ASWS), and the Governor's Committee on Disability & Employment (GCDE).

UIAC advises ESD on ways to improve Washington's Unemployment Insurance program. UIAC has nine members appointed by the ESD Commissioner and nine members appointed by employees, employers, and the general public (three each). UIAC's charter, meeting schedule, meeting minutes, agendas, and recordings are available on its [website](#).

ASWS advises ESD on H-2A agricultural programs, protections for foreign and domestic workers, and workforce stabilization. ASWS has 12 appointed members representing agricultural workers (four members), agricultural employers (four members), and state agencies (four non-voting members). ASWS's charter, committee procedures, meeting schedule, and meeting minutes, and recordings are available on its [website](#).

GCDE helps Washington officials understand initiatives and programs important to Washingtonians with disabilities. The GCDE members are Congressmen from throughout the State and associate members who are responsible for aspects of several state agencies. GCDE's services, meeting calendar, meeting agendas, meeting minutes, and various programs and subcommittees are detailed on GCDE's [website](#).

ESD also has a Commissioner's Review Office (CRO) that decides unemployment benefits and tax cases. Employees can appeal an unemployment compensation decision to OAH.¹⁶ Employers can appeal an OAH unemployment tax decision associated with tax rates, penalties, employees' unemployment benefits, and ESD audit findings to the CRO. OAH decisions explain how to petition the CRO. Petitions must be submitted within 30 days of the date of the OAH decision. CRO judges review the testimony and evidence before the OAH to ensure the OAH findings are accurate and the OAH decision properly applies the laws about unemployment insurance benefits and taxation under the Washington Employment Security Act. Additional information about the CRO is available on ESD's [CRO website](#).

1.1.4. Washington Office of Administrative Hearings (OAH)

The OAH is an independent agency that holds hearings and proceedings for appeals in unemployment benefits and tax cases. Employees can appeal unemployment decisions to the OAH. Employers can appeal an unemployment tax decision associated with tax rates, penalties, or employees' unemployment benefits, and ESD audit findings to the ESD. If ESD does not change its decision, then ESD sends the appeal to OAH. OAH assigns the appeal to an OAH judge. The OAH judge decides the appeal on papers or schedules a telephonic hearing. After the OAH judge decides the appeal, then the decision can be appealed to the Commissioner's Review Office, and OAH decisions explain how to petition the CRO. Detailed guidance about OAH appeals are available on its [website](#).

1.1.5. Washington Industrial Safety and Health Act Advisory Committee

The Washington Legislature formally established the WISHA Advisory Committee in 1997.¹⁷ The Advisory Committee, comprised of ten members, provides comment on department rule making, policies, and procedures.¹⁸

¹⁶ See Section 1.1.4., *infra*.

¹⁷ RCW 49.17.055.

¹⁸ *Id.*

1.1.6. Washington Board of Industrial Insurance Appeals (BIIA)

The BIIA is an independent state agency that hears appeals of L&I decisions in the following principal areas:

- Industrial insurance or workers' compensation;
- Safety citations under WISHA; and
- Employer premium or tax assessments and classifications.

1.2. Seattle Agencies

1.2.1. Seattle Office for Civil Rights (OCR)

The Seattle Office for Civil Rights enforces Seattle's Fair Employment Practices Ordinance, SMC 14.04. See Chapters 9 Section 6 and 11 Section 3. Employees can file a claim of employment discrimination under the Ordinance with OCR, so long as the alleged discrimination occurred in the last 18 months.¹⁹ OCR also issues [rules](#) applicable to Seattle's civil rights ordinances.

1.2.2. Seattle Office of Labor Standards (OLS)

The OLS implements and interprets the following minimum wage and other labor laws: App-Based Worker Minimum Payment Ordinance,²⁰ App-Based Worker Paid Sick and Safe Time Ordinance,²¹ App-Based Worker Deactivation Rights Ordinance,²² Cannabis Employee Job Retention Ordinance,²³ Commuter Benefit Ordinance,²⁴ Domestic Worker Ordinance,²⁵ Fair Chance Employment Ordinance,²⁶ Hotel Employee Safety Protections Ordinance,²⁷ Protecting Hotel Employees from Injury Ordinance,²⁸ Improving Hotel Employee's Access to Medical Care Ordinance,²⁹ Hotel Employees Job Retention Ordinance,³⁰ Independent Contractor Protections Ordinance,³¹ Minimum Wage Ordinance,³² Paid Sick and Safe Time Ordinance,³³ Secure Scheduling Ordinance,³⁴ Transportation Network Company Driver Deactivation Rights Ordinance,³⁵ Transportation Network Company Minimum Compensation Ordinance,³⁶ and Wage Theft Ordinance.³⁷ Importantly, OLS issues rules and guidance for these Ordinances, all of which are available through the links to the respective ordinance's OLS page (see footnotes below).

Not all of these ordinances are detailed in this Book yet. For this reason, we have provided summary information here, with links to OLS webpages that detail about the ordinances', OLS's rules, and OLS's guidance for each. We plan to detail these ordinances in future editions of this Book.

¹⁹ See OCR's enforcement website, available [here](#).

²⁰ SMC 8.37.

²¹ SMC 8.39.

²² SMC 3.40.

²³ SMC 8.38.

²⁴ SMC 14.30.

²⁵ SMC 14.23.

²⁶ SMC 14.17.

²⁷ SMC 14.26.

²⁸ SMC 14.27.

²⁹ SMC 14.28.

³⁰ SMC 14.29.

³¹ SMC 14.34.

³² SMC 14.19.

³³ SMC 14.16.

³⁴ SMC 14.22.

³⁵ SMC 14.32.

³⁶ SMC 14.33.

³⁷ SMC 14.20.

Ordinance	Description
App-Based Worker Minimum Payment Ordinance	Provides covered app-based workers' rights to minimum payment, transparency, and flexibility ³⁸
App-Based Worker Paid Sick and Safe Time Ordinance	Provides covered workers with paid sick and safe time ³⁹
App-Based Worker Deactivation Rights Ordinance	Provides deactivation rights for covered workers ⁴⁰
Cannabis Employee Job Retention Ordinance	Provides employees with job retention protections during changes in ownership ⁴¹
Commuter Benefit Ordinance	Requires employers to offer the option to deduct pre-tax commuter benefits ⁴²
Domestic Workers Ordinance	Provides domestic workers the right to minimum wage protections, meal periods, paid rest breaks, and other rest ⁴³
Fair Chance Employment Ordinance	Regulates the use of criminal history in advertisements and employment decisions ⁴⁴
Hotel Employee Safety Protections Ordinance	Requires hotel employers to take measures to prevent, address, and respond to violent or harassing guest conduct ⁴⁵
Protecting Hotel Employees from Injury Ordinance	Limits the workload of hourly employees who clean guest rooms ⁴⁶
Improving Hotel Employee's Access to Medical Care Ordinance	Requires hotel employers to provide certain hotel workers with healthcare expenditures. ⁴⁷
Hotel Employees Job Retention Ordinance	Provides employees with job retention protections during changes in ownership ⁴⁸
Independent Contractor Protections Ordinance	Requires certain disclosures and payments ⁴⁹
Minimum Wage Ordinance	Establishes a minimum hourly wage that increases annually ⁵⁰

³⁸ Additional information about the Ordinance is available on OLS's website [here](#).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Additional information about the Ordinance is available on OLS's website [here](#).

⁴² Additional information about the Ordinance is available on OLS's website [here](#).

⁴³ Additional information about the Ordinance is available on OLS's website [here](#).

⁴⁴ See Chapter 11, Section 3. Additional information about the Ordinance is available on OLS's website [here](#).

⁴⁵ Additional information about the Ordinance is available on OLS's website [here](#).

⁴⁶ Additional information about the Ordinance is available on OLS's website [here](#).

⁴⁷ Additional information about the Ordinance is available on OLS's website [here](#).

⁴⁸ Additional information about the Ordinance is available on OLS's website [here](#).

⁴⁹ Additional information about the Ordinance is available on OLS's website [here](#).

⁵⁰ See Chapter 3, Section 1.6. Additional information about the Ordinance is available on OLS's website [here](#).

Ordinance	Description
Paid Sick and Safe Time Ordinance	Requires certain disclosures and payment of all promised compensation to independent contractors ⁵¹
Secure Scheduling Ordinance	Establishes scheduling requirements for retail and food service establishments ⁵²
Driver Deactivation Rights Ordinance	Provides deactivation protections and creates a Driver Resolution Center ⁵³
Transportation Network Company Minimum Compensation Ordinance	Requires minimum compensation for drivers ⁵⁴
Wage Theft	Requires employers to pay all compensation due to employees ⁵⁵

1.2.3. Seattle Office of the Hearing Examiner

The Office of the Hearing Examiner conducts fair and impartial administrative hearings regarding violations of several of Seattle’s labor and employment ordinances (among other ordinances). Specifically, the Office conducts hearings for employment discrimination complaints, Paid Sick and Safe Time Ordinance appeals, Fair Chance Employment Ordinance appeals, Minimum Wage Ordinance appeals, and Wage Theft Ordinance appeals.⁵⁶ The Office of the Hearing Examiner maintains [rules](#) for practicing before it.

⁵¹ See Chapter 8, Section 9.9. Additional information about the Ordinance is available on OLS’s website [here](#).

⁵² Additional information about the Ordinance is available on OLS’s website [here](#).

⁵³ Additional information about the Ordinance is available on OLS’s website [here](#).

⁵⁴ Additional information about the Ordinance is available on OLS’s website [here](#).

⁵⁵ See Chapter 3, Section 3. Additional information about the Ordinance is available on OLS’s website [here](#).

⁵⁶ [https://www.seattle.gov/Documents/Departments/HearingExaminer/HE-Jurisdictions-Updated02-02-16\(0\).pdf](https://www.seattle.gov/Documents/Departments/HearingExaminer/HE-Jurisdictions-Updated02-02-16(0).pdf)

2. Hours of Work

“Hours of work”-related requirements fall under several different Washington employment law statutes, most notably the IWA⁵⁷ and the MWA.⁵⁸

L&I has interpreted “hours worked” as all hours an employer requires an employee to be on duty, either a) on the employer’s premises or b) at a prescribed workplace.⁵⁹ To determine whether time is considered “hours worked,” L&I considers the following questions:

- Is the time spent by the employee requested, suffered, permitted, allowed, or otherwise sanctioned by the employer for the employee to complete work on the employer’s behalf?
- Does the employer restrict the employee’s personal activities or control the employee’s time?
- Is the employee on an employer’s worksite or otherwise at a location where work is performed for the employer?

If the answer to all three questions is “yes,” then the employee’s time is considered “hours worked.”⁶⁰

2.1. Workweek

A workweek is a fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods. It may begin on any day of the week and any hour of the day.⁶¹ A workweek does not need to coincide with a calendar week.⁶²

An employer may set the workweek for employees, but it must document the day of the week that the workweek begins and ends.⁶³ If the employer does not set a workweek, the default workweek in Washington is the calendar week — Sunday through Saturday.⁶⁴

2.2. Compensable Time

Time is compensable if it is considered “hours worked.” Washington courts have held that “all” hours worked are required to be paid, such that “averaging” to meet minimum wage is not allowed.⁶⁵

Washington courts have declined to adopt the *de minimis* doctrine, reasoning it would frustrate the legislature’s intent for the MWA.⁶⁶ In addition to employees’ performance of routine work duties, other activities may be compensable, such as:

⁵⁷ RCW 49.12.

⁵⁸ RCW 49.46.

⁵⁹ WAC 296-126-002(8).

⁶⁰ Wash. Lab. & Indus. Admin. Pol’y [ES.C.2\(1\)](#).

⁶¹ Unlike California, there are no restrictions on the number of hours of work per day except for certain industries, including for employees working on public works contracts, domestic employees, and health care facility employees. These restrictions are available at [RCW 49.28](#). Future editions of this Book will detail these laws.

⁶² WAC 296-128-015(1).

⁶³ WAC 296-128-010(5)-(6).

⁶⁴ L&I Overtime FAQs; <https://lni.wa.gov/workers-rights/wages/overtime/>.

⁶⁵ Under the MWA, employees must be paid at least minimum wage for all hours worked. RCW 49.46.020. “Hours worked” means “all hours during which the employee is authorized or required by the employer to be on duty on the employer’s premises or prescribed work place.” WAC 296-126-002(8); *Stevens v. Brink’s Home Security, Inc.*, 162 Wn.2d 42, 47 (2007).

⁶⁶ *Robertson v. Valley Commc’ns Ctr.*, 18 Wn. App. 2d 122 (2021), review denied, 198 Wn.2d 1036 (2022).

2.2.1. Donning and Doffing

Time spent donning and doffing is compensable if employees must wear certain clothes or specialized protective gear to perform their jobs.⁶⁷

2.2.2. Lectures, Meetings, and Training Programs

Time spent by employees attending lectures, meetings, training programs, or similar activities required by the employer is compensable.⁶⁸ However, training and meeting time is not compensable if:

- attendance is voluntary;
- the employee does not perform active work during the meeting;
- the meeting takes place outside of regular work hours; and
- the meeting is not directly related to the employee's current work.⁶⁹

When a public entity, not the employer, requires a training, then only the first three provisions apply.⁷⁰ Therefore, time spent in training mandated by federal, state, or local laws or regulations, but not by the employer, is not compensable if:

- attendance is voluntary;
- the employee does not perform active work during the meeting; and
- the meeting takes place outside of regular work hours.

2.2.3. Preparation Time

Preparatory and concluding activities that are integral and necessary to the performance of an employee's job are compensable when the employee does not have control over when and where these activities can be performed.⁷¹

2.2.4. Waiting Time

If a shutdown or other work stoppage occurs, then the time an employee spends waiting to return to work is compensable unless the employee is completely relieved from duty and can effectively use the time for the employee's own purpose, rather than standing by until work commences or commences again.⁷²

2.2.5. On-Call Time

Whether or not employees are considered to be working during on-call time depends on whether they are required to remain on or so close to the employer's premises that they are unable to use the time effectively for their own purposes. On-call time during which employees are a) not required to stay on the employer's premises, b) are only required to leave word with company officials regarding where they can be reached, and c) are generally free to go where they choose and utilize the time how they please is generally not considered compensable "hours worked." However, if the employer places restrictions on where and when the employee may travel while "on-call" this may change the character of that "on-call"

⁶⁷ Wash. Lab. & Indus. Admin. Pol'y [ES.C.2\(15\)](#).

⁶⁸ Wash. Lab. & Indus. Admin. Pol'y: [ES.C.2\(6\)](#).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ WAC 296-126-002(8); Wash. Lab. & Indus. Admin. Pol'y: [ES.C.2\(15\)](#).

⁷² Wash. Lab. & Indus. Admin. Pol'y: [ES.C.2\(10\)](#).

status to compensable “hours worked.” The particular facts should be evaluated on a case-by-case basis.⁷³

2.2.6. Report or Show-Up Time

On a state-level, employers do not have to pay employees when they report to work for their shift, the employer has no work to be performed, and the employee is released to leave the employer’s designated work site.⁷⁴ In other words, the employer is not required to pay wages if no work has been performed.⁷⁵ Additionally, employers are not required to give advance notice to change an employee’s shift or duration of the shift, so there is no show-up pay requirement.⁷⁶

However, some local jurisdictions, such as Seattle, have requirements related to show-up pay or secure scheduling. In Seattle, retail and food service employers with more than 500 employees worldwide, including franchises, must comply with Seattle’s Secure Scheduling Ordinance.⁷⁷ These employers must display a schedule posted in the employees’ primary language in an accessible place.⁷⁸ They must post work schedules at least 14 days in advance.⁷⁹ Employees have a right to decline any hours not originally posted on the schedule.⁸⁰ When an employer requests a schedule change after the schedule has been originally posted, they must compensate employees for an additional one hour of pay for hours added to a shift or when a shift date or time is changed and no less than half of the hours not worked when an employee is sent home early from a shift, otherwise shortening a shift, cancelling a shift, or scheduling the employee for an on-call shift.⁸¹ There are exceptions to these requirements, and Seattle’s Secure Scheduling Ordinance is extensive and detailed. We provide only a short summary here. Employers with employees in Seattle are encouraged to review Chapter 14.22 of the Seattle Municipal Code and Seattle’s Office of Labor Standards’ rules, Q&A, fact sheet, and webpage related to secure scheduling for more detail.⁸²

2.2.7. Travel Time

Time spent travelling for work constitutes compensable time if the time is considered “hours worked.” To reiterate generally, time is considered “hours worked” if: a) an employee is authorized or required by the employer, b) to be on duty, c) and is on the employer’s premises or at a prescribed workplace.⁸³ Ordinary commute time does not typically satisfy the conditions to be considered hours worked.

2.2.7.a. Travel in Company Vehicle

Whether time spent driving or riding in a company-provided vehicle constitutes compensable time depends on whether the time is considered “hours worked” under the three-part analysis listed above. Time spent driving or riding in a company vehicle during an employee’s ordinary commute is generally not considered “hours worked” if the employee is not on duty and performs no work while driving or riding in the company vehicle.⁸⁴ To help employers determine if time an employee spends driving in a company

⁷³ Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2\(9\)](#).

⁷⁴ Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2.\(11\)](#).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ SMC 14.22.

⁷⁸ SMC 14.22.040.

⁷⁹ *Id.*

⁸⁰ SMC 14.22.045.

⁸¹ SMC 14.22.050.

⁸² Seattle OLS secure scheduling webpage available [here](#).

⁸³ Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2\(3\)](#).

⁸⁴ Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2\(4\)](#).

vehicle from home to work to home satisfies the “hours worked” test, L&I divides the analysis into on-duty considerations and premises/workplace considerations.

The “on-duty” factors are:

1. The extent to which the employee is free to make personal stops and engage in personal activities during the drive time between home and the first or last job site of the day, or whether the vehicle may only be used for company business.
2. The extent to which the employee is required to respond to work-related calls or to be redirected while en route.
3. Whether the employee is required to maintain contact with the employer.
4. The extent to which the employee receives assignments at home and must spend time writing down the assignments and mapping the route to reach the first job site before beginning the drive.⁸⁵

The “on-the-employer’s premises” or “at-a-prescribed-workplace” factors are:

1. Whether the nature of the business requires the employee to drive a particular vehicle provided by the employer to carry necessary non-personal tools and equipment to the work site.
2. The extent to which the company-provided vehicle serves as a location where the employer authorizes or requires the employee to complete business-required paperwork or load materials or equipment.
3. The extent to which the employer requires the employee to ensure that the vehicle is kept clean, organized, safe, and serviced.⁸⁶

Time spent driving a company-provided vehicle from the employer’s place of business to the job site is considered “hours worked.” However, time spent riding in a company-provided vehicle from the employer’s place of business to the job site is not considered hours worked when an employee voluntarily reports to the employer’s location merely to a) obtain a ride as a passenger for the employee’s convenience, b) is not on duty, and c) performs no work.⁸⁷

2.2.7.b. Out-of-Town Travel

Compensable out-of-town travel is travel that takes place for the employer’s benefit and is requested to meet the needs of a particular assignment. L&I takes the position that out-of-town travel that is an integral part of the principal activity the employee was hired to perform is compensable, regardless of whether the employee engages in additional work during the journey or whether the employer owns or controls the employee’s means of transport. The time will be compensable so long as the employer approved the means of travel. This includes the time it takes for the employee to get from home to an airport, for example.⁸⁸ L&I takes the position that once the employee arrives at the employee’s lodgings, the employee is no longer “on duty” and that time is not compensable as “hours worked” so long as the employee is free to engage in personal activities.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2\(5\)](#).

Employers should generally understand that L&I interprets the MWA with respect to out-of-town travel as different and more stringent than under the FLSA. In many instances, out-of-town travel will be compensable according to L&I.⁸⁹

2.3. Reporting All Time Worked

Employers must record all time that their employees have worked. This includes keeping records of the total hours worked each workday and each workweek.⁹⁰ L&I's guidance about payroll record and paystub requirements in Washington are on its [payroll and personnel records website](#) and its administrative policies.⁹¹

2.3.1. Rounding

L&I permits rounding for time-clock recordkeeping systems or written recordkeeping systems, as long as rounding will not result in a failure to properly compensate employees for all hours worked. Time may be rounded to the nearest five minutes, or to the nearest one-tenth or quarter of an hour. If the employer uses a quarter-hour-minute increment, then the employer must use the seven-minute rule. Under this rule, time is rounded down if the employee clocks in or out at seven minutes into the increment, but rounded up if the employee clocks in or out at eight minutes into the increment. Any system where time is always rounded down is not permissible.⁹² For example, in *Bennett & Hughes v. Providence Health Services*, a unanimous jury found rounding to the nearest fifteen minute increment was not neutral and systematically favored the employer.⁹³ The jury awarded \$9,318,271.45 in compensatory damages to class members for uncompensated hours worked due to timeclock rounding.

2.4. Meal Periods

Under L&I rules and guidance, employers are required to provide non-exempt employees who work more than five consecutive hours with a 30-minute, unpaid meal period. The meal period must occur no earlier than two hours from the start of the shift and no later than five hours into the shift. Employees who work three or more hours longer than their normal work day must receive at least one 30-minute meal period prior to or during the overtime period.⁹⁴

A second meal period is required for each five hours worked after the first meal period.⁹⁵

Rounding is not permitted for meal and rest periods.⁹⁶ Employers cannot round, deduct, or average any time from a meal or rest period.⁹⁷

Employees who work five hours or less are not entitled to a 30-minute meal period unless the employer wishes to give one.⁹⁸

2.4.1. Work Performed During Meal Periods and Missed Meal Periods

L&I requires an employee to be paid for meal periods if the employer (1) requires the employee to be on duty, or (2) to remain at a worksite as required in the interest of the employer. If the employer requires the

⁸⁹ *Id.*

⁹⁰ WAC 296-128-010(6).

⁹¹ Wash. Lab. & Indus. Admin. Pol'y: [ES.D.1](#) and [ES.D.2](#) (for agricultural employers).

⁹² Wash. Lab. & Indus. Admin. Pol'y: [ES.D.1\(11\)](#).

⁹³ Case No. 21-2-13058-1 SEA (King Cty. Sup. Ct. Jan. 16, 2024).

⁹⁴ WAC 296-126-092.

⁹⁵ Wash. Lab & Indus. Admin. Pol'y [ES.C.6.1\(5\)](#).

⁹⁶ Wash. Lab. & Indus. Admin. Pol'y: [ES.D.1\(11\)](#).

⁹⁷ *Id.*

⁹⁸ WAC 296-126-092.

employee to be on duty during the meal period, the 30-minute meal period is calculated by excluding any interruptions that occur while the employee is on duty. If the employer requires the employee to remain at a worksite as required in the interest of the employer, meal periods must be paid regardless of whether the employee's meal period is interrupted by work.⁹⁹

An employer must pay the employee for any missed meal periods owed. This compensation is in addition to payment an employee may have already received for the work. For example, if an employee works a six-hour shift and misses their meal period, then they are entitled to be paid for six hours and thirty minutes.¹⁰⁰ At least one appellate court has ruled there is also a thirty-minute penalty in this circumstance and, depending on the circumstances, double damages/penalties for willfulness.¹⁰¹ In other words, a remedy for meal period violations could be 120 minutes in pay.

2.4.2. Waivers

Employees may waive their meal periods. A waiver must be “knowing and voluntary” by the employee. An employer cannot waive a meal period for the employee, although an employer can refuse an employee's request for a waiver. Waivers need not be written, but it is strongly encouraged that they be written. Waivers must be revocable at any time.¹⁰²

In *Brady v. Autozone Stores, Inc.*, the Washington Supreme Court explained it is the employer's burden to show an employee waived a meal period.¹⁰³ When an employee asserts a meal break violation, the employee must provide evidence the employee was not given a timely meal break to prove their prima facie case.¹⁰⁴ Once the employee has made out a prima facie case, the burden shifts to the employer to rebut the employee's evidence by showing that a valid waiver existed or that in fact no violation occurred.¹⁰⁵

2.5. Rest Breaks

Rest breaks are considered hours worked by L&I. In general, L&I's rest break rules are:

- Non-exempt employees must be allowed a paid rest break of at least ten minutes for each four hours worked.
- The rest break must be allowed no later than the end of the third hour of the shift.
- Rest periods must be scheduled as near as possible to the midpoint of the work period.
- Employers may require employees to remain on-call during rest periods if the employees otherwise control how they spend their time. If the rest period is interrupted to perform work, then the employee must be given the remainder of the ten-minute break.¹⁰⁶

Generally, L&I takes the position that employees cannot waive rest breaks.

Rest break violations are treated similarly to meal period violations described in Section I.D.1 above.

⁹⁹ Wash. Lab. & Indus. Admin. Pol'y [ES.C.6.1\(7\)](#); see also *Hill v. Garda CL Northwest, Inc.*, 191 Wn.2d 553, 564 (2018); *Pellino v. Brink's, Inc.*, 164 Wn. App. 668 (2011).

¹⁰⁰ Wash. Lab. & Indus. Admin. Pol'y [ES.C.6.1\(7\)](#).

¹⁰¹ *Androckitis v. Virginia Mason Med. Ctr.*, 32 Wn. App. 2d 418 (2024).

¹⁰² Wash. Lab. & Indus. Admin. Pol'y [ES.C.6.1\(8\)](#).

¹⁰³ 188 Wn.2d 576 (2017).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ WAC 296-126-092(4); Wash. Lab. & Indus. Admin. Pol'y: [ES.C.6.1\(9\)-\(11\)](#).

2.5.1. Intermittent Rest Breaks

Where the nature of the work allows employees to take intermittent rest periods equivalent to ten minutes for each four hours worked, scheduled rest periods are not required.¹⁰⁷ However, according to L&I, a series of ten one-minute breaks is not sufficient. When the nature of the work is continuous, such as constant mental vigilance to protect life or property, intermittent rest periods are not permitted.¹⁰⁸ As an example, in *Hill v. Garda CL Northwest, Inc.*, the Washington Supreme Court held that an armored truck company violated rest break rules because its official policies did not provide for adequate rest breaks given that the policies required vigilance at all times.¹⁰⁹ Similarly, in *Pellino v. Brink's Inc.*, the Division I of the Washington Court of Appeals held that, despite the employer allowing the driver and messenger employees to make stops during the course of their scheduled route to use the restroom and buy themselves food and drink, these stops were not adequate meal and rest breaks because they did not provide a true break from work activity or an opportunity for the employees to relax.¹¹⁰

Additionally, the Washington Supreme Court does not distinguish between regular and overtime hours worked when determining if a rest break is mandated. If an employee works three hours in regular hours, overtime, or a combination of both, they must receive a ten-minute rest break.¹¹¹

2.6. Meal Period and Rest Break Rules for Certain Situations/ Industries

2.6.1. Lactation

Employers must provide reasonable break time for employees to express breast milk for two years after the birth of a child. Employers must provide or identify a private location, other than a bathroom, for this purpose.¹¹²

Additionally, effective in 2025, construction industry employers must provide both menstruating and lactating employees with reasonable accommodations under WISHA.¹¹³

2.6.2. Agricultural Employees

There are different meal period and rest break requirements for agricultural workers in Washington. These requirements are set forth in detail in L&I's Administrative Policy ES.C.6.2, and agricultural employers should review this policy carefully. It is worth noting separately that the Washington Supreme Court held in *Demetrio v. Sakuma Bros. Farms, Inc.* that agricultural employees paid at a piece rate must be paid a wage separate from the piece rate for time spent on rest breaks.¹¹⁴ Rest break time must be paid at the greater rate of either the applicable minimum wage or the pieceworker's regular rate of pay.¹¹⁵

2.6.3. Construction Workers

A labor contract for employees in the construction trades that is negotiated under the NLRA may include provisions that vary from L&I's meal period and rest break requirements. The terms of the CBA must specifically require meal periods and rest breaks and set forth the conditions for those breaks.

¹⁰⁷ WAC 296-126-092(5); Wash. Lab. & Indus. Admin. Pol'y: [ES.C.6.1\(12\)](#).

¹⁰⁸ Wash. Dep't of Labor & Indus. Admin. Policy [ES.C.6.1\(12\)](#).

¹⁰⁹ 179 Wn.2d 47 (2013).

¹¹⁰ 164 Wn. App. 668, 690-91 (2011).

¹¹¹ *Wingert v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841 (2002).

¹¹² RCW 43.10.005.

¹¹³ RCW 49.17.530.

¹¹⁴ 183 Wn.2d. 649 (2015).

¹¹⁵ Wash. Lab. & Indus. Admin. Pol'y: [ES.C.6.2\(11\)-\(13\)](#).

Construction trades covered by this exemption may include, but are not limited to, employees working in construction, alteration, or repair of any type of privately, commercially, or publicly-owned building, road, or parking lot, or the erection of playground or school yard equipment, or other related industries where the employees are in a recognized construction trade covered by a CBA.¹¹⁶

2.6.4. Health Care Workers

Health care facilities are subject to different requirements for meal periods and rest breaks. These special requirements cover any “employee” who is “involved in direct patient care activities or clinical services” and is paid hourly or covered by a collective bargaining agreement.¹¹⁷ Rest breaks must be scheduled and can occur at any point during the work period where a rest break is required.¹¹⁸

Meal periods and rest breaks must be uninterrupted, unless there is an unforeseeable emergency or unforeseeable clinical circumstance where the patient may suffer life threatening adverse effects if a meal or rest break is taken by the employee.¹¹⁹

For any work period for which an employee is entitled to one or more meal periods and more than one rest period, the employee and the employer may agree to combine a meal period and a rest period.¹²⁰ The employee has the exclusive right to revoke the agreement at any time.¹²¹

The health care employer must devise a system to record when these health care workers miss a meal period or rest break.¹²² Then, on a quarterly basis, the employer must report to L&I the total meal and rest periods missed during the quarter, and the total meal and rest periods required during the quarter.¹²³ This reporting requirement does not apply to hospitals until July 1, 2026.¹²⁴

If L&I determines that a report is invalid or that the employee was coerced into inaccurately recording their breaks, it may order the employer to pay a penalty and/or order relief for the employee.¹²⁵ Starting July 1, 2026, when an employer is not at least 80 percent compliant with their meal and rest break requirements, the department must impose penalties determined by the amount of beds in the health care facility.¹²⁶

At the time this Book was being finalized for publication, on April 21, 2025, the Washington Legislature passed and Governor Ferguson signed into law a bill that amends Washington’s meal and rest break laws and waiver requirements for health care workers. The new law becomes effective on January 1, 2026 and is available [here](#). We will detail the new law in future editions of this Book.

2.6.5. Minors

Minors under the age of 16 cannot work for more than four hours without a 30-minute meal period. The meal period should not be near the beginning of the shift. The meal period cannot be combined with a

¹¹⁶ RCW 49.12.187; Wash. Lab. & Indus. Admin. https://www.lni.wa.gov/workers-rights/_docs/esc6.1.pdf

¹¹⁷ RCW 49.12.480(3); see also WAC 296-126-0921; Wash. Lab. & Indus. Admin. Pol’y: [HLS.A.2](#) (for L&I’s detailed administrative policy on this topic).

¹¹⁸ RCW 49.12.480(1)(a).

¹¹⁹ RCW 49.12.480(1)(b).

¹²⁰ *Id.*

¹²¹ RCW 49.12.480(1)(c).

¹²² RCW 49.12.480(2)(a).

¹²³ RCW 49.12.480(2)(b).

¹²⁴ RCW 49.12.480(1)(c).

¹²⁵ RCW 49.12.483(3)(c).

¹²⁶ RCW 49.12.483(2)(c).

rest break.¹²⁷ The more general meal period timing rules applicable to regular employees apply to minors of ages 16 and 17.¹²⁸ Minors, including those ages 16 and 17, cannot waive any meal period requirements and must be provided with 30 uninterrupted minutes of meal break.¹²⁹

Minors 14 and 15 years old must be given: (1) a paid rest period of at least ten minutes for every two hours worked; and (2) either a ten-minute rest period or a 30-minute meal period for a four-hour work period. Rest breaks cannot be scheduled near the beginning of the work shift.¹³⁰

Minors 16 and 17 years old must be given: (1) a paid rest period of at least ten minutes for every four hours worked; and (2) a rest period at least every three hours. Rest breaks must be scheduled as near as possible to the midpoint of the work period.¹³¹

Washington maintains extensive penalties associated with violations of child labor laws.¹³²

At the time this Book was being finalized for publication, on April 21, 2025, the Washington Legislature passed and Governor Ferguson signed into law a bill that amends Washington's child labor laws to allow for more flexibility in the work hours of 16-17 year olds. The new law becomes effective on July 1, 2026 and is available [here](#). We will detail the new law and provide a more extensive section on child labor laws in Washington in future editions of this Book.

2.7. Uniforms

Washington employers have an obligation under the IWA to provide or compensate employees for required uniforms.¹³³ Uniforms are apparel of “a distinctive style and quality that, when worn outside of the workplace, clearly identifies the person as an employee of a specific employer,” “is specially marked with an employer’s logo,” represents an “historical time period or ethnic tradition,” or is “formal.”¹³⁴

Employers are not required to compensate employees for required apparel unless the apparel constitutes a uniform.¹³⁵ This includes apparel of a common color or for certain seasonality if the apparel does not otherwise meet the definition of a uniform, unless the employer changes the color or seasonality with certain frequency.¹³⁶

Personal protective equipment is governed by other laws and does not constitute a “uniform” governed by this portion of the IWA.¹³⁷

L&I's [uniforms website](#) contains additional guidance.

¹²⁷ WAC 296-125-0280.

¹²⁸ WAC 296-125-0287.

¹²⁹ WAC 296-125-0280; WAC 296-125-0287.

¹³⁰ WAC 296-125-0285.

¹³¹ WAC 296-125-0287.

¹³² RCW 49.12.380-RCW 49.12.420. At the time this Book was being finalized for publication, on April 28, 2025, the Washington Legislature passed and Governor Ferguson signed into law a bill that amends Washington's child labor laws to assess more onerous penalties for violations of child labor laws. The new law becomes effective on July 1, 2026 and is available [here](#) (amendments in underline and strikethrough).

¹³³ RCW 49.12.450; Wash. Lab. & Indus. Admin. Pol'y: [ES.C.8.1](#) and [ES.C.8.2](#).

¹³⁴ RCW 49.12.450(3).

¹³⁵ RCW 49.12.450(2).

¹³⁶ RCW 49.12.450(4), (5).

¹³⁷ RCW 49.12.450(6).

2.8. Public-Sector Employees

The general meal period and rest break requirements do not apply to employees of public employers who have entered into a collective bargaining agreement or other mutually agreed upon employment agreement that specifically varies from or supersedes the rules regarding meal and rest periods.¹³⁸

2.9. Variances

Employers may apply to L&I for a variance under any rule promulgated by L&I under the IWA, including for a variance from meal period or rest break requirements.¹³⁹

2.10. Enforcement

The IWA and MWA, like most Washington employment statutes, contain non-retaliation, enforcement, and penalty provisions.¹⁴⁰ L&I has expanded upon these through rulemaking.¹⁴¹ Employees can file IWA and MWA-related complaints with L&I. Additionally, both statutes generally allow for private rights of action.¹⁴² For additional detail, see Chapter 3, Section 3.

¹³⁸ RCW 49.12.005; Wash. Lab. & Indus. Admin. Pol'y: [ES.C.6.1\(3\)](#).

¹³⁹ WAC 296-126-130; Wash. Lab. & Indus. Admin. Policies: [ES.C.6.1\(14\)](#) and [ES.C.9](#).

¹⁴⁰ RCW 49.12.033 (enforcement of IWA by L&I) referring to 43.22.2870(5)), 49.12.041 (investigation by L&I of MWA issues), 49.12.140-170 (L&I investigation and enforcement of IWA violations), 49.12.380-420 (L&I investigation and enforcement of IWA violations related to child labor), 49.12.483 (non-retaliation, investigation, enforcement, and penalty provisions of IWA violations related to health care facilities), 49.46.210 (non-retaliation under MWA), 49.46.100 (penalties under MWA), 49.46.810 (enforcement of MWA by L&I), 49.46.830 (investigation by L&I of MWA issues).

¹⁴¹ WAC, Chapter 296.128; WAC, Chapter 296-900.

¹⁴² See, e.g., RCW 49.12.010 (provides a private cause of action for employees to recover unpaid wages for hours worked); RCW 49.12.150 (affords employees a private cause of action to seek civil remedies for underpayment of wages); WAC 296-126-092 (explains a private cause of action allowing employees to sue employers for failure to provide mandated meal and rest periods). This list is not exhaustive.

3. Minimum Wage

An employer's obligation to pay minimum wage in Washington is governed by the MWA, which provides for a much higher minimum wage rate than the FLSA.¹⁴³ The MWA applies to all Washington employers and non-exempt Washington employees, with some exceptions.

Employees exempt from MWA include certain "temporary hand harvest laborers who commute daily from his or her permanent residence to the farm on which he or she is employed; casual laborers in a private home; executive, administrative, and professional employees; outside salespersons; volunteers for charitable, religious, non-profit, or government organizations; newspaper vendors, carriers, or delivery people; freelance news correspondents; railroad carriers; individuals engaged in forest protection and fire protection; individuals employed by charitable institutions providing childcare, certain youth activities, or recreational opportunities for members of their armed forces; individuals whose duties require them to sleep at the place of employment or spend a substantial amount of time on call; residents, inmates, or patients of a state, county, or municipal correctional, detention, treatment, or rehabilitative institution; elected or appointed officials and employees of the state legislature; crewmembers on Washington state ferries; seamen on non-American vessels; farm interns working on certified small farms; junior ice hockey team players; and minor league baseball players."¹⁴⁴

Under the MWA, employees must be paid at least minimum wage for all hours worked.¹⁴⁵ "Hours worked" means "all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or prescribed work place."¹⁴⁶ Washington courts have interpreted this to mean that minimum wage must be paid for each hour worked, meaning averaging to meet minimum wage is not allowed.¹⁴⁷ See *generally* Chapter 1 for more detail.

3.1. Washington Minimum Wage Rate

As of January 1, 2025, the minimum wage in Washington is \$16.66 per hour.¹⁴⁸ Employees who are 14 or 15 years old can be paid \$14.16 per hour.¹⁴⁹ Employers should expect this amount to increase each year pursuant to the cost-of-living adjustment calculated by L&I. The new minimum wage is announced on September 30th of every year and takes effect January 1st of the following year.¹⁵⁰

The current federal minimum wage is \$7.25 per hour. Because Washington's minimum wage is higher than the federal minimum wage, an employer's compliance with FLSA does not suffice. Washington employers must comply with the state requirement.¹⁵¹

3.1.1. Tips and Service Charges

Under the MWA, employers must pay all tips and certain service charges to their employees.¹⁵² Employers cannot subtract tips and service charges from an employee's hourly minimum wage.¹⁵³ Any tips received by employees must be paid in addition to their hourly wage.¹⁵⁴

¹⁴³ RCW 49.46.

¹⁴⁴ RCW 49.46.010.

¹⁴⁵ RCW 49.46.020.

¹⁴⁶ WAC 296-126-002(8).

¹⁴⁷ *Stevens v. Brink's Home Security, Inc.*, 162 Wn.2d 42, 47 (2007).

¹⁴⁸ <https://www.lni.wa.gov/workers-rights/wages/minimum-wage/>

¹⁴⁹ *Id.*

¹⁵⁰ RCW 49.46.020(2)(b).

¹⁵¹ Wash. Lab. & Indus. Admin. Policies: [E.S.A.1\(1\)](#).

¹⁵² RCW 49.46.020(3).

With regard to service charges, the MWA creates special guidelines for employers that “provide food, beverages, entertainment, or portorage” to its customers.¹⁵⁵ The MWA mandates that service charges must be paid in addition to the hourly wages that are paid to the employee or employees serving customers.¹⁵⁶ Service charges are typically designated as “service charges,” “gratuity,” “portorage charge(s)” or “portorage charge(s).” If an employer imposes an automatic service charge to its customers, they must disclose the percentage of the automatic service charge that is paid directly to the employee.¹⁵⁷ They can disclose the percentage of the service charge in either the menu that is provided to the customer, or an itemized receipt provided to the customer.¹⁵⁸

3.1.2. Collective Bargaining Agreements

The MWA does not interfere with, impede, or diminish employees' right to bargain with their employers to establish wages or other work conditions beyond the applicable minimum standards of MWA.¹⁵⁹ For example, employers and unions may have a collective bargaining agreement that establishes a higher pay rate than MWA's minimum rate. However, employers and unions generally cannot maintain a labor contract provision that establishes a lower pay rate than MWA's minimum wage rate.

3.1.3. Commission and Piece Rate

Washington employers must pay workers who are paid on a commission or piecework basis at least the applicable minimum wage for all hours worked.¹⁶⁰

3.1.4. Transportation Network Companies

Washington imposes minimum per-trip payments and other benefits for rideshare drivers. The MWA establishes a pay rate for rideshare drivers according to the starting or ending location of the ride. Transportation Network Companies should review the statute, rules, and guidance related to covered workers separately, as these rules are not detailed here.¹⁶¹

Seattle also imposes several ordinances on Transportation Network Companies. We do not detail them in this Book, but they are referenced in Chapter 1, Section 2.2. under the Seattle OLS Section, which includes links to OLS guidance about the same.

3.1.5. Theatrical Enterprises

Washington imposes wage bonding requirements on theatrical enterprises, including circuses, vaudevilles, carnivals, revues, variety shows, musical comedies, operettas, operas, dramas, endurance contests, marathons, walkathons, or any other entertainment events involving individuals that are part of the enterprise's presentation. Employers in these industries should review [RCW Chapter 49.38](#).

3.1.6. Seattle Minimum Wage Rate

Certain Washington municipalities have their own minimum wage rates. Seattle's is detailed here. Washington employers should check their specific municipality to determine if it is subject to a higher minimum wage rate than Washington's, like Seattle's.

¹⁵³ RCW 49.46.020(3); WAC 296-126-022.

¹⁵⁴ WAC 296-126-022.

¹⁵⁵ RCW 49.46.160(2)(b).

¹⁵⁶ RCW 49.46.160(2)(c).

¹⁵⁷ RCW 49.46.160(1).

¹⁵⁸ *Id.*

¹⁵⁹ RCW 49.46.120.

¹⁶⁰ Wash. Lab. & Indus. Admin. Pol'y: [ES.C.3](#).

¹⁶¹ RCW 49.46.300.

As of January 1, 2025, under the Seattle Minimum Wage Ordinance (MWO),¹⁶² the current minimum wage is \$20.76, regardless of an employer's size.¹⁶³ Because Seattle's minimum wage is higher than both that of the MWA and FLSA, a Seattle employer must pay Seattle employees Seattle's minimum wage.

Similar to the MWA, Seattle's MWO provides regular increases in minimum wage.¹⁶⁴ Employers should expect the Seattle minimum wage to increase every year and for the next year's minimum wage to be announced every September 30th by the Seattle OLS.

Generally, employees are covered by the MWO for each hour worked within the geographic boundaries of Seattle.¹⁶⁵ If an employee is typically based outside of Seattle, but performs work in Seattle on occasion, then the employee is covered by the MWO for a two-week period, but only if the employee works more than two hours within Seattle during that same two-week period.¹⁶⁶ Once a non-Seattle-based employee works more than two hours in Seattle within two consecutive weeks, all payment for time worked in Seattle during that two-week period must comply with the MWO.¹⁶⁷ For example, if an employee based in Olympia occasionally travels to Seattle for client meetings once a month and that employee works for more than two hours in Seattle within a two-week period, all the time that this employee works in Seattle during that two-week period must be paid according to the MWO. Time in Seattle used for non-employment-related travel and stops does not count as time worked in Seattle.¹⁶⁸

3.2. Payment of Sub-Minimum Wages

Under certain circumstances, Washington employers can apply for permission to pay employees less than the state minimum wage. L&I may issue a certificate allowing a subminimum wage if an employer meets certain requirements. Specifically, employers may pay the following types of employees subminimum wage: (1) learners, apprentices, and messengers employed primarily to deliver letters and messages, (2) individuals whose earning capacity is impaired by a disability, and (3) student learners/workers.¹⁶⁹

L&I has provided guidance regarding the payment of subminimum wages, as follows:

Workers with a disability:

L&I no longer issues subminimum wage certificates for workers with a disability.

Learners:

Definition – a worker whose total experience in an authorized learner occupation is less than the period of time allowed as a learning period for that occupation in a learner certificate issued pursuant to these regulations.¹⁷⁰

Application – to qualify for this exception, employers must show that certain employment conditions exist and that experienced workers are unavailable. Learners cannot be paid less than 85% of the state minimum wage.¹⁷¹

¹⁶² SMC 14.19.

¹⁶³ <https://www.seattle.gov/laborstandards/ordinances/minimum-wage>.

¹⁶⁴ SMC 14.19.030.B, 14.19.035.B.

¹⁶⁵ SMC 14.19.015.A.

¹⁶⁶ SMC 14.19.015.B; see also Seattle Office of Labor Standards, [SHRR, Chapter 90](#) and Seattle Office of Labor Standards, [Seattle's Minimum Wage Ordinance Questions and Answers](#).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ RCW 49.46.060; WAC 296-128-175; WAC 296-128-275.

¹⁷⁰ WAC 296-128-105.

Student Learners:

Definition – a student who is receiving instruction in an accredited school, college, or university, and who is employed on a part-time basis in a bona fide vocational training program, or in a job-training program established by an accredited school and approved by the director of the department of labor and industries.¹⁷²

Application – Student learners cannot be paid less than 75% of the state minimum wage.¹⁷³

Student Worker:

Definition – a student who is receiving instruction in a bona fide educational program in an educational institution and who is employed on a part-time basis by the educational institution from which the student is receiving his instruction, for the purpose of enabling the student to defray part of his school expenses.¹⁷⁴

Application – a student cannot displace an experienced worker. Student workers cannot be paid less than 75% of the state minimum wage.¹⁷⁵

Apprentices:

Definition – a person at least 16 years of age who is covered by a written agreement registered with the Washington state apprenticeship council providing for not less than 4,000 hours of reasonably continuous employment for such person, and for his participation in an approved schedule of work experience through employment which should be supplemented by 144 hours per year of related technical instruction.¹⁷⁶

Procedure for applying for subminimum wage certificates:

To apply for a subminimum wage certificate, employers must complete the [application](#) found on L&I website. Employers can then mail the application directly to L&I or deliver it to a local L&I office. After L&I receives the application, it will review it to ensure the necessary supporting documents have been included. L&I will contact employers if they need any clarification, and it will issue a certificate via mail or email if approved.

3.2.1. Subminimum Wage in Seattle

Seattle has additional requirements for employees with respect to subminimum wages. Employers may pay subminimum wages only to: (1) employees under 16 years old, and (2) student learners, apprentices, and messengers who have been approved for a state Special Certificate under WAC 296-128 and a Seattle Special Certificate.¹⁷⁷

Employees under 16 years old cannot be paid less than 85% of the hourly rate required by the Seattle's MWO.¹⁷⁸ Qualified apprentices and messengers may be paid less than Seattle's minimum wage, but above the state minimum wage, as authorized by the Director of the Seattle OLS.¹⁷⁹

¹⁷¹ WAC 296-128-125; see also <https://www.lni.wa.gov/workers-rights/wages/minimum-wage/paying-certain-workers-less-than-minimum-wage>.

¹⁷² WAC 296-128-180.

¹⁷³ WAC 296-128-200(2).

¹⁷⁴ WAC 296-128-280.

¹⁷⁵ <https://www.lni.wa.gov/workers-rights/wages/minimum-wage/paying-certain-workers-less-than-minimum-wage>

¹⁷⁶ WAC 296-128-230.

¹⁷⁷ Seattle Office of Labor Standards, SHRR 90-050(1).

¹⁷⁸ Seattle Office of Labor Standards, SHRR 90-060(2).

3.3. Wage Theft Laws

Washington law provides that employers who fail to pay adequate wages owed are liable for, inter alia, the wages owed, double damages for willful violations, costs, civil penalties, interest, and attorneys' fees.¹⁸⁰ State law gives L&I authority to investigate wage complaints, collect wages owed to workers, and assess civil penalties against employers who have willfully failed to pay wages, although employees have a private right of action as well. To file a workplace rights complaint, workers can go to [L&I's website](#) and begin the process.

Seattle also has a Wage Theft Ordinance (WTO) that holds employers liable for paying incorrect wage rates.¹⁸¹ Under the Seattle WTO, employers must pay all wages and tips owed to employees, provide written notice to employees, and itemize pay information when employees are paid.¹⁸² The written notice must contain the following information: (1) all hours worked with regular and overtime hours shown separately; (2) all rates of pay whether paid on hourly, salary, commission, piece rate, or combination thereof, or other basis during the pay period, and workers paid on a rate other than hourly or salary are entitled to a detailed printed accounting of commissions, piece rate, or other methods of payment earned during the pay period; (3) tip compensation; (4) pay basis (e.g., hour, shift, day, week, commission); (5) gross wages; (6) all deductions for that pay period; and (7) any other information that is material and necessary to assist the employee in understanding their compensation.¹⁸³

Violations of the Seattle WTO can result in significant damages and penalties. Employers face payment of unpaid compensation, liquidated damages, civil penalties, fines, and interest for violations. For example, the civil penalties assessed increase with every violation: up to \$500 per aggrieved party for the first violation, the greater of \$1,000 per aggrieved party or 10% of the total amount of unpaid compensation for any second violation, and the greater of \$5,000 per aggrieved party or 10% of the total amount of unpaid compensation for any third or subsequent violations.¹⁸⁴

¹⁷⁹ Seattle Office of Labor Standards, SHRR 90-050(1).

¹⁸⁰ RCW 49.48; RCW 49.52.

¹⁸¹ SMC 14.20.020.

¹⁸² SMC 14.20.025(E).

¹⁸³ SMC 14.20.025(E)(1)-(7).

¹⁸⁴ SMC 14.20.060(F).

4. Overtime

Under the Washington Minimum Wage Act (MWA), employers generally must pay non-exempt employees a premium for hours worked in excess of 40 hours in a workweek.¹⁸⁵ Overtime exemptions are covered in Chapter 4.

4.1. General Overtime Rule in Washington

Most employers can require mandatory overtime, meaning hours worked in excess of 40 hours in a workweek, but non-exempt employees must be compensated appropriately.¹⁸⁶ Employees eligible for overtime wage rates must be paid at an hourly rate of 1.5 times their “regular rate of pay” for those overtime hours worked.¹⁸⁷ This is true for non-exempt employees regardless of whether the employee is paid on an hourly, piecemeal, or salary basis.¹⁸⁸

The overtime requirement may not be waived by an employment agreement or a collective bargaining agreement.¹⁸⁹ A declaration by an employer that no overtime work will be permitted, or that overtime work will not be paid unless authorized in advance, is not a defense to an employee’s right to compensation for any overtime hours actually worked.¹⁹⁰ While employers may discipline employees for violating overtime rules, employers may not withhold wages as punishment.

4.2. Mandatory Overtime Prohibited in Health Care Facilities

While most employees may be required to work overtime, legislation in Washington prohibits health care facilities from requiring employees to work overtime, with limited exceptions.¹⁹¹ For these employees, any overtime worked must be strictly voluntary and refusal to work overtime may not be grounds of counseling or discipline.¹⁹²

Four statutory exceptions permit a health care facility to mandate overtime work:

- When there is an unforeseeable emergent circumstance;
- When there is pre-scheduled on-call time, when the on-call time is not used to address regular changes in patient care or for reporting to predetermined scheduled shifts;
- When the health care facility has staffing shortages and documented its reasonable efforts to obtain staffing; and
- When an employee is required to work in order to provide patient care that is already in progress and the employee’s absence would negatively impact the patient.¹⁹³

Employees accepting overtime work and who work more than twelve consecutive hours must be provided the option to have at least eight consecutive uninterrupted time off from work following the end of that shift.¹⁹⁴

¹⁸⁵ RCW 49.46.130.

¹⁸⁶ RCW 49.46.130(1).

¹⁸⁷ *Id.*

¹⁸⁸ WAC 296-128-550; see also Wash. Lab. & Indus. Admin. Pol’y: [ES.A.8.1](#).

¹⁸⁹ RCW 49.46.090.

¹⁹⁰ *Id.*

¹⁹¹ RCW 49.28.140(1); see also Wash. Lab. & Indus. Admin. Pol’y: [HLS.A.1](#) (for L&I’s detailed administrative policy on this topic).

¹⁹² RCW 49.28.140(2).

¹⁹³ RCW 49.28.140(3).

¹⁹⁴ RCW 49.28.140(4).

4.3. Workweek Defined

A workweek is a fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods. It may begin on any day of the week and any hour of the day. A workweek does not need to coincide with a calendar week.¹⁹⁵

An employer may set the workweek for employees, but it must document the day of the week that the workweek begins and ends.¹⁹⁶ If the employer does not set a workweek, the default workweek in Washington is the calendar week — Sunday through Saturday.¹⁹⁷

4.4. Regular Rate of Pay

In order to calculate overtime, an employer must first calculate the employee's "regular rate of pay" for the week.

Regular rate of pay is determined by dividing the total weekly compensation received by the total number of hours the employee worked during the workweek, including the hours over forty in a workweek.¹⁹⁸ As discussed in greater detail below in Chapter 4, Section 4.2., L&I excludes certain types of payments from the regular rate of pay calculation described above.¹⁹⁹ What constitutes hours worked is described in more detail in Chapter 2.

If an employee receive compensation other than their ordinary hourly rate, the employee's regular rate of pay for overtime purposes may be different than their ordinary hourly rate. For example, if an employee receives additional compensation in the form of commission payments, then the regular rate of pay will not be the employee's ordinary hourly rate of pay because those commission payments contribute the employee's overall regular rate of pay for the workweek.²⁰⁰

4.4.1. Calculating Regular Rate of Pay

When an employee earns an hourly rate and receives no additional compensation during the week, the "regular rate of pay" is the employee's ordinary hourly rate. Overtime is simply 1.5 times the hourly rate.²⁰¹

For employees earning two or more rates during any given week, employers can calculate the employee's regular rate of pay by taking the weighted average of those rates. In these cases, the regular rate of pay is the total earnings divided by the total number of hours worked at all rates.²⁰² The same regular rate of pay applies to all earned overtime wages due in a given workweek, no matter which hourly rate applied to the work that was performed at the time.

Non-exempt salaried employees who receive a weekly salary are entitled to a regular rate of pay calculated by dividing the salary by the number of hours for which the salary is intended to compensate.²⁰³ If such a salary is monthly or yearly, L&I requires employers to reduce the salary to a weekly equivalent in order to determine the regular rate.²⁰⁴

¹⁹⁵ WAC 296-128-015(1).

¹⁹⁶ WAC 296-128-010(5)-(6).

¹⁹⁷ L&I Overtime FAQs; <https://lni.wa.gov/workers-rights/wages/overtime/>.

¹⁹⁸ WAC 296-128-550.

¹⁹⁹ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.2](#).

²⁰⁰ WAC 296-126-021; Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.1](#).

²⁰¹ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.2](#).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

Non-exempt employees who earn commission payments are entitled to the commission being part of their regular rate. This is true whether the commission is computed daily, weekly, or monthly. When a commission is paid, an employer must add the commission attributable to that work week to the employee's other earnings for that workweek and divide by the number of hours worked in the workweek to calculate the new regular rate. The employee is then owed extra compensation for each hour over 40 worked.²⁰⁵

Non-exempt employees who are paid by piece rate, day rate, and job rates are likewise entitled to overtime compensation, using the methods prescribed for these regular rates by L&I.²⁰⁶ For piece rate employees, the regular rate of pay is calculated by adding an employee's total earnings for the workweek from piece rate work and other earnings paid for hours worked and divided by the total number of hours worked in that week.²⁰⁷ Likewise, the regular rate for day and job rates, is calculated by summing all day or job rate pay and dividing it by the total hours actually worked.²⁰⁸

4.4.2. Compensation Excluded from the Regular Rate of Pay Calculation

Certain payments made by employer to their employees are excluded from the regular rate calculation. For example, the regular rate does not include:

1. **Overtime Pay.** Overtime itself does not need to be included in the regular rate of pay, provided that it is at least one and one-half times the regular rate of pay.²⁰⁹
2. **Payments for things other than work, such as paid sick leave.** When payments are for other than "hours worked" under Washington law, then it is possible these payments may be excluded from the regular rate calculation. For example, payments for sick days or leave are not included in total compensation used to calculate the regular rate of pay because they are not payments for hours worked. When an employee receives pay for time off, the time off does not count towards the number of hours the employee worked when determining if an employee worked more than 40 hours in a workweek.²¹⁰
3. **Discretionary bonuses.** Bonuses unrelated to a prior contract, agreement, or promises do not need to be included in the regular rate of pay calculation.²¹¹ Non-discretionary bonuses must be included in the regular rate calculation.
4. **Reimbursements.** L&I has determined that payments reimbursing employees for out-of-pocket work-related costs (e.g., gas, food, lodging, etc.) are excluded from regular rate calculations.²¹²
5. **Tips, Gratuities, and Service Charges.** Tips, gratuities, and service charges are not part of the regular rate calculation.²¹³

²⁰⁵ *Id.*; see also Wash. Lab. & Indus. Admin. Pol'y: [ES.A.10.1](#), [ES.A.10.2](#), [ES.A.10.3](#) (for L&I's administrative policies related to retail and service establishment commission exceptions).

²⁰⁶ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.2](#).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.1](#).

²¹⁰ *Id.* See also Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.2](#).

²¹¹ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.1](#).

²¹² *Id.*

²¹³ *Id.*

4.5. Fluctuating Workweek

When non-exempt employees are paid a fixed salary and the number of hours an employee works fluctuates from week-to-week, employers and employees can reach an agreement that the salary is intended to compensate the employee for all hours worked, including those hours less than or in excess of 40 in a workweek. Under this method, rather than providing a rate at one and one-half the employee's regular rate of pay for overtime wages, an employer instead can pay an additional one-half times the employee's regular rate of pay for hours worked in excess of 40 in a week.²¹⁴

4.6. Overtime Alternatives

L&I authorizes employers to use alternative arrangements to overtime wages in very specific professions.²¹⁵ These arrangements are available for: (1) employees of a retail or service establishment, (2) employees who sell automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements, and (3) public employees who works in fire protection and law enforcement.²¹⁶

4.7. Compensatory Time

In Washington, an employer may offer but not require an employee to receive time-off in lieu of overtime pay.²¹⁷ However, under the FLSA, only public employees may elect to take advantage of compensatory time-off in lieu of providing overtime wages.²¹⁸ When employers are faced with applying conflicting state and federal law to a specific situations, employers should apply the law more beneficial to the employee.

Under both Washington and federal law, compensatory time received by an employee in lieu of cash must be at the rate of not less than one and one-half hours of compensatory time for each hour of overtime work.²¹⁹ Upon an employee's termination of employment, the employee must be paid any balance of accrued compensatory time in wages.²²⁰

²¹⁴ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.1](#).

²¹⁵ RCW 49.46.130(3)-(5).

²¹⁶ *Id.*; Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.1](#), [ES.A.10.1](#), [ES.A.10.2](#), [ES.A.10.3](#).

²¹⁷ WAC 296-128-560.

²¹⁸ 29 CFR 553.20

²¹⁹ *Id.*; WAC 296-128-560.

²²⁰ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.8.1](#).

5. Exemptions from Overtime

Generally, employers must provide employees overtime compensation for all hours worked in excess 40 hours in a workweek under the Washington Minimum Wage Act (MWA).²²¹ Chapter 4 provides more detail about these general requirements. However, certain classes of employees are exempt from overtime wage requirements. If an exemption applies, the employee is also exempt from Washington paid sick leave requirements, which are also set forth in the MWA, but may still be entitled to sick time pursuant to a Washington municipality's sick leave ordinance.

5.1. White-Collar Exemptions

Three of the most common exemptions from overtime wages are called the white-collar exemptions that encompass executive, administrative, and professional workers.²²² In order to qualify, employees must generally earn above a threshold, be paid on a salary-basis, and satisfy a duties test.²²³

Unlike the FLSA, Washington does not provide a separate exemption for highly-compensated employees.

5.1.1. Minimum Compensation Requirements

To qualify under a white-collar exemption, employees must typically earn above a certain threshold. Washington's salary requirements are significantly higher than those required by the FLSA. To be exempt from Washington overtime requirements, the employee must earn above the salary-threshold contained in Washington law.

Washington's salary thresholds for most white-collar exemptions are set as follows:

- Beginning January 1, 2025, and through December 31, 2025:
 - If the employer has 50 or fewer employees, an amount not less than 2 times the minimum wage for a 40-hour workweek, which is \$1,332.80 per week or \$69,305.60 per year in 2025; and
 - If the employer has more than 50 employees, an amount not less than 2.25 times the minimum wage for a 40-hour workweek, which is \$1499.40 per week or \$77,968.80 per year in 2025;
- Beginning January 1, 2026, and through December 31, 2026, an amount not less than 2.25 times the minimum wage for a 40-hour workweek regardless of the size of the employer;
- Beginning January 1, 2027, and through December 31, 2027,
 - If the employer has 50 or fewer employees, an amount not less than 2.25 times the minimum wage for a 40-hour workweek; and
 - If the employer has more than 50 employees, an amount not less than 2.5 times the minimum wage for a 40-hour workweek;
- Beginning January 1, 2028, and each following year, an amount not less than 2.5 times the minimum wage for a 40-hour workweek regardless of the size of the employer.²²⁴

²²¹ RCW 49.46.130(1).

²²² RCW 49.46.010(3)(c); RCW 49.46.130(2)(a).

²²³ WAC 296-128-500 through 545.

²²⁴ WAC 296-128-545.

Under FLSA, employers may use non-discretionary bonuses to satisfy up to ten percent of the required salary threshold to qualify for a white-collar exemption.²²⁵ Washington wage and hour law does not contain a similar provision. As a consequence, bonuses, commissions, and other payments may not count towards the employee's salary threshold requirement.

5.1.2. Salary Basis Test

Employees qualifying for a white-collar exemption must be paid on a salary-basis.²²⁶ In other words, an exempt employee must regularly receive a predetermined, fixed, and full salary for any week the employee performed work, regardless of the number of days and hours worked.²²⁷ The predetermined amount cannot be reduced because of variations in the quality or quantity of the work performed.²²⁸ Washington law, however, specifies that paying extra compensation or bonuses in addition to a base salary does not undermine the fact that the employee is paid on a salary-basis.²²⁹

Employers must be mindful when they take deductions out of employees' pay, as it could compromise their exemption. Washington's wage and hour law provides that certain deductions are permissible without compromising employees' exempt status. For example:

- If the employee performs no work in a particular week, regardless of the circumstances, the employer may deduct for the entire week.
- When the employee takes a full day off for personal reasons other than sickness or accident, the employer may make deductions in full-day increments.
- Deductions for absences due to sickness or disability may be made in full day increments if the deduction is made according to the employer's bona fide plan, policy, or practice of providing paid sick and disability leave (other than industrial accidents or disability).
- In the first and final week of employment, an employee's salary may be prorated for the actual days worked.
- Deductions are allowed for disciplinary absences that are imposed for violations of safety rules of major significance. This includes only those relating to the prevention of serious danger to the plant, the public, or other employees, such as rules prohibiting smoking in explosive plants or around hazardous or other flammable materials.
- Deductions are required by law or permissibly authorized with prior written authorization.²³⁰

Notably, unlike the FLSA, Washington does not permit employers, in most situations, to discipline an exempt worker with unpaid disciplinary suspension without jeopardizing the exemption.²³¹ Washington only permits unpaid suspensions for violations of safety rules of major significance. As a consequence, employers disciplining an employee for reasons other than safety rules of major significance should consider a full-week suspension, so the employee would not be eligible for wages.

While a single, isolated, and inadvertent deduction may not compromise the employee's exemption, frequent or regular unauthorized deductions will mean that the employee is no longer being paid on a

²²⁵ 29 CFR 541.602(a)(3).

²²⁶ WAC 296-128-532; WAC 296-128-535; Wash. Lab. & Indus. Admin. Pol'y: [ES.A.9.1](#).

²²⁷ WAC 296-128-532(2).

²²⁸ *Id.*

²²⁹ RCW 49.46.130(2)(a).

²³⁰ WAC 296-128-532(3).

²³¹ *Compare* 29 CFR 541.602(b)(5) *with* WAC 296-128-532(3)(f).

salary basis and will be eligible for overtime wages for the applicable time period.²³² In some cases, employers may promptly correct any improper deductions to preserve the exemption.²³³

5.1.3. Duties Test for White-Collar Exemption

The third and final component of a white-collar exemption is the duties test.²³⁴ Each of the three white-collar exemptions has its own duties test.

5.1.4. Executive Employee Duties Test

Executive employees can qualify for an exemption in one of two ways. First, there is a business owner exemption. An employee can qualify for this exemption by owning at least a bona fide 20-percent equity interest in the enterprise in which they are employed and if they are actively engaged in the business' management. This is one of the few white-collar exemptions that does not require the employee to earn above the salary threshold discussed in Chapter 5, Section 1.1. to qualify for the exemption.²³⁵

The second executive employee exemption is more common. Under this exemption, the employee's primary duties must involve:

1. managing the enterprise or a customarily recognized subdivision of the enterprise;
2. customarily and regularly directing the work of at least two or more other full-time employees; and
3. hiring or firing other employees, or recommending hiring, firing, promotion, or any other change in employee status.²³⁶

Typical managerial responsibilities include but are not limited to interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment, or tools to be used or merchandise to be bought, stocked, and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.²³⁷

To satisfy the duties test, the executive employee must supervise two or more full-time employees or their equivalent. Managing two part-time employees will not suffice.²³⁸

²³² WAC 296-128-532(5).

²³³ *Id.*

²³⁴ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.9.2.](#)

²³⁵ WAC 296-128-510(2).

²³⁶ WAC 296-128-510(1); Wash. Lab. & Indus. Admin. Pol'y: [ES.A.9.3.](#)

²³⁷ WAC 296-128-510(3)(b).

²³⁸ WAC 296-128-510(3)(c).

5.1.5. Administrative Employee Duties Test

As the most expansive and murkiest white-collar exemption, care is warranted when determining whether a Washington employee qualifies for the administrative exemption. To qualify for the administrative exemption, the employee's primary duties must include:

1. performing office or non-manual work that is directly related to the management or general business operations of the employer or its customers; and
2. exercising discretion and independent judgment with respect to matters of significance.²³⁹

The requirement that an employee perform nonmanual work is to distinguish employees whose primary duties involve manufacturing, such as using machinery or equipment or performing repetitive operations with their hands.²⁴⁰ No matter how skilled the work is, manual labor will not qualify as administrative work.

Archetypical administrative duties include advising management, planning operations, negotiating on behalf of the company, representing the company, major purchasing, and conducting business research. This exemption may cover advisory specialists, consultants, experts, analysts, marketers, and promoters, or work in functional areas such as tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, computer network, internet and database administration, legal and regulatory compliance, and similar activities.²⁴¹

Additionally, to qualify, employees must regularly exercise discretion and independent judgment over matters of importance.²⁴² This mean comparing and evaluating possible courses of conduct, and acting or making a decision after the various possibilities have been considered.²⁴³ The fact that the employee's decision is not final or is reviewed by a supervisor does not defeat the exemption.²⁴⁴ Performing clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work does not demonstrate that an employee regularly exercises independent judgment or discretion.²⁴⁵

To satisfy this element, relevant criteria include whether the employee:

- has authority to formulate, change, interpret, or implement management policies or operating practices;
- carries out major assignments in conducting the operations of the business;
- performs work that affects business operations to a substantial degree (even if the work relates to operation of only a particular segment of the business);
- has authority to negotiate, commit, or bind the employer in matters that are significant to the company or have significant financial impact;
- has authority to waive or deviate from established policies and procedures without prior approval;

²³⁹ WAC 296-128-520(1).

²⁴⁰ WAC 296-128-520(3)(a).

²⁴¹ Wash. Lab. & Indus. Admin. Pol'y: [E.S.A.9.4](#).

²⁴² WAC 296-128-530(1)(b)

²⁴³ WAC 296-128-520(3)(b).

²⁴⁴ *Id.*

²⁴⁵ *Id.*

- provides consultation or expert advice to management;
- is involved in planning long- or short-term business objectives;
- investigates and resolves matters of significance on behalf of management; or
- represents the employer in handling complaints, arbitrating disputes or resolving grievances.²⁴⁶

5.1.6. Professional Employee Duties Test

To be properly classified as a professional employee, the employee's primary duty must include:

- a. work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
- b. work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.²⁴⁷

Two types of professionals may fall within the ambit of this exemption: learned professionals and creative professionals.²⁴⁸ In this regard, much like administrative employees, professional employees are distinct from those whose work primarily involves routine mental, manual, mechanical, or physical work.

To qualify as a learned professional, the employee must use their advanced knowledge acquired through prolonged training or study in their primary job duties. This restricts the learned professional exemption to professions where specialized academic training is a standard prerequisite. The prolonged course of specialized intellectual study requirement is not met where the prerequisite for entry into the field or occupation is a general, four-year degree from any field, or a specialized, two-year degree.²⁴⁹

There are a handful of learned professionals who are exempt from the salary threshold requirement, such as, lawyers and medical practitioners.²⁵⁰ Unlike FLSA, Washington does not provide an exception for the salary-basis requirement for educational professionals, although there is no minimum salary threshold in Washington for educational professionals.²⁵¹

5.2. Computer Professionals

Washington provides a separate exemption for computer professionals. They are defined as those who are a computer system analyst, computer programmer, software engineer, or other similarly skilled worker and whose primary duties consist of:

- the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
- the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- the design, documentation, testing, creation, or modification of computer programs related to machine operation systems; or

²⁴⁶ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.9.4](#).

²⁴⁷ WAC 296-128-530(1).

²⁴⁸ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.9.5](#).

²⁴⁹ WAC 296-128-530(3).

²⁵⁰ WAC 296-128-530(3)(d).

²⁵¹ Compare 29 CFR § 541.600(g) with WAC 296-128-530(2)(b).

- a combination of the above-mentioned duties.²⁵²

Certain professionals will necessarily fall outside this exemption. First, employees who manufacture or repair computer hardware or equipment will not satisfy the duties test.²⁵³ Secondly, employees whose work is merely facilitated by the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software) will not qualify, as the exemption is geared to those who are primarily engaged in computer systems analysis and programming.²⁵⁴

Guidance from L&I further restricts this exemption to workers with a certain degree of skill and expertise. L&I has explained that “the exemption also does not apply to employees in entry level positions learning to become proficient, or to employees in computer systems analysis, programming, or software engineering who have not attained the level of skill and expertise that allows them to generally work independently and without close supervision.”²⁵⁵

To qualify for an exemption, computer professionals may be paid on either a salary or hourly basis. If they are paid on a salary-basis, they must earn the same thresholds as other white-collar exempt employees.²⁵⁶ Hourly employees must earn 3.5 times the applicable minimum wage.²⁵⁷

5.3. Outside Sales Exemption

To qualify for the outside sales employee exemption, the employee's primary duty must include

- making sales, including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or
- obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- being customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.²⁵⁸

Additionally, Washington specifically requires employers to notify outside salespeople of their exempt status.²⁵⁹ Merely labelling the job the employee holds as an outside sales position will not satisfy this requirement, as the employer's notice must explain that they are exempt from overtime as an outside salesperson.²⁶⁰

The requirement that the employee regularly work away from the employer's place of business can be challenging to satisfy. Any fixed site used by a salesperson, whether at an office or at home, is considered the employer's place of business, even if the employer is not in any formal sense the owner or tenant of the property. This means if an outside salesperson works remotely from their home consistently, their work is more akin to a remote nonexempt inside salesperson and may not qualify for this exemption. Typically, nonexempt inside sales work includes sales made by mail, telephone, or internet, unless such contact is merely in support for the employee's personal visits to the customer.²⁶¹

²⁵² WAC 296-128-535(1).

²⁵³ WAC 296-128-535(2)(a).

²⁵⁴ WAC 296-128-535(2)(b).

²⁵⁵ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.9.6](#).

²⁵⁶ WAC 296-128-535(1)(c).

²⁵⁷ *Id.*

²⁵⁸ WAC 296-128-540.

²⁵⁹ WAC 296-128-540(3).

²⁶⁰ Wash. Lab. & Indus. Admin. Pol'y: [ES.A.9.7](#).

²⁶¹ *Id.*

Finally, unlike white-collar exemption, the outside sales exemption does not require that the employee earn a certain amount. Nonetheless, they must receive a guaranteed salary, commission, or fees.²⁶² Being paid on an hourly basis with commission does not meet these criteria.²⁶³ The FLSA has no similar requirement.²⁶⁴

5.4. Other Miscellaneous Washington Exemptions

Washington law provides for several additional exemptions.²⁶⁵ These include certain types of seamen, seasonal employees, motion picture projectionists, truck drivers, agricultural employees, employees in industries where federal law provides for overtime payment based on a workweek other than forty hours, air carrier employees who engage in certain types of shift trading, and real estate brokers.

²⁶² WAC 296-128-540(3).

²⁶³ *Id.*; see also Wash. Lab. & Indus. Admin. Pol'y: [E.S.A.9.8](#).

²⁶⁴ 29 CFR 541.500.

²⁶⁵ RCW 49.46.130(2).

6. Payment of Wages

Washington has myriad wage-payment related laws and rules. This Chapter covers those laws and rules as they pertain to pay periods, final wages, what is and what is not a wage, compensable time, paid-time off payments, bonuses, severance and severance agreements (including the Silenced No More Act), wage and salary ranges on and other content in job postings, expense reimbursement requirements in Seattle, and deductions for paychecks. Chapter 2, Section 2 also covers compensable time (i.e., “hours worked”) in more detail, and Chapter 3 covers minimum wages in more detail.

6.1. Frequency and Timing of Payment

Generally, employers must pay their employees according to one of the following pay intervals:²⁶⁶

- Daily
- Weekly
- Bi-weekly
- Semi-monthly
- Monthly

If federal law provides a specific payment interval more favorable to employees, that law applies.²⁶⁷

6.1.1. Rules for Specific Pay Periods

6.1.1.a. Pay Periods Shorter than One Month

Employers with pay periods shorter than one month must provide a regular pay day that is no more than ten calendar days after the end of the pay period, unless the law expressly provides otherwise.²⁶⁸

6.1.1.b. Employers with Monthly Pay Periods

Employers with monthly pay periods may establish a regular payroll system under which wages for worked performed in the last seven days of that pay period can be paid on the next pay period’s pay day.²⁶⁹

6.1.1.c. Pay at Termination

An employer must pay terminated employees any wages they are owed at the end of the established pay period, unless specified otherwise by contract.²⁷⁰

Employers must pay employees who voluntarily withdraw from employment or who are discharged their final wages by the next regular payday with two exceptions:²⁷¹

1. If the employee works for multiple employers in the same industry interchangeably and the employer establishes a plan which provides at least one payday per week.
2. If a collective bargaining agreement provides for the full payment of an employee’s final wages at another time.

²⁶⁶ WAC 296-126-023(2)(d); WAC 296-128-035(2)(d); WAC 296-131-010(2)(d).

²⁶⁷ WAC 296-126-023(3).

²⁶⁸ WAC 296-126-023(4); WAC 296-128-035(4); WAC 296-131-010(4).

²⁶⁹ WAC 296-126-023(5); WAC 296-128-035(5); WAC 296-131-010(5).

²⁷⁰ RCW 49.48.010(2).

²⁷¹ RCW 49.48.010.

6.2. Wages Under Washington Law

6.2.1. What is Included in Wages (and What is Not)

Washington law defines “wages” broadly; it includes any compensation payable in legal tender and due to an employee by reason of employment.²⁷² Unused PTO or sick leave can constitute wages if the employer has a contractual obligation to pay out unused PTO or sick leave (such as pursuant to a collective bargaining agreement, employment agreement, or policy).²⁷³

Other items of potential value that are not wages include lodging and meals (these are not payable in legal tender) or discretionary bonuses (these are not a guaranteed result of the employee’s labor).²⁷⁴

6.2.2. Commissions & Bonuses

Wages also include non-discretionary bonuses and commissions in various contexts.²⁷⁵ An employment contract generally governs when commissions must be paid, including whether an employee is able to earn and obtain commissions post-termination.²⁷⁶ Failure to pay an earned commission is considered a wage payment violation.²⁷⁷

6.2.3. Tips & Automatic Service Charges

An employer must pay its employees all tips and gratuities.²⁷⁸ However, tips and service charges paid to an employee do not count towards the employee’s minimum hourly wage.²⁷⁹

Employers must disclose the percentage of an automatic service charge that is paid directly to the employees serving the customer in an itemized receipt and on any menu provided to the customer.²⁸⁰ If the employer does not disclose any alternative arrangement, it must pay the employees all service charges.²⁸¹

6.2.4. Compensability of Time

Washington law requires wages to be paid for all hours worked by nonexempt employees. “Hours worked” means all time during which employees are required to be on duty either:

- On the employer’s premises, or
- At a prescribed workplace.²⁸²

“Hours worked” and the concepts summarized here are covered in more detail in Chapter 2.

6.2.4.a. Checking Email, Voicemail, and Assignments

Although Washington law does not address whether time spent checking email, voicemail, or assignments is compensable, Washington courts tend to favor employees when determining the scope of hours worked. For instance, the Washington Supreme Court held that the time security company

²⁷² RCW 49.46.010(7).

²⁷³ *Sornsin v. Scout Media, Inc.*, 10 Wn. App. 2d 739, 743 (2019).

²⁷⁴ See Chapter 6, Section 4.

²⁷⁵ *Id.* at Chapter 3, Section 1.3.

²⁷⁶ *Willis v. Champlain Cable Corp.*, 109 Wn.2d 747, 754–55 (1988).

²⁷⁷ RCW 49.48.160(4).

²⁷⁸ WAC 296-128-820; Wash. Lab. & Indus. Admin. Pol’y: [ES.A.12](#).

²⁷⁹ RCW 49.46.020(3).

²⁸⁰ RCW 49.46.160.

²⁸¹ Wash. Lab. & Indus. Admin. Pol’y: [ES.A.12](#).

²⁸² WAC 296-126-002(8); see also Chapter 2, Section 2.

installers and technicians spent commuting, during which employees checked assignments, is considered “hours worked” because the employer’s vehicle can be considered the employer’s premises or prescribed workplace.²⁸³

6.2.4.b. Meetings, Trainings & Lectures

Time spent in meetings, lectures, or training is not compensable if:²⁸⁴

- Attendance is voluntary
- The employee does not perform productive work during the training
- The training occurs outside of regular business hours
- The training is not directly related to the employee’s current job

6.2.4.c. Travel

Time non-exempt employees spend on out-of-town travel for their employers is considered “hours worked” and is compensable.²⁸⁵ This includes trips to and from the airport and all time spent flying.²⁸⁶

To determine whether commute time is considered “hours worked” and therefore compensable, courts look at all the facts, including:²⁸⁷

- If the employee may make personal stops or if the employee may only use the vehicle for company business.
- If the employee must respond to work-related calls.
- If the employee must maintain contact with the employer.
- How often the employee receives assignments at home and spends time writing down instructions and mapping out routes.

6.2.4.d. Preparatory Time

Preparatory activities are compensable if they are:²⁸⁸

- Necessary for an employee to perform their job.
- Performed in readiness or completion of the job.

Preparatory and concluding activities are compensable if the employee does not control when and where to perform those activities.²⁸⁹

If employees must wear certain clothes or specialized protective gear to perform their jobs, the time spent donning and doffing is compensable.²⁹⁰

²⁸³ *Stevens v. Brinks Home Sec., Inc.*, 162 Wn.2d 42, 49 (2007).

²⁸⁴ Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2\(6\)](#).

²⁸⁵ *Port of Tacoma v. Sacks*, 19 Wn. App. 2d 295, 305 (2021); Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2\(5\)](#).

²⁸⁶ Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2\(5\)](#).

²⁸⁷ RCW 49.46.020; WAC 296-126-002(8); Wash. Lab. Indus. Admin. Pol’y: [ES.C.2](#).

²⁸⁸ Wash. Lab. & Indus. Admin. Pol’y: [ES.C.2](#).

²⁸⁹ *Id.*

²⁹⁰ *Id.*

6.2.4.e. Waiting Time

Waiting time is compensable if an employee is authorized or required to:²⁹¹

- Report at a designated time.
- Remain on the employer's premises or at a designated work site until the employee's shift begins.
- Check in with a supervisor before leaving even after the shift is complete.

When there is a shutdown or other work stoppage due to technical problems, waiting time is compensable unless the employees:

- Are relieved from duty, and
- May use the time for their own purposes.²⁹²

6.2.5. Paid Time Off ("PTO")

Under Washington law, employers are not required to grant PTO to employees. (Employers are required to pay sick leave and family leave. See Chapter 8 for details.) However, if an employer offers PTO benefits, it must comply with its own policies.²⁹³ Accordingly, when an employer changes its policies, it is crucial to promptly inform employees of the changes and to require employees to acknowledge their receipt of the information. Employers are not required to cash out accrued but unused PTO at termination, unless required to do so by contract or the employer's own policies.²⁹⁴ If an employer fails to do so, an employee may file an action for unpaid benefits.²⁹⁵

6.3. Severance Payments and Agreements

Severance payments are not required in Washington. However, the Silenced No More Act places restrictions on what can be included in a severance agreement.²⁹⁶ The Silenced No More Act renders certain nondisclosure and non-disparagement provisions illegal in employment agreements. Specifically, the law prohibits nondisclosure or non-disparagement agreements that cover conduct that an employee reasonably believes to be illegal discrimination; harassment; retaliation; a wage violation; sexual assault; or other conduct that is recognized as against a clear mandate of public policy. This can impact certain settlement agreements that contain provisions where an employer agrees to pay an employee or former employee an amount in exchange for the release of a legal claim. To be compliant, employers should include in their severance agreements that any confidentiality, release, or non-disparagement agreements do not restrict an employee from disclosing facts that the employee reasonably believes to be the prohibited conduct.

For additional detail on the Silenced No More Act, see Chapter 11, Section 2.3.

6.4. Bonuses

Bonuses are also not required by Washington law. However, when an employer chooses to offer bonuses, employers will need to determine whether the bonuses are wages in order to comply with other aspects of Washington law.

²⁹¹ *Id.*

²⁹² Wash. Lab. & Indus. Admin. Pol'y: [ES.C.2\(10\)](#).

²⁹³ *Sornsin v. Scout Media, Inc.*, 10 Wn. App. 2d 739, 743 (2019).

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ RCW 49.44.211.

When bonuses are “discretionary,” they fall outside Washington’s definition of wages.²⁹⁷ This means that if bonuses are not tied to any kind of contract or promise, the bonus is not considered wages.

When bonuses are “nondiscretionary,” or earned, then they fall within the definition of wages. This is because the bonus is compensation for actual work done based on a clear set of standards, such as logging a certain number of hours or meeting a sales goal. If an employer in Washington has a policy about bonuses, such as how to earn a bonus, it is a contract under Washington law and, therefore, is considered wages.

6.5. Wage or Salary Range and Bonuses Disclosed in Job Postings

Washington’s Equal Pay and Opportunities Act requires employers with 15 or more employees (including at least one Washington-based employee) to include the wage scale or salary range and a general description of all compensation and benefits in their job postings.²⁹⁸ Employees offered an internal transfer or promotion must be provided the wage scale or salary range disclosure upon request.

This provision applies to any job posting. A posting is any solicitation intended to recruit job applicants for a specific available position. This includes recruiting done by the employer or a third party, electronic or hard copy postings, and postings for remote work that could be performed by a Washington-based employee. In other words, LinkedIn postings, or other online postings, need to include the compensation in the description if it is for a job in Washington or could be performed remotely by someone in Washington. A disclaimer that an employer will not accept applicants living in Washington is not sufficient.²⁹⁹

At the time this Book was being finalized for publication, on April 22, 2025, the Washington Legislature passed amendments to the EPOA that affect disclosure requirements in the EPOA. The passed bill is available [here](#). Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. Employers should be aware that when they are reading this section, there may be different requirements in place. If the passed bill is signed into law, then we will detail the new requirements in future editions of this Book.

Additionally, effective July 27, 2025, the EPOA prohibits employers from requiring employees to have a valid driver’s license as a condition of employment, unless driving is one of the essential job functions or is related to a legitimate business purpose for the position, or including prohibited statements in job postings that an applicant must have a valid driver’s license. Additional details about this newly enacted law, available [here](#), will be provided in future editions of this Book.

6.6. Expense Reimbursement – Seattle

Washington does not require employers to reimburse employees for work-related expenses. The City of Seattle, however, does have such an employee expense reimbursement requirement in its Wage Theft Ordinance (WTO).³⁰⁰ The WTO defines “compensation” broadly to include (without limitation) “reimbursement for employer expenses.” The ordinance provides that “an employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee’s duties, or of the employee’s obedience to the directions of the employer...”

²⁹⁷ *LaCoursiere v. Camwest Dev., Inc.*, 181 Wn.2d 734 (2014).

²⁹⁸ RCW 49.58.110.

²⁹⁹ Wash. Lab. Indus., Equal Pay & Opportunities Act Common Questions (2024).

³⁰⁰ SMC 14.20.010.

6.7. Pay Method

Employers must pay wages in cash or by check.³⁰¹ While direct deposit is not directly addressed by state law, L&I has stated that employers may pay employees by direct deposit or through alternative methods so long as employees can access wages without cost.³⁰²

6.8. What Constitutes “Earning”

Hourly wages (including overtime wages) are earned when worked.³⁰³ A non-discretionary bonus or commission is earned as set forth in the applicable employee agreement or policy.³⁰⁴ Notably, “[w]here a sales representative’s efforts prior to termination of a contract results in a sale, regardless of when the sale occurs, the termination may not affect whether a commission is considered earned.”³⁰⁵

6.9. Deductions

6.9.1. Deductions During the Ongoing Employment Relationship

During an on-going employment relationship, employers can make wage deductions only in specific circumstances:³⁰⁶

- As required by state or federal law, such as
 - Federal income taxes;
 - Medicare;
 - Workers’ compensation;
 - Federal Insurance Contributions Act (FICA);
 - Washington Paid Family & Medical Leave premium contributions; and
 - Washington CARES Fund contributions.
- For medical, surgical, or hospital care or service; or
- To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments; or
- Deductions for the benefit of the employee, such as cash advances or to recoup personal purchases by the employee, but any such deductions must be expressly authorized by the employee in advance and in writing.

Neither the employer nor any person acting in the interest of the employer can derive any financial profit or benefit from any of these authorized deductions.³⁰⁷ Reasonable interest charged by the employer for a loan or credit extended to the employee is not considered to be of financial benefit to the employer.³⁰⁸

Employers may make deductions for overpayments when the employer pays the employee more than their wage rate or more than the hours actually worked and the overpayment was infrequent and

³⁰¹ RCW 49.46.010(7).

³⁰² Wash. Lab. & Indus. Admin. Pol’y: [E.S.A.2](#).

³⁰³ *Champagne v. Thurston Cnty.*, 163 Wn.2d 69, 78 (2008) (holding that an employer’s practice of paying overtime wages the month after they were earned was unlawful).

³⁰⁴ *Willis v. Champlain Cable Corp.*, 109 Wn.2d 747, 756-57 (1988).

³⁰⁵ RCW 49.48.160.

³⁰⁶ WAC 296-126-028(1)-(2)

³⁰⁷ WAC 296-126-028(3).

³⁰⁸ WAC 296-126-028(4)

inadvertent.³⁰⁹ Deductions are not allowed for disputes concerning the quality of work.³¹⁰ Allowed overpayment deductions cannot reduce an employee's wage below the state minimum wage in any pay period.³¹¹ These deductions also must occur within ninety days from the initial overpayment.³¹² Employees must be notified, in writing, in advance of the deduction, and this written notice must include details about how the overpayment will be recouped (e.g., one deduction or a series of deductions over multiple pay periods).³¹³ The paycheck must clearly identify and record the deduction for the overpayment.³¹⁴

6.9.2. Deductions from Final Wages

An employer may deduct wages from an employee's final paycheck only:

- As required by state or federal law; or
 - Federal income taxes;
 - Medicare;
 - Workers' compensation;
 - Federal Insurance Contributions Act (FICA);
 - Washington Paid Family & Medical Leave premium contributions; and
 - Washington CARES Fund contributions.
- For medical, surgical, or hospital care or service; or
- To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.³¹⁵

In addition, an employer may deduct wages from an employee's final paycheck for the following reasons if they were specifically agreed upon (orally or in writing) by the employee and employer:³¹⁶

- For pension, medical, dental, or other benefit plans; or
- For a payment to a creditor or third party for the benefit of the employee.

An employer may also deduct wages from an employee's final paycheck for the following reasons but only if these incidents occurred in the final pay period and none of these deductions reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work was performed:³¹⁷

- For accepting a bad check or credit card in violation of procedures;
- For any cash shortage if it can be shown that the employee has sole access to the cash and participated in the cash accounting at the beginning and end of the shift; or

³⁰⁹ WAC 296-126-030(1), (4).

³¹⁰ WAC 296-126-030(3).

³¹¹ WAC 296-126-030(2).

³¹² WAC 296-126-030(4).

³¹³ WAC 296-126-030(6).

³¹⁴ WAC 296-126-030(8).

³¹⁵ WAC 296-126-028.

³¹⁶ WAC 296-126-025(2).

³¹⁷ WAC 296-126-025(3)(a)-(c).

- For any cash shortage, failure of customer to pay, breakage or loss of equipment if those incidents were a result of the employee's dishonest or willful act.

Deductions taken due to alleged theft by employee are permissible only if it can be shown that the employee's intent was steal and the employer filed a police report.³¹⁸

6.9.3. Employee Notification of Deductions

The employer must identify and record all wage deductions openly and clearly in employee payroll records.³¹⁹

Since it is the employer's responsibility to prove the existence of any agreement to deduct, it is recommended to have all agreements, policies, and procedures in writing and signed by the employees.³²⁰

6.10. Unclaimed Wages

Wages are presumed abandoned if unclaimed by the employee one year after the amount becomes payable.³²¹ After the one year, employers must report the unclaimed wages to Washington's Department of Revenue before November 1 and deliver the property to the state.³²² The employer must retain records regarding the unclaimed wages for six years after the later of the date the report was filed or the date a timely report was due to be filed.³²³ Furthermore, the employer shall send a notice to the employee that the wages were transferred to the Department of Revenue by first-class United States mail after 60 days but before 180 days after filing the report if the employer has a valid address for the employee and the wages are \$75 or more. The employer must also send a notice to the employee via email if the employee has consented to receive email delivery from the employer and the email address is believed to be valid.³²⁴

³¹⁸ WAC 296-126-025(3)(d).

³¹⁹ WAC 296-126-025(5); WAC 296-126-028(5); WAC 296-126-040; Wash. Lab. & Indus. Admin. Pol'y: [ES.D.1\(1\)](#).

³²⁰ WAC 296-126-025(4).

³²¹ WAC 63.30.040(11).

³²² WAC 63.30.340.

³²³ WAC 63.30.250.

³²⁴ WAC 63.30.280.

7. Classifying Workers as Independent Contractors

With the rise of the gig economy, the number of independent contractors in the workforce across the United States has grown exponentially in recent years. As a Washington employer, it is essential to know who is, and is not, an independent contractor within your workforce and to stay up to date on relevant laws and ordinances, including the Seattle Independent Contractor Protection Ordinance, to ensure compliance and avoid costly penalties or litigation.

7.1. Importance of Proper Classification for Independent Contractors

Because independent contractors are exempt from statutory protections under Washington's workers' compensation laws, unemployment insurance laws, paid family and medical leave laws, minimum wage and hour laws, and anti-discrimination laws, misclassification can result in fines, penalties, or legal action resulting in employer liability and damages for unpaid wages, back taxes (plus interest), and any applicable fines.

For example, under Washington's workers' compensation laws, misclassification of an independent contractor may result in civil penalties for failure to pay premiums to misclassified employees or criminal liability where an employer knowingly or intentionally provides false information or conceals material facts as it relates to a worker's classification.³²⁵ Washington's unemployment compensation, paid leave, and wage and hour laws all contain similar provisions.³²⁶

L&I is likely to investigate potential misclassification of independent contractors—thus, properly classifying independent contractors is important to avoid costly penalties and/or litigation.

7.2. Washington Tests for Independent Contractors

Determining who is an independent contractor and who is an employee depends on the context and the nature of the work relationship between an employer and worker.

In Washington, there are different tests for determining who is an independent contractor depending on the applicable law. The tests are used to determine if a worker is an independent contractor and, thus, exempt from that law's statutory protections. Although the tests may be similar or contain some of the same elements or factors, in some circumstances, an individual may be an independent contractor under one law and not another. As an employer, it is important to apply the proper test to avoid misclassification.

7.2.1. Is an Individual an Independent Contractor Under Washington's Workers' Compensation (IIA) or Unemployment Insurance (ESA) Laws?

Under Washington's Industrial Insurance Act (IIA), which applies to workers' compensation, there are two tests to determine whether a worker is an independent contractor: the personal labor test and the 6- (or 7- for construction) part test.³²⁷

³²⁵ RCW 51.48.017; RCW 51.48.020; RCW 51.48.080; RCW 51.48.270.

³²⁶ RCW 50.36.010; RCW 50A.45.010; RCW 49.46.100.

³²⁷ RCW 51.08.180; RCW 51.08.181; RCW 51.08.195. Transportation network workers are entitled to unemployment benefits and paid leave benefits. RCW 50.29.021; RCW 50A.25.040.

Personal labor test (IIA):³²⁸

To pass the personal labor test, one of these statements must be true:

- The individual brings their own employees to perform the work, and the potential employer does not control the individual or their employees.
- The individual brings heavy or costly specialized equipment and possesses the expertise to operate it, and the potential employer does not control the individual (Examples: MRI machine, earth-moving equipment, ultrasound machine).

If true, the individual is properly classified as an independent contractor. If not, proceed to the potential employer proceeds to the next test:

6- (or 7- for construction) part test (IIA and ESA, which applies to unemployment compensation):³²⁹

If the individual does not meet the personal labor test, a potential employer should consult the 6- (or 7- for construction) part test, where all of the following must be true for the individual:

- Be free from a potential employer's control or direction (e.g., the worker controls their own schedule and organizes how they complete the work)
- Must pass one of the following three options:
 - The service is outside the potential employer's usual course of business (for example, landscaping outside a restaurant is outside the restaurant's course of business, which is preparing and serving food).
 - The service is performed outside all of the places of business.
 - The individual is responsible for the costs of the principal place of business from which the service is performed (meaning that the individual, not the potential employer, is paying for the costs of the individual's work).
- Must pass one of the following two options: The individual:
 - Is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.
 - Has a principal place of business that is eligible for a business deduction for IRS purposes.
- The individual is responsible for filing a schedule of expenses with the IRS.
- The individual has established an account with the Department of Revenue and other state agencies as required.
- The individual is maintaining a separate set of books or records that reflect all items of income and expenses.
- (Construction only) The individual is properly registered as a contractor or has a valid electrical contractor license.

If the answers to each of the above questions is "yes," an employer can properly classify the worker as an independent contractor under both the IIA and the ESA.³³⁰

³²⁸ [Wash. Lab. & Indus. Insurance Requirements: Independent Contractors Guidance](#); *Dep't of Lab. & Indus. of State v. Lyons Enterprises, Inc.*, 186 Wn. App. 518, 531 (2016).

³²⁹ [Wash. Lab. & Indus. Insurance Requirements: Independent Contractors Guidance](#)

If not, then the employer has certain legal responsibilities, such as to: (1) keep accurate records; (2) pay workers' compensation premiums; and (3) follow state employment laws. If the employer is found to have workers that should have been reported for workers' compensation, the employer will be held responsible for unpaid premiums with penalties and interest.

7.2.2. Is an Individual an Independent Contractor Under Washington Minimum Wage and Hour and Paid Sick Leave Laws?

To determine whether someone is an independent contractor under Washington's wage and hour laws,³³¹ and, thus, exempt from minimum wage, paid sick leave (which is set forth in Washington's wage and hour laws), and other related wage requirements, Washington uses the "economic dependence" test, which asks whether the worker is economically dependent on the employer. If yes, the worker is likely an employee; if not, and the worker is instead in business for themselves, they are likely an independent contractor.³³²

Washington's Minimum Wage Act (MWA) looks to the following factors on a case-by-case basis:

- The degree of control that the business has over the worker (the more control a business exerts over the worker, the more likely the worker is an employee).
- The worker's opportunity for profit or loss is dependent on the worker's managerial skill (when the worker's opportunity for profit is not limited by a business, and the worker controls their own business expenses, the worker is more likely an independent contractor).
- The worker's investment in equipment or material (where the worker's investment in equipment or materials is substantial, the worker is more likely an independent contractor).
- The degree of skill required for the job (when a worker brings a special skill to a job and employs those skills in an independent manner, the worker is more likely an independent contractor).
- The degree of permanence of the working relationship (when a limited term working relationship exists, the worker is more likely an independent contractor).
- The degree to which the services rendered by the worker are an integral part of the business (when the services performed by a worker are integral to the business, the worker is more likely an employee).

According to guidance from L&I, these six factors should be considered and weighed in combination with each other.³³³

7.2.3. Is an Individual an Independent Contractor Under Washington Paid Family Medical Leave?

Under WA PFMLA,³³⁴ to determine whether a worker is an independent contractor, a potential employer should ask the following questions:

- Does the worker direct their own work (ex: do they control their schedule, hire their own staff, and determine how best to complete their work)?

³³⁰ RCW 50.04.145.

³³¹ RCW 49.46.10; *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 867 (2012).

³³² *Id.*

³³³ [Wash. Lab. & Indus. 'Independent Contractor or Covered Worker?' Guidance](#); see also Wash. Lab. & Indus. Admin. Pol'y: [E.S.A.14](#).

³³⁴ RCW 50A.05.010.

- Does the worker perform work that is different from the work the potential employer performs? Does the worker perform work in a location that is different from where the potential employer performs its work?
- Did the worker independently establish their own business, trade, or occupation?
- Is the worker required to comply with state and federal tax obligations, including filing with the IRS, registering their business, and maintaining books and records?
- Is the worker registered with the Washington Department of Revenue, and other applicable state agencies, for the business the worker is conducting and possess a unified business identifier number?

If the answers to each of these questions is “yes,” an employer can likely properly classify the worker as an independent contractor for the purposes of WA PFMLA.

7.3. Seattle Independent Contractor Protection Ordinance

The Seattle Independent Contractor Protection Ordinance (“Ordinance”) passed on June 14, 2021 and took effect on September 1, 2022.³³⁵ The Ordinance’s goal is to increase pay transparency for the gig workforce, including independent contractors.

7.3.1. Purpose

The Ordinance requires covered employers to provide independent contractors with information and disclosures before entering into a contract and at the time of payment.

7.3.2. Coverage

The Ordinance applies to “hiring entities.” A “hiring entity” is defined as any company that is regularly engaged in business or commercial activities.³³⁶ In other words, a “hiring entity” is any person or commercial entity who hires an independent contractor.

The Ordinance offers protections for independent contractors whose work is performed in whole or in part in Seattle.³³⁷ Those covered by the Ordinance are self-employed independent contractors who receive, or reasonably expect to receive, at least \$600 in total compensation from the hiring entity during the year.³³⁸ A self-employed independent contractor is defined as a person or entity composed of a single person, regardless of how their business is organized, hired by a hiring entity as a self-employed person or entity that, in exchange for compensation, provides services to the hiring entity.³³⁹ The self-employed independent contractor must be a single person, which excludes businesses with more than one employee from the Ordinance’s coverage.³⁴⁰

The Ordinance also excludes: lawyers, workers whose relationship with the hiring entity is limited to a property rental agreement (e.g., a hair stylist at a salon who rents a chair at the salon), and any other class of independent contractor that the Director of the Seattle Office of Labor Standards may add.³⁴¹

³³⁵ SMC 14.34.

³³⁶ SMC 14.34.020.

³³⁷ SMC 14.34.030.

³³⁸ SMC 14.34.045.

³³⁹ SMC 14.34.020.

³⁴⁰ SMC 14.34.020.

³⁴¹ SMC 14.34.020.

7.3.3.Compliance

Under the Ordinance, hiring entities must provide independent contractors with pre-contractual disclosures about the “proposed terms and conditions of work,” notice of the independent contractor’s rights under the Ordinance before starting work, and timely payment in accordance with the contract or the terms and conditions within the pre-work notice.³⁴² Additionally, if time for payment is not specified in the contract, the hiring entity must pay the independent contractor for their services within 30 days of completion of services under the contract.³⁴³ The hiring entity must also provide written notice with itemized payment information.³⁴⁴

In the pre-contractual disclosures that are required by the Ordinance, the hiring entity must disclose:³⁴⁵

- The date(s) of work
- Names of involved parties and business contact information
- A description of the work
- Location of the work
- Compensation structure (including pay rate, pay basis, tips, etc.) and pay schedule

While no specific terms or conditions are required to be included in the pre-contractual disclosures or in the contract itself, the hiring entity must provide disclosures to the independent contractors prior to the start of the contractor’s work.³⁴⁶

7.4. Special Laws for Transportation Network Companies

In 2022, the state legislature passed special benefits for drivers working for transportation network companies. The statute also defined who is not an employee or agent of a transportation network company.³⁴⁷

Additionally, on April 19, 2025, the Legislature passed a bill providing drivers working for transportation network companies with rights to certain records effective July 1, 2026. The passed bill is available [here](#) (revisions to the existing law are in underline or strikethrough). Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. Employers should be aware that when they are reading this section, there may be new recordkeeping requirements in place effective July 1, 2026. If the passed bill is signed into law, then we will detail the new requirements in future editions of this Book.

Seattle also imposes several ordinances on Transportation Network Companies. We do not detail them in this Book, but they are referenced in Chapter 1, Section 2.2. under the Seattle OLS Section, which includes links to OLS guidance about the same.

³⁴² SMC 14.34.050.

³⁴³ SMC 14.34.055.

³⁴⁴ SMC 14.34.060.

³⁴⁵ SMC 14.34.050.

³⁴⁶ SMC 14.34.100.

³⁴⁷ RCW 49.46.300 (1)(i).

7.4.1. Coverage

A driver is not an employee or agent of a transportation network company if the following factors are met:

- The transportation network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the driver must be logged into the transportation network company's online-enabled application or platform;
- The transportation network company may not remove a driver for not accepting a specific transportation service request;
- The transportation network company does not prohibit the driver from performing services through other transportation network companies except while performing services through the transportation network company's online-enabled application or platform during dispatch platform time and passenger platform time; and
- The transportation network company does not prohibit the driver from working in any other lawful occupation or business.

7.4.2. Compensation for Drivers

The statute also sets minimum compensation requirements for drivers. In 2025, for dispatched trips originating in cities with a population of 600,000+ or for any time spent driving in such cities, drivers must be compensated at least the greater of: (1) \$0.68 per minute spent driving a passenger and \$1.59 per mile; or (2) \$5.95 per dispatched trip.³⁴⁸ For all other dispatched trips, in 2025, drivers must be compensated at least the greater of: (1) \$0.39 per minute spent driving a passenger and \$1.34 per mile; or (2) \$3.45 per dispatched trip.³⁴⁹ These rates will be adjusted annually to account for the rate of increase of the state minimum wage.³⁵⁰ There is a combined trip rate for trips starting outside of Seattle and ending inside Seattle.³⁵¹

Transportation network companies must remit all tips to drivers.³⁵² They cannot deduct any compensation not voluntarily and knowingly expressly authorized by a driver in writing.³⁵³

7.4.3. Notice Requirements

A transportation network company must provide each driver with a written notice of rights. The notice of rights shall provide information on:³⁵⁴

- The right to the applicable per minute rate and per mile rate or per trip rate guaranteed by the law;
- The right to be protected from retaliation for exercising in good faith the rights protected by the law; and

³⁴⁸ RCW 49.46.300 (4)(a); see also <https://lni.wa.gov/workers-rights/docs/Notice-of-Rights-English.pdf>.

³⁴⁹ *Id.*

³⁵⁰ RCW 49.46.300 (4)(b).

³⁵¹ <https://lni.wa.gov/workers-rights/docs/Notice-of-Rights-English.pdf>.

³⁵² RCW 49.46.300 (6)(a).

³⁵³ RCW 49.46.300 (6)(c).

³⁵⁴ RCW 49.46.300(7).

- The right to seek legal action or file a complaint for violation of the requirements of the law, including a transportation network company's failure to pay the minimum per minute rate or per mile rate or per trip rate, or a transportation network company's retaliation against a driver or other person for engaging in an activity protected by the law.

After each ride, a transportation network company must transmit an electronic receipt to the driver within 24 hours of completion of the dispatched trip.³⁵⁵ On a weekly basis, the transportation network company must provide written notice to drivers of summarizing their total time and mileage driving passengers, total tips earned, and gross compensation.³⁵⁶

7.4.4. Driver Resource Center

The driver resource center provides representation to drivers appealing “eligible account deactivation.” A transportation network company must enter into an agreement with the driver resource center regarding the driver account deactivation appeals process for eligible account deactivations.³⁵⁷ “Eligible account deactivation” means: (1) blocking or restricting access to the transportation network company driver platform for three or more consecutive days; or (2) changing a driver's account status from eligible to provide transportation network company services to ineligible for three or more consecutive days.³⁵⁸

“Eligible account deactivation” does not include any change in a driver's access or account status that is: (1) related to an allegation of discrimination, harassment, including sexual harassment or harassment due to someone's membership in a protected class, or physical or sexual assault, or willful or knowing commitment of fraud; (2) related to an allegation that the driver was under the influence of drugs or alcohol while a related active investigation that takes no longer than 10 business days is under way; or (3) any other categories of conduct the transportation network company and the driver resource center may agree to.³⁵⁹

Transportation network companies must collect a \$0.15 per trip fee that is deposited in the new driver resource center fund, a public fund meant to support the driver community. These contributions must be made on a quarterly basis.³⁶⁰

L&I calculates an adjusted per trip fee by adjusting the current amount by the rate of inflation. Each adjusted amount calculated takes effect on the following January 1st.³⁶¹

The statute also provides for a voluntary “per trip earnings deduction” contributions to the driver resource center, after at least 100 drivers have authorized such a deduction to the driver resource center in writing.³⁶²

³⁵⁵ RCW 49.46.300 (8).

³⁵⁶ RCW 49.46.300 (10).

³⁵⁷ RCW 49.46.300 (15)(a)(iii).

³⁵⁸ RCW 49.46.300 (15)(a).

³⁵⁹ RCW 49.46.300 (15)(a).

³⁶⁰ RCW 49.46.300 (12)(a); RCW 49.46.310.

³⁶¹ RCW 49.46.300 (12)(b).

³⁶² RCW 49.46.300 (13).

8. Mandated Time Off and Washington Leave Laws

Washington has several paid leave, leave, and accommodation laws. This Chapter covers paid sick leave (which is contained in the Washington Minimum Wage Act (MWA)). Finally, this Chapter covers Seattle's paid sick leave ordinance. Other Washington municipalities have their own paid sick leave ordinances, and employers operating in other municipalities should determine whether those municipalities have paid sick leave ordinances.

8.1. Washington Paid Sick Leave

Employers in Washington must provide non-exempt employees with paid sick leave. Construction industry employers should be aware that they have some unique requirements.³⁶³

8.1.1. Accrual Rate?

Washington employers must provide all non-exempt employees, regardless of full-time, part-time, temporary, or seasonal status, one (1) hour of paid sick leave for every 40 hours worked.³⁶⁴ The default accrual year is January 1st through December 31st, however, an employer may choose to use a different accrual year (e.g., fiscal year or benefit year) given that it is a fixed, consecutive 12-month period. If an employer decides to use a different accrual year, it must be defined in a written policy or a collective bargaining agreement.³⁶⁵

8.1.2. Sick Leave Pay Rate

Generally paid sick leave is paid at the state minimum wage or the employee's "normal" rate of pay that they would earn if they had worked those hours, which rate is greater.³⁶⁶ Washington defines "Normal hourly compensation" as "the hourly rate that an employee would have earned for the time during which the employee would have used paid sick leave. For employees who use paid sick leave for hours that would have been overtime hours worked, employers are not required to apply overtime standards to an employee's normal hourly compensation. Normally hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a collective bargaining agreement allow for such considerations. However, where an employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate."³⁶⁷

8.1.2.a. Hourly Employees

Hourly employees are paid sick leave at the employee's normal hourly compensation.³⁶⁸ If the employee has a fluctuating rate of pay, an employer should apply the rate of pay that would have been used during the period in which the employee used the paid sick leave. If that anticipated rate of pay is not known, the

³⁶³ Wash. Lab. & Indus. Admin. Pol'y: [ES.B.3](#).

³⁶⁴ RCW 49.46.210(1)(a).

³⁶⁵ WAC 296-128-620(6).

³⁶⁶ WAC 296-128-670.

³⁶⁷ Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1](#); see also WAC 296-128-600 and Wash. Lab. & Indus. Admin. Pol'y [ES.B.2](#).

³⁶⁸ *Id.*

employer should use the employee's average hourly rate in the current or preceding 30 days (whichever is higher).³⁶⁹

If an employee is scheduled an open-ended shift (e.g., 3 p.m. to close), they would be paid for the amount of hours their replacement worked or what a similarly situated worker worked. If there was no replacement, the employer must use the average number of shift hours worked by employee taking paid sick leave.³⁷⁰

8.1.2.b. Salaried Employees

Non-exempt, salaried employees must be paid sick leave at the equivalent of their hourly wage, calculated by dividing the annual salary by 52 to determine the weekly salary, and then dividing the weekly salary by the employee's normal scheduled hours of work.³⁷¹ Overtime exempt salaried employees are not entitled to paid sick leave.³⁷²

8.1.2.c. Commission and Piece-Rate Employees

Non-exempt employees paid by commission or piece rate must receive paid sick leave at an equivalent hourly rate. For such commissioned employees, the paid sick leave rate is calculated by dividing the employee's total earnings by the total hours worked in the full pay periods in the prior ninety days of employment.³⁷³ For such piece rate employees, paid sick leave is calculated by dividing the total earnings by the total hours worked in the most recent workweek when the employee performed similar work.³⁷⁴

8.1.2.d. Tips, Gratuities, Differentials, Overtime, and Pay Premiums

Unless required by a collective bargaining agreement or local ordinance, normal hourly compensation used to establish the paid sick leave rate of pay does not include:

- Tips;
- Gratuities;
- Services charges;
- Holiday pay;
- Other premium rates, including overtime.³⁷⁵

The normal hourly compensation does include differential pay.³⁷⁶

8.1.3. Alternative to Washington Paid Sick Leave

With the employer's approval, employees can trade shifts with another employee or get an employee to cover their shift instead of using their paid sick leave. However, an employer cannot require that an employee find a replacement worker to cover their shift before using their paid sick leave.³⁷⁷

³⁶⁹ WAC 296-228-670(2)(d)(ii); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.2.](#)

³⁷⁰ WAC 296-128-670(3); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.2.](#)

³⁷¹ WAC 296-128-670(1)(c); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.2.](#)

³⁷² RCW 49.46.010(3)(a)-(p); RCW 49.46.130; Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1.](#)

³⁷³ WAC 296-128-670(2)(a); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.2.](#)

³⁷⁴ WAC 296-128-670(2)(b); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.2.](#)

³⁷⁵ Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1.](#); see also WAC 296-128-600 and Wash. Lab. & Indus. Admin. Pol'y [ES.B.2.](#)

³⁷⁶ *Id.*

³⁷⁷ WAC 296-128-720.

8.1.4. Circumstances that Paid Sick Leave Covers

Non-exempt employees may use their paid sick leave for the following reasons:³⁷⁸

- Self: An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;
- Family/Others: To care for the employee's covered family member with a mental or physical illness, injury, or health condition; to care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or to care for a family member who needs preventive medical care;
- Health-Related Closures: Closure of the employee's place of business or closure of the employee's child's school or place of care by order of a public official for any health-related reason or after the declaration of an emergency by a local or state government or agency or by the federal government; and
- Safe Leave Reasons: Certain absences related to the employee's or the employee's covered family member's status as a victim of domestic violence, sexual assault, or stalking, including:
 - Seeking legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;
 - Seeking treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking;
 - Attending to health care treatment for a victim who is the employee's family member;
 - Obtaining, or assisting the employee's family member(s) in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;
 - Obtaining, or assisting the employee's family member(s) in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; or
 - Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or employee's family member(s) from future domestic violence, sexual assault, or stalking.

At the time this Book was being finalized for publication, on April 25, 2025, the Washington Legislature passed and Governor Ferguson signed into law a bill that amends the law to protect time needed for employees to prepare for or participate in immigration proceedings. The new law becomes effective on July 27, 2025 and is available [here](#) (revisions to existing law in underline and strikethrough). We will detail the new requirements in future editions of this Book. Importantly, the contents of the subsections of this Section 8.1 detail the law as it exists prior to July 27, 2025.

³⁷⁸ RCW 49.46.210.

8.1.5. Timing of Usage

An employee can use their leave 90 days after their first day of work.³⁷⁹ If an employee leaves and comes back within 12 months, the previous time will count towards the 90 days.³⁸⁰

8.1.6. Carryover and Cap

An employee is entitled to carry over up to 40 hours of accrued, unused paid sick leave into the next year.³⁸¹ Employers can allow for more than 40 hours to be carried over but are required to guarantee a minimum of 40 hours.

One of the most important characteristics of Washington paid sick leave is covered employees must earn sick leave for every hour they perform work. There is no cap on the amount of hours that can accrue from one year to the next.³⁸² Employers frontloading paid sick leave must ensure that the lump sum provided matches or exceeds the amount of paid sick leave the employee will work during the future earning period.³⁸³ Employers using frontloads but that provide less paid sick leave than the employee would have earned must correct the difference as soon as practicable and no later than 30 days after identifying the discrepancy.³⁸⁴ Frontloading is subject to notice and other requirements, and employers using it should review L&I's guidance carefully.

8.1.7. Family Member Coverage

- A child: this includes any biological, adopted, foster, or stepchild that the employee is legally responsible for;
- A parent: this includes biological, adoptive, foster, or stepparent, or someone who was the legal guardian of either the employee or their spouse/registered domestic partner;
- Spouse;
- Registered domestic partner;
- Grandparent;
- Grandchild;
- Sibling;
- Any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care.³⁸⁵

At the time this Book was being finalized for publication, on April 25, 2025, the Washington Legislature passed and Governor Ferguson signed into law a bill that amends the law to protect time needed for employees to prepare for or participate in immigration proceedings. The new law becomes effective on July 27, 2025 and is available [here](#) (revisions to existing law in underline and strikethrough). We will detail the new requirements in future editions of this Book. Importantly, the contents of the subsections of this Section 8.1 detail the law as it exists prior to July 27, 2025.

³⁷⁹ RCW 49.46.210(1)(d).

³⁸⁰ RCW 49.46.210(1)(k).

³⁸¹ RCW 49.46.210(1)(ii); WAC 296-128-620(4), (5); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1.](#)

³⁸² RCW 49.46.210(1)(a); WAC 296-128-620(1); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1.](#)

³⁸³ RCW 49.46.210(1)(a); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1.](#)

³⁸⁴ WAC 296-128-730(3)(b); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1.](#)

³⁸⁵ RCW 49.46.210(2)(a).

8.1.8. Notice Requirements

All Washington employers must notify their employees in paper or electronic writing about their eligibility for paid sick leave.

Employers must give an initial one-time notice detailing:³⁸⁶

- That the employee is entitled to paid sick leave;
- How much paid sick leave the employee will earn;
- When the employee can use their paid sick leave;
- That the employer is prohibited from retaliating against any employees for using their paid sick leave.

At least once a month, employers must give a paper or electronic written statement, which could be in the form of a payroll statement, detailing:

- How much paid sick and safe leave an employee earned since their last notice;
- How much paid sick and safe leave an employee used since their last notice;
- How much unused paid sick and safe leave is available to an employee.³⁸⁷

Employers are permitted to require that employees provide reasonable notice in order to use their leave.³⁸⁸ In this case, there must be a written policy or a collective bargaining agreement that lays out this policy.³⁸⁹

For foreseeable events, an employer can require employees to provide up to ten days of notice or notice as early as practical.³⁹⁰ For example, if an employee has a last-minute medical appointment scheduled in five days, they would be required to give three days' notice instead of ten.

For unforeseeable events, employers can require that employees provide notice as soon as possible before the start of their shift. If, for whatever reason, an employee is unable to provide notice themselves, another person can give notice to the employer.³⁹¹

8.1.9. Verification Requirements

For absences that exceed three consecutive days, an employer may require that an employee provide verification that they are authorized to take paid sick leave.³⁹² Once the employer requests verification, the employer must provide it within a reasonable time period during or after their leave.³⁹³ Additionally, employers cannot require employees to provide this verification less than ten calendar days after their first day of leave.³⁹⁴

³⁸⁶ WAC 296-128-755(1).

³⁸⁷ WAC 296-128-750(2).

³⁸⁸ RCW 49.46.210(1)(f).

³⁸⁹ WAC 296-128-650(3).

³⁹⁰ WAC 296-128-650(1)(a).

³⁹¹ WAC 296-128-650(1)(b).

³⁹² RCW 49.46.210(1)(g); WAC 296-128-660.

³⁹³ RCW 49.46.210(1)(b); WAC 296-128-660(5); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1](#).

³⁹⁴ WAC 296-128-660(5); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1](#).

An employer's request for verification cannot:

- Result in an unreasonable burden or expense on the employee;
- Exceed privacy requirements established by law;
- Require the employee to provide information that explains the nature of the health condition.³⁹⁵

At the time this Book was being finalized for publication, on April 25, 2025, the Washington Legislature passed and Governor Ferguson signed into law a bill that affects verification of time needed for employees to prepare for or participate in immigration proceedings. The new law becomes effective on July 27, 2025 and is available [here](#) (revisions to existing law in underline and strikethrough). We will detail the new requirements in future editions of this Book. Importantly, the contents of the subsections of this Section 8.1 detail the law as it exists prior to July 27, 2025.

8.1.10. Implementing a Sick Leave Policy

It is recommended that employers create a written policy to set forth expectations for their workplace and to effectively communicate the law to their employees. Not all employers are required to have a written policy but employers must have a written policy if their business does any of the following:³⁹⁶

- Uses a paid time off program to satisfy paid sick leave requirements.
- Uses a different paid sick leave accrual other than the calendar year;
- Requires employees to provide a reasonable notice when using their paid sick leave;
- Requires verification for absences lasting longer than three days;
- Provides employees access to paid sick leave before it has accrued (i.e., frontloading);
- Offers a shared leave program (where employees can donate their accrued time to another employee; or
- Reimburses an employee at separation for any portion of their accrued and unused paid sick leave. Practically, it is also best practice for an employer who will not be reimbursing an employee for paid sick leave to state so in a written plan.

8.1.11. Work Interruption

For most covered employees, an employer can, but is not required to, pay out accrued paid sick leave upon an employee's termination of employment.³⁹⁷ If the employer offers a payout, it must be mutually agreed upon, in writing, by the employer and the employee.³⁹⁸ If the employer intends not to pay out accrued, but unused, paid sick leave at an employee's termination of employment, it is best practice to clearly state so in a written policy.

However, if construction employers impose a 90-day waiting period to use accrued paid sick leave payout, payout at an employee's separation may be mandatory. Non-exempt "construction industry employees" that are subject to the waiting period must be paid out any remaining accrued sick leave, if they fall into the industry classification. Commercial construction workers as well as adjacent employees performing construction-related work but who are not engaged in the "construction work itself," are due

³⁹⁵ Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1](#).

³⁹⁶ *Id.*

³⁹⁷ RCW 49.46.210(1)(k); WAC 296-128-690(1), (2); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1](#).

³⁹⁸ WAC 296-128-690(2); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1](#).

this payout as long as their construction is covered under NAICS 236100 (North America Industry Classification System Code 23).³⁹⁹

8.1.12. Enforcement

L&I administers Washington paid sick leave and allows for employees to have a private right of action under the law.⁴⁰⁰

8.1.12.a. Private Right of Action

The MWA, which paid sick leave is a part of, protects the rights of employees in making claims against their employer. It is unlawful for employers to interfere, restrain, or deny the exercise of any employee's rights to use their paid sick leave.⁴⁰¹

8.1.12.b. Remedies

If an employer violates the MWA, they may be liable to pay the employee the full amount of paid sick leave that the employee was unable to take and can be responsible for the employee's attorney fees if a civil suit is brought against them.⁴⁰²

Failure to maintain proper recordkeeping can result in a finding of a minor infraction as well as potential civil liabilities. Intentional violations of the act could result in the employer paying L&I a civil penalty of \$1,000 for each violation. Repeat violations can result in a civil penalty anywhere between \$2,000 and \$20,000.⁴⁰³

8.1.12.c. Reinstatement

If an employee is rehired within 12 months, and did not cash out their time, accrued paid sick leave must be available for use immediately upon being rehired, unless the employee had not reached their paid sick leave eligibility date before they left.⁴⁰⁴

8.2. Pregnancy, Childbirth, and Pregnancy-Related Conditions

Washington law protects pregnancy and post-pregnancy disabilities from discrimination and requires employers to accommodate certain pregnancy, childbirth, and pregnancy-related conditions through the Washington Law Against Discrimination (WLAD) and the Washington Healthy Starts Act (WA HSA).⁴⁰⁵

At the time this Book was being finalized for publication, on April 18, 2025, the Washington Legislature passed a bill that repeals the WA HSA and replaces it with new provisions in RCW Title 49. The passed bill is available [here](#). Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. If the passed bill is signed into law, then it will become effective on January 1, 2027. We will detail any new requirements in future editions of this Book.

Importantly, the contents of the subsections of this Section 8.2 detail the law as it exists prior to this bill.

³⁹⁹ RCW 49.46.210(1)(l); WAC 296-128-600; Wash. Lab. & Indus. Admin. Pol'y: [ES.B.3](#).

⁴⁰⁰ RCW 49.46.090.

⁴⁰¹ RCW 49.46.210(4).

⁴⁰² RCW 49.46.090.

⁴⁰³ RCW 49.46.100.

⁴⁰⁴ RCW 49.46.210(1)(k); WAC 296-128-690(2)(b); Wash. Lab. & Indus. Admin. Pol'y: [ES.B.1](#).

⁴⁰⁵ RCW 49.60; RCW 43.10.005.

8.2.1. Maternity Disability under WLAD

Washington employers must provide a pregnant employee an unpaid leave of absence for the period of time that the employee is sick or temporarily disabled because of pregnancy or childbirth.

An employer must treat a pregnant employee who is sick or disabled due to pregnancy in the same way that they would treat another employee who is temporarily disabled.

If the employer offers paid leave for illness, or temporary disabilities, the employer must provide paid leave for pregnancy-related illnesses or disabilities.⁴⁰⁶

8.2.1.a. Covered Employers

The WLAD covers employers with eight or more employees and any person acting in the interest of the employer. It does not cover employers that are religious or sectarian non-profit groups.⁴⁰⁷

8.2.1.b. Eligible Employees

The WLAD covers all employees who are pregnant and who have pregnancy-related conditions, including, but limited to related medical conditions, miscarriage, pregnancy termination, and complications associated with pregnancy.⁴⁰⁸

8.2.1.c. Administration

The Washington State Human Rights Commission enforces the WLAD, including its provisions related to the treatment of pregnant women.⁴⁰⁹

8.2.1.d. Private Right of Action

An employee may file a claim alleging a WLAD violation with the Washington State Human Rights Commission.⁴¹⁰ An employee also has a separate, standalone private right of action under the WLAD.⁴¹¹

8.2.2. Washington Healthy Starts Act

The WA HSA provides further protections for employees who have health conditions related to pregnancy or childbirth.⁴¹² L&I's [website](#) outlines detailed requirements under the statute, which the below section borrows heavily from. Statutory citations for L&I's statements are included below.

8.2.2.a. Covered Employers

The WA HSA applies to all employers with 15 or more employees.⁴¹³

8.2.2.b. Prohibited Actions

Under the WA HSA, employers may not:

- Refuse to consider an accommodation from a pregnant employee.
- Fail to implement reasonable accommodations.

⁴⁰⁶ WAC 162-30-020(4).

⁴⁰⁷ RCW 49.060.040(11).

⁴⁰⁸ WAC 162-30-020(2).

⁴⁰⁹ RCW 49.60.120.

⁴¹⁰ RCW 49.60.230.

⁴¹¹ RCW 49.60.020; 49.60.030(2).

⁴¹² RCW 43.10.005.

⁴¹³ RCW 43.10.005(1)(a).

- Retaliate against a pregnant employee who requests an accommodation or a change in work environment, or who has made a complaint under the WA HSA.
- Deny employment opportunities to an otherwise-qualified employee if the denial is based on their need for reasonable accommodation. This could include hiring, opportunities for promotion, compensation, etc.
- Require a pregnant employee to take leave if other solutions can be provided.⁴¹⁴

8.2.2.c. Accommodation After Birth of a Child and Lactation-Related Accommodations

Workplace accommodations can be requested after childbirth as well. For example, under the WA HSA, employers are required to provide:

- A reasonable break time for an employee to express breast milk for two years after the child's birth and each time the employee has need to express milk.
- A private location, other than a bathroom, if a location exists at the place of business or worksite which may be used by the employee to express breast milk.
- If the business location does not have a space for the employee to express milk, the employer will work with the employee to identify a convenient location and work schedule to accommodate their needs.⁴¹⁵

8.2.2.d. Pregnancy Accommodations

Under the WA HSA, employers must consider any request for an accommodation related to pregnancy or childbirth. For example, employers must provide the following accommodations for a pregnant employee if they request:

- Frequent, longer, or additional restroom breaks.
- Modified food or drink policies.
- The ability to sit more frequently.
- Not to lift objects over 17 pounds.
- The need to express breast milk.⁴¹⁶

Employers cannot request a healthcare provider verification of the need for these accommodations.⁴¹⁷

8.2.2.e. Documentation and Accommodation Analysis

Employers can request documentation from a health care provider outlining the need for accommodation when a pregnant employee requests:

- Job restructuring including:
 - Schedule changes such as part-time or modified work schedules.
 - Job reassignments.
 - Providing or modifying equipment or devices.

⁴¹⁴ RCW 43.10.005(2).

⁴¹⁵ RCW 43.10.005(1)(b), (c); RCW 43.10.005(1)(c)(viii).

⁴¹⁶ RCW 43.10.005(1)(c), (d).

⁴¹⁷ RCW 43.10.005(3).

- Changes to their workstation.
- Scheduling flexibility for prenatal visits.
- A temporary transfer to a less strenuous or less hazardous position.
- Any further accommodation needed by the employee.⁴¹⁸

After receiving an accommodation request, the employer must review how they can reasonably accommodate the request. If the request creates an “undue hardship,” they may decline the request or suggest a reasonable alternative.⁴¹⁹ See section 8.2.2.f. for additional detail.

If an employee feels that their request is reasonable and it is denied by their employer, the employee can file a complaint with the Attorney General's Office.⁴²⁰

8.2.2.f. Undue Hardship

An undue hardship is defined as an action requiring significant difficulty or expense.⁴²¹ Employers must prove that an accommodation would cause an undue hardship.⁴²²

Employers cannot claim undue hardship for:

- Frequent, longer, or additional restroom breaks.
- Modifying food or drink policies.
- Providing seating for employees who stand or allowing the employee to sit more frequently.
- Limiting lifting to 17 pounds or less.⁴²³

Employers are not required to create additional employment that they would not otherwise have created, unless they would do so for another class of employees who need accommodation.⁴²⁴

8.3. Washington Family Care Act

If a collective bargaining agreement or employer policy entitles an employee to sick leave or other paid time off, then the Washington Family Care Act (WFCA) requires employers to allow their employees to use this paid leave to care for:

1. A child with a health condition that requires supervision or treatment; or
2. A spouse, registered domestic partner, parent, parent-in-law, or grandparent that has a serious or emergency health condition.⁴²⁵

8.3.1. Covered Employers

All Washington employers that offer paid leave are covered under the WFCA, as further explained in the section above.

⁴¹⁸ *Id.*

⁴¹⁹ RCW 43.10.005(1)(d).

⁴²⁰ RCW 43.10.005(6).

⁴²¹ RCW 43.10.005(1)(d).

⁴²² RCW 43.10.005(2)(a).

⁴²³ RCW 43.10.005(1)(d).

⁴²⁴ RCW 43.10.005(4).

⁴²⁵ RCW 49.12.270; Wash. Lab. & Indus. Admin. Pol'y: [ES.C.10](#).

8.3.2. Employee Eligibility

The WFCA applies to all Washington state employees that are entitled to paid leave under an applicable collective bargaining agreement or employer policy.

8.3.3. Leave Requirements

According to L&I, the WFCA allows employees to decide the type of paid leave to use for the above-described family care including:

- Paid sick leave.
- Vacation.
- Paid time off (PTO).
- Personal holidays.
- Short-term disability plans, although short-term disability plans that are covered under the Employee Retirement Income Security Act (ERISA) or established through the purchase of insurance are excluded.⁴²⁶

The Washington Supreme Court has taken a narrower view as to what the WFCA actually requires with respect to availability of paid leave for WFCA purposes under collective bargaining agreements and employer policies.⁴²⁷

8.3.4. Qualifying Family Members

Qualifying family members for WFCA usage are:

- A child under 18 (biological, adopted, foster, stepchild, etc.) or an adult child incapable of self-care;
- Grandparent;
- Parent or Parent-in-law; or
- Spouse.⁴²⁸

8.3.5. Retaliation

The WFCA prohibits employers from taking the following acts with respect to employees exercising their rights under WFCA:

- Discharge or threats of discharge;
- Demotion;
- Suspension;
- Discipline; or
- Other employment discrimination.⁴²⁹

⁴²⁶ See <https://lni.wa.gov/workers-rights/leave/family-care-act>.

⁴²⁷ *Alaska Airlines, Inc. v. Department of Labor and Indus.*, 1 Wn.3d 666 (2023) (WFCA does not trump CBA vacation bidding procedures).

⁴²⁸ RCW 49.12.265(1)-(4), (6).

⁴²⁹ RCW 49.12.287.

8.3.6. Enforcement and Potential Penalties

Employees who believe their employer has violated the WFCA may file an administrative complaint with L&I.⁴³⁰ Violations of this Act may result in fines of: (i) \$200 for the first offense, and (ii) \$1,000 for each offense following the first.⁴³¹ There is no private right to action under the WFCA.

8.4. Domestic Violence Leave Act

The Washington Domestic Violence Leave Act (WA DVLA) requires employers to provide leave to their employee victim of domestic violence, sexual assault, or stalking the opportunity.⁴³² All employees in Washington must be afforded the opportunity for such leave.

Victims may take reasonable leave from work, including intermittent leave and/or reduced schedules for:

- Legal or law enforcement assistance and court proceedings related to domestic violence, sexual assault, or stalking that are necessary to ensure the health and safety of the employee or the employee's family member(s).
- Treatment of physical or mental injuries caused by domestic violence, sexual assault, or stalking or to attend to treatment for a victim of the same who is an employee's family member.
- Obtaining social service programs and/or mental health counseling associated with relief from domestic violence, sexual assault, or stalking.
- Safety planning or relocating to increase the safety of the employee or the employee's family member(s) from future domestic violence, sexual assault, or stalking.⁴³³

Family members covered by the WA DVLA are a child, spouse, parent, parent-in-law, and grandparent.⁴³⁴

The employee is allowed to elect to take accrued paid leave for the above described purposes in lieu of unpaid leave.⁴³⁵

At the time this Book was being finalized for publication, on April 15, 2025, the Washington Legislature passed a bill that amends WA DVLA to include protected leave and protections for victims of hate crimes. The passed bill is available [here](#). Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. If the passed bill is signed into law, then it will become effective on January 1, 2026. We will detail any new requirements in future editions of this Book.

Importantly, the contents of the subsections of this Section 8.4 detail the law as it exists prior to this bill.

8.4.1. Accommodations and Undue Hardship

Employers must provide an accommodations when requested, unless it would create an undue hardship for the employer.⁴³⁶ L&I has stated that reasonable safety accommodations can include:

- A job transfer or reassignment.
- Changing work telephone or email.
- Implementation of safety procedures.⁴³⁷

⁴³⁰ RCW 49.12.280.

⁴³¹ RCW 49.12.285.

⁴³² RCW 49.76.

⁴³³ RCW 49.76.030.

⁴³⁴ *Id.*

⁴³⁵ RCW 49.76.030; RCW 49.76.040(6).

⁴³⁶ RCW 49.76.030; RCW 49.76.120(3).

8.4.2. Employee Notice and Documentation

To take a protected leave under the WA DVLA, an employee must give an employer advance notice of the employee's need for and intention to take a leave. The notice required should be consistent with the employer's WA DVLA policy or related absence policy. If an employee cannot give advance notice because of an emergency or unforeseen circumstances, then the employee or their designee must give notice to the employer no later than the end of the first day that the employee takes such leave.⁴³⁸

An employer may require that the leave or accommodation be supported by verification that the employee or family member is a victim of domestic violence, sexual assault, or stalking and that the leave is taken for one of the covered purposes of the WA DVLA.⁴³⁹ If an employer requires such verification, then the employee must timely provide the verification.⁴⁴⁰ An employer must accept the following as verification:

- Police reports.
- Court documents.
- Statements or documents from advocate for victims, an attorney, clergy, or a medical provider or other professional.
- An employee's written statement.⁴⁴¹

8.4.3. Confidentiality

According to both the statute and L&I, an employee is not required to produce or discuss any information about their leave or reason for leave that is beyond the scope of verification. The employee is not required to disclose anything that would compromise their safety or the safety of their family member(s).⁴⁴² An employer must maintain the confidentiality of all information provided by the employee.⁴⁴³

8.4.4. Retention of Position, Pay, and Benefits and Anti-Retaliation

An employer cannot rescind earned pay or accrued benefits for employees who take leave under the WA DVLA.⁴⁴⁴ An employer must return an employee taking WA DVLA leave to their former position or to an equivalent position.⁴⁴⁵ An employer must also maintain health insurance coverage for the employee.⁴⁴⁶

Employers cannot refuse to hire, discharge, threaten to discharge, demote, suspend, retaliate, or discriminate against an employee for their actual or perceived status as a victim of domestic violence, sexual assault, or stalking or the actual or perceived status of a qualifying family member.⁴⁴⁷

⁴³⁷ See <https://lni.wa.gov/workers-rights/leave/domestic-violence-leave>.

⁴³⁸ RCW 49.76.040(1).

⁴³⁹ RCW 49.76.040(2).

⁴⁴⁰ RCW 49.76.040(3).

⁴⁴¹ RCW 49.76.040(4).

⁴⁴² RCW 49.76.040(7); see also <https://lni.wa.gov/workers-rights/leave/domestic-violence-leave>.

⁴⁴³ RCW 49.76.040(8).

⁴⁴⁴ RCW 49.76.050(1).

⁴⁴⁵ RCW 49.76.050(2).

⁴⁴⁶ RCW 49.76.050(4).

⁴⁴⁷ RCW 49.76.115; RCW 49.76.120.

8.4.5. Enforcement and Potential Penalties

Employees who believe their employer has violated the WA DVLA may file an administrative complaint with L&I.⁴⁴⁸ Violations of the WA DVLA may result in fines of: (i) \$500 for the first offense, and (ii) \$1,000 for each subsequent offense.⁴⁴⁹ There is also a private right of action under the WA DVLA.⁴⁵⁰

8.5. Washington Paid Family and Medical Leave

The Washington Paid Family and Medical Leave Act (WA PFMLA) is a mandatory statewide insurance and leave program that is administered by the Washington Employment Security Department (ESD) and employers. The stated statutory purpose of WA PFMLA is to provide reasonable paid leave for the birth or placement of a child with the employee, for care of a family member who has a serious health condition, and for a qualifying exigency under the FMLA; for reasonable paid medical leave for an employee's own serious health condition; and to reasonably assist businesses in implementing and maintaining a program to support their employees and family.⁴⁵¹ The ESD provides partial wage replacement benefits that may be used by eligible Washington employees who take a leave from work for qualifying reasons. WA PFMLA benefits are partially funded through employee contributions via payroll deductions based on a formula determined by the State of Washington. The rate of employee contributions is reviewed annually by the State and is subject to change.⁴⁵²

At the time this Book was being finalized for publication, on April 19, 2025, the Washington Legislature passed amendments to the WA PFMLA. The passed bill is available [here](#). Amendments to the WA PFMLA are in underline and strikethrough. Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. If the bill becomes law, it will be effective on January 1, 2026. Employers should be aware that when they are reading this section, there may be different requirements in place. If the passed bill is signed into law, then we will detail the new requirements in future editions of this Book.

Importantly, the contents of the subsections of this Section 8.5 detail the law as it exists prior to this bill.

8.5.1. Covered Employers

Almost every Washington employer must participate in WA PFMLA.⁴⁵³ The only exclusions are:

- The United States, as an employer.
- Tribally-owned businesses on tribal land.⁴⁵⁴

Temporary employment agencies are considered to be the “employer” and are responsible for providing the benefits of this section the temporary employees.⁴⁵⁵

Covered employers may opt out of either the state program for family leave, medical leave, or both, if they have a voluntary private plan that meets certain standards.⁴⁵⁶ Employers must apply to the commissioner for approval of such plans and pay an application fee.⁴⁵⁷

⁴⁴⁸ RCW 49.76.080.

⁴⁴⁹ RCW 49.76.080.

⁴⁵⁰ RCW 49.76.100.

⁴⁵¹ RCW 50A.05.005.

⁴⁵² The program is described in detail on ESD's WA PFMLA [website](#).

⁴⁵³ RCW 50A.05.010; WAC 192-500-010.

⁴⁵⁴ RCW 50A.05.010(7); see *also* <https://paidleave.wa.gov/employers/>.

⁴⁵⁵ RCW 50A.20.030.

⁴⁵⁶ RCW 50A.30.

8.5.2. Premium Payments and Reporting

WA PFMLA is funded through employer and employee premiums. Employers must collect premiums from employees and remit payments to ESD. The premium rate for 2025 is 0.92% of an employee's gross wages (exclusive of tips) up to the federal social security maximum for 2025 (\$176,100).

The 0.92% premium is divided into mandatory employee and employer premiums. In 2025, employers can require employees to pay 71.52% of the premium. Employers may withhold this amount from employees' paychecks or pay it on employees' behalf. Employers cannot collect missed premiums from employees in subsequent paychecks. Employers must remit the employees' share of the premium to the state with the mandatory employer quarterly reports (see below).

Employers with 50 or more employees, must pay 28.48% of the premium. Employers with fewer than 50 employees do not need to pay the employer share. The employer share is determined in September and takes effect on January 1 each year.

Each quarter, employers must complete a report and pay WA PFMLA premiums. Reports must include each employee's total hours worked and paid time off and their total wages (exclusive of tips).⁴⁵⁸ The ESD has published a detailed wage reporting and premiums [toolkit](#) for employers.

8.5.3. Employee Eligibility

To qualify for WA PFMLA benefits, employees must have worked 820 hours (equal to 16 hours a week for a year) in the first four of the last five quarters or the last four completed calendar quarters immediately preceding the application for leave ("the Qualifying Period").⁴⁵⁹ Employees are eligible if they have worked 820 hours in the Qualifying Period regardless of the number of employers or jobs they had and regardless of whether the work was temporary, part-time, or full-time. Employees are eligible for job protection if they work for certain employers and satisfy certain employment requirements described in Section 8.5.8. below.⁴⁶⁰

8.5.4. Amount of Leave, Qualifying Reasons, and Definition of Family Member

Eligible employees may take up to 12 weeks of "family leave" or "medical leave" per claim year, up to a maximum annual aggregate.⁴⁶¹ If employees face multiple events in a year, they may be eligible to receive up to 16 weeks of leave, and up to 18 weeks if they experience a serious health condition during pregnancy that results in incapacity.⁴⁶²

Employees may take WA PFMLA for:

1. Medical leave for the employee's own serious health condition.⁴⁶³
2. Family leave to care for a family member with a serious health condition.⁴⁶⁴
3. Family leave to bond with the employee's child during the first 12 months after birth or placement of a child under the age of 18 years old ("placement" refers to adoption or foster care).⁴⁶⁵

⁴⁵⁷ RCW 50A.30.010; RCW 50A.30.020.

⁴⁵⁸ All of the information in this Section is set forth in detail on ESD's WA PFMLA website. See <https://paidleave.wa.gov/employer-roles-responsibilities/>

⁴⁵⁹ RCW 50A.15.010; RCW 50A.05.010(21).

⁴⁶⁰ RCW 50A.35.010.

⁴⁶¹ RCW 50A.15.020(3)(c).

⁴⁶² *Id.*

⁴⁶³ RCW 50A.05.010(15).

⁴⁶⁴ RCW 50A.05.010(10)(a).

4. Family leave for any qualifying exigency as permitted under the federal FMLA for covered family members.⁴⁶⁶
5. The six weeks after birth (“postnatal” period) for an incapacity due to pregnancy or for pre-natal care, unless the employee chooses to use paid family leave.⁴⁶⁷
6. During the seven calendar days following the death of the family member for whom the employee would have qualified for medical leave for: (i) the birth of their child, or (ii) family leave to bond with their child following their birth or placement.⁴⁶⁸

WA PFMLA defines “family members” as a child; grandchild; grandparent; parent; sibling; spouse; any individual who depends on the employee for care; and any individual who regularly resides in the employee’s home with an expectation that the employee care for the individual.⁴⁶⁹

8.5.5. Calculation Method

The weekly benefit for an employee who takes WA PFMLA is calculated as follows:

1. If the employee’s average weekly wage is equal to or less than 50% of the state’s average weekly wage, the employee’s benefit is 90% of the employee’s average weekly wage.
2. If the employee’s average weekly wage is more than 50% of the state’s average weekly wage, the employee’s benefit is the sum of 90% of the employee’s average weekly wage up to 50% of the state average weekly wage plus 50% of the difference of the employee’s average weekly wage and 50% of the state average weekly wage.⁴⁷⁰

For 2025, the maximum weekly benefit for family and medical leave is \$1,542.⁴⁷¹ The minimum weekly benefit \$100, except that if the employee’s average weekly wage is less than \$100, the weekly benefit is the employee’s full wage.⁴⁷²

On September 30th of each year, the maximum weekly benefit is adjusted to 90% of the state average weekly wage, with the adjusted amount taking effect on the following January 1st.⁴⁷³

Benefits for an employee who takes leave on an intermittent basis or who works a reduced schedule are prorated by the percentage of hours on leave compared to the number of typical workweek hours.⁴⁷⁴

8.5.6. Concurrent Leave Time and Supplemental Benefits

If WA PFMLA is taken for a qualifying reason under both the WA PFMLA law and the FMLA, then WA PFMLA will run concurrently with FMLA leave. WA PFMLA leave may also run concurrently with other forms of leave, as permitted by law.⁴⁷⁵

⁴⁶⁵ RCW 50A.05.010(10)(b).

⁴⁶⁶ RCW 50A.05.010(10)(c).

⁴⁶⁷ RCW 50A.05.010(19).

⁴⁶⁸ RCW 50A.05.010(10)(d).

⁴⁶⁹ RCW 50A.05.010(11).

⁴⁷⁰ RCW 50A.15.020(5).

⁴⁷¹ RCW 50A.15.020(6)(a); <https://paidleave.wa.gov/how-paid-leave-works/>.

⁴⁷² RCW 50A.15.020(6)(b).

⁴⁷³ RCW 50A.15.020(6)(a).

⁴⁷⁴ RCW 50A.15.020(2).

⁴⁷⁵ RCW 50A.15.110(2).

Employers may not require employees to take paid vacation leave, paid sick leave, or other forms of paid time off provided by the employer before, in place of, or concurrently with paid family or medical leave benefits.⁴⁷⁶

If an employee uses employer-sponsored leave (such as paid sick, vacation time, paid parental leave or short-term disability benefits) while using WA PFMLA, the employee's WA PFMLA benefit will be affected unless the employer designates the leave as a supplemental benefit. This election allows employees to receive full pay while on WA PFMLA. However, it is an employer's choice to offer a supplemental benefit and the employee's choice whether to take it if it is available. An employee cannot receive more than 100% of their regular pay from a combination of WA PFMLA and other employer-sponsored leave periods.⁴⁷⁷

8.5.7. Intermittent Leave

WA PFMLA may be taken in weekly or daily increments as long as the minimum claim duration is eight consecutive hours in a week. WA PFMLA may be taken in shorter increments when running concurrently with other forms of leave (such as FMLA) and where intermittent leave in shorter increments is granted or allowed. Consecutive periods of leave for the same or related injury or sickness are deemed a single period of leave only if separated by less than four months.⁴⁷⁸

8.5.8. Job Protection, Continuation of Health Benefits, and Non-Retaliation

Employees must be returned to their same position or one that is comparable with the same benefits, pay, and employment terms and conditions if:

1. the employer has 50 or more employees;
2. the employee taking leave has worked for the employer for at least 12 months; and
3. the employee taking leave has worked for 1,250 hours in the 12 months prior to commencing leave.⁴⁷⁹

While an employee is on leave and if the FMLA requires healthcare continuation for the leave, under the WA PFMLA, an employer must continue the employee's existing health benefits until the employee returns to employment.⁴⁸⁰

Employers may not interfere with, restrain, or deny any employee from exercising their rights under the WA PFMLA. Employers are prohibited from discharging or otherwise discriminating against an employee for:

1. Filing a complaint or instituting a proceeding related to the WA PFMLA;
2. Giving information in connection with any inquiry or proceeding under the WA PFMLA; or
3. Testifying in any inquiry or proceeding relating to the WA PFMLA.⁴⁸¹

⁴⁷⁶ WAC 192-610-075.

⁴⁷⁷ RCW 50A.15.060(2); see also <https://paidleave.wa.gov/app/uploads/2024/02/Employers-Paid-Leave-Benefits-Toolkit-Version-2.1.pdf>.

⁴⁷⁸ RCW 50A.15.020(1)(c); WAC 192-620-005.

⁴⁷⁹ RCW 50A.35.010.

⁴⁸⁰ RCW 50A.35.020.

⁴⁸¹ RCW 50A.40.010.

8.5.9. Employee Notice Obligations

If an employee's need for WA PFMLA is foreseeable based on an expected birth or placement, the employee must provide the employer with no fewer than 30 days' written notice before the date the employee intends to take leave for the birth or placement of a child. However, if the date of the birth or placement requires leave to begin in fewer than 30 days, the employee must provide such written notice as soon as is practicable.⁴⁸²

If an employee's need for WA PFMLA is foreseeable based on the serious health condition of an employee or family member, the employee must: (1) make a reasonable effort to schedule the treatment so it does not unduly disrupt the employer's operations, subject to approval from the employee's or family member's health care provider, as appropriate; and (2) provide no fewer than 30 days' written notice before the date the employee intends to begin the leave for a qualifying serious health condition. However, if the date of the treatment requires WA PFMLA to begin in fewer than 30 days, the employee must provide such written notice as soon as is practicable.⁴⁸³

If need for WA PFMLA is unforeseeable, an employee must provide written notice to the employer as soon as is practicable under the facts and circumstances of the particular situation. If the employee fails to give proper notice, then the employee's benefits will be denied for a period of time equal to the number of days that notice was insufficient.⁴⁸⁴

8.5.10. Employer Notice Obligations

Employers must post a notice of employees' rights under the WA PFMLA.⁴⁸⁵

Importantly, employers also must provide a written statement of employee rights within five days after a seven day consecutive absence for family or medical leave.⁴⁸⁶

Employers must maintain a record of employment for at least six years where ESD can gather all information concerning employee leave taken under this Act.⁴⁸⁷

8.5.11. Enforcement and Potential Penalties

Employees may file a complaint with the ESD, who may conduct an investigation and order the employer to pay liquidated damages if there is a finding of a violation. Employees may also bring a private right of action without filing a complaint with the ESD or after withdrawing or resolving a complaint, and through that action recover lost wages, benefits, and other compensation, as well as costs associated with having to pay for care that they could have provided themselves through the denied leave.⁴⁸⁸

8.5.12. Statute of Limitations

An employee must bring a complaint or civil action within three years of the alleged violation.⁴⁸⁹

⁴⁸² RCW 50A.15.030(1).

⁴⁸³ RCW 50A.15.030(2).

⁴⁸⁴ WAC-192-600-010; WAC-192-600-025.

⁴⁸⁵ RCW 50A.20.020. Posters are available here: <https://paidleave.wa.gov/employer-roles-responsibilities/>.

⁴⁸⁶ RCW 50A.20.010.

⁴⁸⁷ RCW 50A.20.030.

⁴⁸⁸ RCW 50A.40.020 through RCW 50A.40-040.

⁴⁸⁹ RCW 50A.40.040(2).

8.6. Military Family Leave Act

Employees eligible for WA Military Family Leave Act (WA MFLA) benefits may take unpaid leave during periods of military conflict when the eligible employee's spouse either: (a) has been notified of an impending call to active duty but has not yet been deployed; or (b) is on leave from deployment.⁴⁹⁰

"Period of military conflict" means a period of war declared by the US Congress, declared by executive order of the president, or in which a member of a reserve component of the armed forces is ordered to active duty pursuant to either sections 12301 and 12302 of Title 10 of the United States Code or Title 32 of the United States Code.⁴⁹¹ "Spouse" means a husband, wife, or state registered domestic partner.⁴⁹²

8.6.1. Covered Employers

Nearly all employers in WA are covered by WA MFLA. This includes both private and public sector employers.⁴⁹³

8.6.2. Eligible Employees

Employees are eligible for WA MFLA leave if the employee works an average of 20 or more hours per week for the employer. Independent contractors are not covered.⁴⁹⁴

8.6.3. Leave Details

8.6.3.a. Qualification for Leave

To qualify for WA MFLA leave, the employee's spouse must be deployed or on leave from deployment for activity duty with the US armed forces, the National Guard, or the reserves.⁴⁹⁵

8.6.3.b. Duration of Leave

Employees may take up to 15 unpaid days of leave for each deployment.⁴⁹⁶ There is no specific method of calculating the time provided by the statute.

8.6.3.c. Concurrent Leave

Employees may substitute any other leave they are entitled to for any part of the leave provided under this Act.⁴⁹⁷

8.6.3.d. Intermittent Leave

The statute does not address whether an employee may take WA MFLA leave intermittently. However, the law is similar to the FMLA military exigency leave, so it is likely intermittent leave could be allowed.⁴⁹⁸

8.6.4. Continuation of Existing Benefits During Leave

During WAWA MFLA leave, employees are entitled to continued health and dental coverage to the extent allowed by law for both the employee and their family if coverage is not otherwise continued by the

⁴⁹⁰ RCW 49.77.030(1); Wash. Lab. & Indus. Admin. Pol'y: [ES.C.12](#).

⁴⁹¹ RCW 49.77.020(4).

⁴⁹² RCW 49.77.020.

⁴⁹³ RCW 49.77.020(3).

⁴⁹⁴ RCW 49.77.020(2).

⁴⁹⁵ RCW 49.77.030.

⁴⁹⁶ *Id.*

⁴⁹⁷ RWC 49.77.030(6).

⁴⁹⁸ 29 U.S.C. § 2612(a)(1)(E); 29 C.F.R. 825.126.

employer policy or a collective bargaining agreement. An employer may provide this coverage at the employees' expense not to exceed 102% of the applicable premium.⁴⁹⁹

8.6.5. Reinstatement

After taking WA MFLA leave, an employer must return the employee to the same position or an equivalent position at a workplace within 20 miles of the workplace the employee was working at when the leave commenced.⁵⁰⁰ When returned to their position, the employee must receive equivalent:

- employment benefits, including accrued benefits;
- pay; and
- other terms and conditions of employment.⁵⁰¹

Employees are not entitled to any of the following after WA MFLA leave:

- The accrual of any seniority or employment benefits during any period of leave; or
- Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.⁵⁰²

8.6.6. Employee Obligations

8.6.6.a. Notice Requirements

An employee taking WA MFLA leave must provide notice of the intention to take leave within five business days of receiving the official notice of either an impending call or order to active duty, or a leave from deployment.⁵⁰³ An employer may require the employee to periodically report on the employee's status and intention to return to work.⁵⁰⁴

8.6.6.b. Certification

There is no employee certification requirement.

8.6.7. Employer Prohibited Acts

Under the WA MFLA, an employer cannot interfere with an employee's exercise of their WA MFLA rights or take adverse action against an employee for taking their WA MFLA leave. Employers also may not discriminate or retaliate against an employee for engaging in protected activity under WA MFLA.⁵⁰⁵

8.6.8. Posters

Employers must post the "Your Rights as a Worker" poster in a conspicuous place.⁵⁰⁶

8.6.9. Enforcement and Potential Penalties

WA MFLA provides for the right to file an administrative complaint with L&I.⁵⁰⁷ Employers found to have violated WA MFLA are subject to a civil penalty of at least \$1,000 for each violation.⁵⁰⁸

⁴⁹⁹ RCW 49.77.030(4).

⁵⁰⁰ RCW 49.77.030(2)(a).

⁵⁰¹ RCW 49.77.020(2)(a), (b).

⁵⁰² 49 RCW 49.77.030(2)(c).

⁵⁰³ 49 RCW 49.77.030(5).

⁵⁰⁴ 49 RCW 49.77.030(2)(d).

⁵⁰⁵ 49 RCW 49.77.040.

⁵⁰⁶ WAC 296-130-050.

⁵⁰⁷ RCW 49.77.050.

WA MFLA also provides employees with a private right of action. Employers are liable for damages that can consist of:

- Lost wages, salary, benefits, and other compensation;
- Actual damages caused by the violation for up to an amount of 12 weeks of wages or salary;
- Interest at the prevailing rate;
- Liquidated damages for willful violations in an amount equal to damages and interest due to the employee;
- Equitable relief, including reinstatement, employment, or promotion; and/or
- Reasonable attorneys' fees, expert witness fees, and costs.⁵⁰⁹

8.6.10. Statute of Limitations

An employee must bring a civil action alleging a violation of the Military Family Leave Act within three years of the alleged violation.⁵¹⁰

8.7. Military Leave and Reemployment Rights

In Washington, employees are entitled to unpaid leave for voluntary or involuntary “service in the uniformed services.” Washington employers may not discriminate when making employment decisions regarding employees or potential employees for their participation or potential participation in the uniformed services. Washington employees are entitled to reinstatement following leave if they meet certain requirements, as explained below. The law is intended to protect the rights of state-activated military personnel in the same manner as the federal USERRA.⁵¹¹

“Uniformed services” means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.⁵¹²

“Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty (including state-ordered active duty), and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.⁵¹³

The statute is quite detailed with respect to leave certification and employment restoration rights. The below provides a high-level overview, but employers should review the entire statute when faced with state-protected military leave situations.

⁵⁰⁸ RCW 49.77.060.

⁵⁰⁹ RCW 49.77.070.

⁵¹⁰ RCW 4.16.080.

⁵¹¹ RCW 73.16.005.

⁵¹² RCW 73.16.031(16).

⁵¹³ RCW 73.16.031(12).

8.7.1. Covered Employers

The law covers all employers in Washington. “Employer” means the person, firm, or corporation, the state, or any elected or appointed public official currently having control over the position that has been vacated.⁵¹⁴

8.7.2. Employee Eligibility

The law covers any employee.⁵¹⁵ An employee is eligible for this protected leave if they:

- Reside or are employed in Washington; and
- Leave their job to serve in the uniformed services, voluntarily or involuntarily, and properly seeks reemployment.⁵¹⁶

An employee is not eligible to take leave under this law if they are employed on a temporary basis.⁵¹⁷

8.7.3. Leave Details

The amount of leave is limited to the employee's period of service.⁵¹⁸ The statute allows from some limitation of leave for hospitalization, convalescing, or other illness or injury caused by uniform service, but there are detailed accommodation requirements in the statute.⁵¹⁹

8.7.3.a. Calculation Method

There is no specified method of calculating time. However, to receive the benefits of the law, employees must notify their employer of the need for leave within a reasonable time period,⁵²⁰ must show proof of completion of service,⁵²¹ and must make an a written application to the employer for benefits.⁵²² The requirements for the written application are based on length of the period of service, with different requirements for periods of service of less than 31 days, for periods of service between 31 and 180 days, and for periods of service of more than 180 days.⁵²³

8.7.3.b. Concurrent Leave Time

Leave does not run concurrently with other leave laws.⁵²⁴

8.7.3.c. Intermittent Leave

The law does not address whether an employee can take this leave intermittently.

8.7.4. Continuation of Existing Benefits During Leave

During leave, an employee may elect to continue their health coverage for up to 18 months at the employee's expense, not to exceed 102% of the premium.⁵²⁵ However, an employer may not require the

⁵¹⁴ RCW 73.16.031(4).

⁵¹⁵ RCW 73.16.031(3).

⁵¹⁶ RCW 73.16.033.

⁵¹⁷ RCW 73.16.031(7).

⁵¹⁸ RCW 73.16.035.

⁵¹⁹ RCW 73.16.035(1)(c)(v).

⁵²⁰ RCW 73.16.035(1)(a).

⁵²¹ RCW 73.16.035(1)(b).

⁵²² RCW 73.16.035(1)(c).

⁵²³ *Id.*

⁵²⁴ RCW 73.16.090.

⁵²⁵ RCW 73.16.053.

employee to pay more than their normal, active employee contribution if the length of service is less than 31 days.⁵²⁶

8.7.5. Reinstatement

An employee is entitled to reemployment after vacating their position for service in the uniformed services if:

- Circumstances have not changed so that reemployment would be impossible or unreasonable; and
- there is no undue hardship on the employer.⁵²⁷

8.7.6. Certification and Benefits

An applicant for reemployment must provide proof they completed their service. This proof must be in the form of one of the following:

- An honorable or under honorable conditions discharge;
- a report of separation;
- a certificate of satisfactory service; or
- other proof of satisfactory completed service.⁵²⁸

Rejectees must furnish proof of orders for examination and rejection.⁵²⁹

Employees must also make an a written application to the employer for benefits.⁵³⁰ The requirements for the written application are based on length of the period of service, with different requirements for periods of service of less than 31 days, for periods of service between 31 and 180 days, and for periods of service of more than 180 days.⁵³¹ The statute sets for these certification requirements in detail.⁵³²

Employees who meet the notice and certification requirements are entitled to the following:

- Restoration to their former position or one of like seniority, status, and pay, if still qualified.
- Reemployment to another position with similar seniority, status, and pay if disability sustained during service disqualifies the employee from their pre-leave position.
- The employee may participate in employment benefits offered by the employer pursuant to the established employer rules and policies regarding employees on furlough or leaves of absence that were in effect at the time the employee was ordered into service.
- No employee may be discharged without cause within one year after restoration.⁵³³

⁵²⁶ RCW 73.16.053(2).

⁵²⁷ RCW 73.16.033.

⁵²⁸ RCW 73.16.035(1).

⁵²⁹ RCW 73.16.035(1)(b).

⁵³⁰ RCW 73.16.035(1)(c).

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ RCW 73.16.051.

8.7.7. Employee Obligations

8.7.7.a. Notice

An employee must provide notice to their employer about membership in the uniformed services within a reasonable time of:

- accepting employment; or
- becoming a member of the uniformed services.⁵³⁴

When returning to employment, an employee must provide the employer with notice within a certain time after completing their service. The notice time requirement is dependent on the length of service.⁵³⁵

8.7.7.b. Application

The employee application or certification requirements are discussed above in Section 8.7.6.

8.7.8. Enforcement and Potential Penalties

If an employer violates this law, the attorney general may bring action for: (i) injunctive relief; and (ii) lost wages and benefits.⁵³⁶ The law alternatively allows a private right of action.⁵³⁷

8.8. Emergency Services Personnel Leave

Washington employees who are volunteer fighters, reserve officers, and civil air patrolmen and women are entitled to leave to respond to a fire alarm or an emergency call. Under this law, an employer may not discharge from employment or discipline:

- A volunteer firefighter or reserve officer because of leave taken related to an alarm of fire or an emergency call; or
- A civil air patrol member because of leave taken related to an emergency service operation.⁵³⁸

“Alarm of fire or emergency call” means responding to, working at, or returning from a fire alarm or an emergency call, but not participating in training or other nonemergency activities.⁵³⁹

“Civil air patrol member” means a person who is a member of the Washington wing of the civil air patrol.⁵⁴⁰

“Emergency service operation” means the following operations of the civil air patrol:

- Search and rescue missions designated by the air force rescue coordination center;
- Disaster relief, when requested by the federal emergency management agency or the department of homeland security;
- Humanitarian services, when requested by the federal emergency management agency or the department of homeland security;
- United States air force support designated by the first air force; and

⁵³⁴ RCW 73.16.035(1).

⁵³⁵ RCW 73.16.035(1)(c).

⁵³⁶ RCW 73.16.061(1).

⁵³⁷ RCW 73.16.061(2).

⁵³⁸ RCW 49.12.460(1).

⁵³⁹ RCW 49.12.460(3)(a).

⁵⁴⁰ RCW 49.12.460(3)(b).

- Counterdrug missions.⁵⁴¹

“Volunteer firefighter” means a firefighter covered under [RCW 41.24](#) who:

- Voluntarily performs, regardless of reimbursement, any assigned or authorized duties on behalf of or at the direction of a firefighting or emergency response unit of a city, county, fire district, regional fire protection district, port district, or the state, including, but not limited to, service pursuant to [RCW 43.43.960](#) through [43.43.975](#); and
- (a) Has notified their employer of their firefighter status and intent to serve as a volunteer if already at the place of employment when called to serve as a volunteer; or (b) If not already at the place of employment when called to serve as a volunteer, has been ordered to remain at their position by the commanding authority at the scene of the fire.⁵⁴²

“Reserve officer” has the meaning provided in [RCW 41.24.010](#).⁵⁴³

8.8.1. Covered Employers

The law covers employers who had 20 or more full-time equivalent employees in the previous year.⁵⁴⁴

8.8.2. Employee Eligibility

An employee must be a volunteer firefighter, a reserve officer, or a member of the civil air control to be covered by this law.⁵⁴⁵

8.8.3. Employee Obligations

8.8.3.a. Notice

The law does not require notice, other than to be considered a volunteer firefighter, if called to serve while at their place of employment, the employee must notify the employer of their status as a firefighter and their intent to serve as a volunteer.⁵⁴⁶

8.8.3.b. Certification

The law does not require certification by the employee.

8.8.4. Employer Obligations

Employers may not discharge or discipline employees covered by the law who are exercising their protected rights.⁵⁴⁷

8.8.5. Enforcement

An employee covered under this law who believes they were discharged or disciplined in violation of this section may file a complaint alleging the violation with the director of L&I.⁵⁴⁸ L&I investigates and makes a determination.⁵⁴⁹

⁵⁴¹ RCW 49.12.460(3)(c).

⁵⁴² RCW 49.12.460(3)(g).

⁵⁴³ RCW 49.12.460(3)(h).

⁵⁴⁴ RCW 49.12.460(3)(d).

⁵⁴⁵ RCW 49.12.460(1).

⁵⁴⁶ RCW 49.12.460(3)(g).

⁵⁴⁷ RCW 49.12.460(1).

⁵⁴⁸ RCW 49.12.460(2).

⁵⁴⁹ RCW 49.12.460(2)(b).

If the director determines that this section was violated and the employer fails to reinstate the employee or withdraw the disciplinary action taken against the employee, whichever is applicable, within 30 days of receipt of notice of the director's determination, the covered employee may bring an action against the employer alleging a violation of the law and seeking reinstatement or withdrawal of the disciplinary action.⁵⁵⁰

8.9. Jury Duty Leave

Under this law, a Washington employer must provide protected leave and not take adverse action against an employee who receives a summons, responds to the summons, serves as a juror, or attends court for prospective jury service.⁵⁵¹

8.9.1. Covered Employers

The law covers any employer in Washington.⁵⁵²

8.9.2. Eligible Employees

Employees protected by the law are employees who receive a summons, respond to the summons, serves as a juror, or attends court for prospective jury service.⁵⁵³

8.9.3. Protected Leave

An employer must provide an employee with a "sufficient" leave of absence to serve as a juror. There is no specific method for calculating leave time.⁵⁵⁴ An employer cannot discharge employment, threaten, or deny promotions because an employee is on leave protected by the law.⁵⁵⁵

8.9.4. Pay

Leave under the law is unpaid.⁵⁵⁶

8.9.5. Concurrent Leave

Leave does not run concurrently with other leave laws.⁵⁵⁷

8.9.6. Intermittent Leave

Leave must be "sufficient" for the employee to serve as a juror, so if there are starts and stops in service, leave should be provided under the law.⁵⁵⁸

8.9.7. Employee Obligations

8.9.7.a. Notice

The law does not require notice.⁵⁵⁹

⁵⁵⁰ RCW 49.12.460(2)(c), (d).

⁵⁵¹ RCW 2.36.165(1), (2).

⁵⁵² RCW 2.36.165(5).

⁵⁵³ RCW 2.36.165(2).

⁵⁵⁴ RCW 2.36.165(1).

⁵⁵⁵ RCW 2.36.165(2).

⁵⁵⁶ RCW 2.36.165.

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*

8.9.7.b. Certification

The law does not require employees to provide certification.⁵⁶⁰

8.9.8. Enforcement and Potential Penalties

8.9.8.a. Criminal Penalties

Employers who intentionally violate this law are guilty of a misdemeanor.⁵⁶¹

8.9.8.b. 8.9.8.b Civil Action

If an employer violates this law, the affected employee may bring a civil action and the court may award: (i) damages, (ii) reinstatement, and (iii) reasonable attorneys' fees.⁵⁶²

8.10. Seattle Paid Sick and Safe Time

Some municipalities in Washington have their own paid sick leave laws that must be complied with in addition to Washington's paid sick leave law. Once such municipality is Seattle. Others are SeaTac and Tacoma.⁵⁶³ There are also state and Seattle sick leave law provisions applicable to transportation network companies.⁵⁶⁴ When more than one paid sick leave law applies to an employer's workers, then state and city's position is generally that the employer must comply with the most generous provision in each law.

The Seattle generally-applicable paid sick leave ordinance is detailed below because there are so many Washington employers subject to the Seattle law. In future editions, we plan to cover the other municipal leave laws in detail. In the meantime, employers should be aware that these other laws and ordinance exist and, if covered by them, comply with these laws and ordinances in addition to Washington law.

The Seattle Office of Labor Standards enforces PSST. Its [PSST website](#) contains the PSST ordinance, rules, questions and answers, and fact sheets and is a helpful resource for employers.

8.10.1. Eligibility

All Washington employees who perform work within the geographic boundaries of Seattle, including those employees who work remotely in Seattle, are eligible for PSST. This includes regular full-time employees, regular part-time employees, and temporary employees (if employed directly by the Company rather than a temporary staffing agency). This also includes exempt and non-exempt employees.⁵⁶⁵

PSST further covers employees who are typically based outside of Seattle but who perform work in Seattle occasionally, as determined by PSST rules.⁵⁶⁶ Time spent in Seattle only for purposes of travelling through the city to a destination outside the employee is not covered by PSST.⁵⁶⁷

⁵⁶⁰ *Id.*

⁵⁶¹ RCW 2.36.165(3).

⁵⁶² RCW 2.36.165(4).

⁵⁶³ See municipal paid sick leave ordinance details on these websites: <https://www.seatacwa.gov/our-city/employment-standards-ordinance>; <https://www.cityoftacoma.org/cms/one.aspx?pageId=75860>.

⁵⁶⁴ See transportation network company paid sick leave law and ordinance details on these websites: <https://lni.wa.gov/workers-rights/industry-specific-requirements/transportation-network-company-drivers-rights/paid-sick-time>; <https://www.seattle.gov/laborstandards/ordinances/app-based-worker-ordinances/app-based-worker-paid-sick-and-safe-time-ordinance>.

⁵⁶⁵ SMC 14.16.010.

⁵⁶⁶ SMC 14.16.015(B). The current rules provide that an employee is covered by PSST once the employee performs more than 240 hours of work in Seattle within a year. [SHHR 70-040](#).

⁵⁶⁷ SMC 14.16.015(B)(2).

8.10.2. Accrual, Carry-Over, Rate, Frontloading, and PTO Programs

8.10.2.a. Accrual Rate by Employer Size⁵⁶⁸

	Tier 1	Tier 2	Tier 3
Full-Time Equivalents (FTEs) Worldwide	One employee and up to 49 FTEs	50-249 FTEs	250 or more FTEs
Accrual of PSST per Hours Worked	One hour per 40 hours	One hour per 40 hours	One hour per 30 hours
Carry-over of Unused PSST per Year	40 hours	56 hours	72 hours or 108 hours for employers with PTO

Employers may frontload PSST, provided that frontloading meets or exceeds the requirements for accrual, use, and carryover of PSST as set forth under the Ordinance. An employer must frontload using a reasonable calculation.⁵⁶⁹

Employers may also use paid time off (PTO) programs to comply with PSST. PTO (also known as “universal paid leave policies” under the PSST) must meet or exceed all provisions of PSST and the rules. There must be a written PTO policy.⁵⁷⁰

8.10.2.b. Exempt Employees

Exempt employees accrue PSST based on their normal workweek, up to a maximum of 40 hours. Exempt employees do not accrue PSST for hours worked beyond 40 in a workweek.⁵⁷¹

8.10.2.c. Rate of Pay

Employees are paid for PSST at their regular hourly rate or salary in effect at the time they take PSST. PSST pay excludes overtime pay that an employee would have earned during the time that PSST was taken.⁵⁷²

8.10.3. Using PSST

8.10.3.a. Waiting Period for Use

Employees may begin using their accrued PSST on the 90th calendar day after the commencement of their employment with the Company.⁵⁷³

8.10.3.b. Increments of Use

Non-exempt employees may take PSST in one-hour increments. Exempt employees may take PSST in half-day or full-day increments.⁵⁷⁴

8.10.4. Reasons for Use

Employees are permitted to use their PSST for any of the following reasons:

⁵⁶⁸ SMC 14.16.020; SMC 14.16.025.

⁵⁶⁹ [SHRR 70-150](#).

⁵⁷⁰ [SHRR 70-120](#).

⁵⁷¹ [SHRR 70-030\(2\)\(a\)\(iii\)](#).

⁵⁷² [SHRR 70-090](#) contains the detailed rate of pay rules for PSST.

⁵⁷³ SMC 14.16.025(F).

⁵⁷⁴ SMC 14.16.030(C).

- An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;⁵⁷⁵
- To allow the employee to provide care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care of a family member who needs preventive medical care;⁵⁷⁶
- For certain reasons related to domestic violence, sexual assault, or stalking that affect the employee or the employee's family member (contact Human Resources for more information) or household members;⁵⁷⁷ or
- Closure of the workplace or the employee's child's school or place of care by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material.⁵⁷⁸

For purposes of this section, the first two "reasons for use" listed above are considered "paid sick time" uses. The last two "reasons for use" listed above are considered "paid safe time" uses. PSST may not be taken for any other purpose.

To protect employee (and family member) privacy, employees need not disclose the underlying reason for a medical or dental appointment or any specific diagnosis information related to a medical condition or details regarding domestic violence, sexual assault, stalking, or harassment.⁵⁷⁹

For purposes of using "paid sick time," covered family members are children, parents, parents-in-law, spouses, domestic partners, and grandparents.⁵⁸⁰ For purposes of paid safe time, "family or household members" has the same definition as in RCW [49.76.020](#).⁵⁸¹

8.10.5. Notice and Use

If the need for PSST is unforeseeable, employees must provide notice as soon as practicable.⁵⁸² If the need for paid safe time arises, the employee must provide oral or written notice of the need for leave no later than the end of the first day that the employee has used PSST for a reason related to domestic violence, sexual assault, or stalking.⁵⁸³

For foreseeable absences, the employee must provide a written request at least 10 days in advance, or as early as possible, unless the employer's normal notice policy requires less advance notice.⁵⁸⁴

8.10.6. Documentation

Unless using PSST during an approved leave of absence, employees who are absent for more than three consecutive full or partial workdays can be required to provide documentation to verify the need for PSST.⁵⁸⁵ Documentation can include, documentation signed by the appropriate health care provider

⁵⁷⁵ SMC 14.16.030(A)(1)(a).

⁵⁷⁶ SMC 14.16.030(A)(1)(b).

⁵⁷⁷ SMC 14.16.030(A)(2)(d).

⁵⁷⁸ SMC 14.16.030(A)(2)(a)-(c).

⁵⁷⁹ SMC 14.16.030(E), (F); [SHRR 70-080\(3\)](#).

⁵⁸⁰ SMC 14.16.010, "Paid sick time" 1.

⁵⁸¹ SMC 14.16.010, "Paid safe time" 2.

⁵⁸² SMC 14.16.030(B)(2).

⁵⁸³ [SHRR 70-070\(1\)\(c\)](#); WAC 296-135-060.

⁵⁸⁴ SMC 14.16.030(B)(1).

⁵⁸⁵ SMC 14.16.030(E), (F).

indicating that the PSST was necessary,⁵⁸⁶ or in the case of time off for reasons related to domestic violence, sexual assault, or stalking that affects the employee or the employee's covered family member, a police report, a court order, documentation that the employee or the employee's family member is experiencing domestic violence, sexual assault, or stalking, or an employee's written statement.⁵⁸⁷ Documentation does not need to explain the nature of any illness or details related to domestic violence, harassment, sexual assault, or stalking of the employee or the employee's covered family member.⁵⁸⁸

8.10.7. PSST Upon Re-Hire

If an employee separates from the employer and is rehired within 12 months, then previously unused PSST must be reinstated upon rehire. If an employee separates from the Company and is rehired more than 12 months later, then previously accrued unused PSST is not reinstated, and the employee is treated as a new hire.⁵⁸⁹

8.10.8. No Cash-Out of PSST

Employers are not required to cash out unused PSST at any time during employment or upon separation of employment. An employer may choose to do so, however, with employee consent or pursuant to another law, the employer's policy, or a collective bargaining agreement.⁵⁹⁰

8.10.9. Notice to Employees

Employers must display a poster pertaining to PSST in a conspicuous and accessible location where any employees work in English and the primary language of employees at the workplace.⁵⁹¹ Employers must also provide employees with written notice of policies and procedures that comply with PSST, which must include statements of the employee's right to use PSST, whether the employer is using a year other than the calendar year to comply with PSST, the employer's tier size, the employer's rate of accrual and carry over of PSST, the authorized purposes for using PSST, the manner of providing employees with notification of available PSST, the reasonable notice requirements for requesting use of PSST, prohibition against retaliation for use of PSST, and if used by the employer, an explanation of verification for use of PSST for more than three consecutive days, use of frontloaded PSST, universal paid leave policy, and/or shared PSST program in which an employee may choose to donate PSST to a co-worker.⁵⁹²

8.10.10. No Retaliation, Interference, or Discrimination

Employers are prohibited from interfering with taking an adverse action or discriminating against employees who assert their right to PSST in good faith. These rights include, but are not limited to:

- Enforcing a policy that counts the use of PSST as an absence that may lead to discipline against the employee;
- Using or asking to use PSST;
- Informing an employer, union, or legal counsel about alleged PSST violations;
- Filing a complaint about alleged PSST violations;

⁵⁸⁶ SMC 14.16.030(E).

⁵⁸⁷ SMC 14.16.030(F)(2).

⁵⁸⁸ SMC 14.16.030(E), (F).

⁵⁸⁹ SMC 14.16.025(L).

⁵⁹⁰ [SHRR 70-110\(2\)](#).

⁵⁹¹ SMC 14.16.045(B). The current poster is available [here](#).

⁵⁹² SMC 14.16.045(C).

- Refusing to participate in an activity that would result in a violation of city, state, or federal law;
- Participating in an investigation of alleged PSST violations; and/or
- Informing other employees of their PSST rights.⁵⁹³

8.10.11. Abuse

Employers can take reasonable disciplinary action for violation of its policies, provided such discipline does not constitute an adverse action or discrimination based on a good faith assertion of PSST rights.⁵⁹⁴

8.10.12. Enforcement and Remedies

An employee may file a complaint under PSST with the City. The Seattle Office of Labor Standards investigates and determines violations of PSST.⁵⁹⁵ There are detailed complaint and appeal procedures set forth in the [City of Seattle Office of Labor Standards Administrative Rules for Conducting Directed Investigations](#) and the Ordinance.⁵⁹⁶ Private rights of action are also available to aggrieved employees.⁵⁹⁷ Remedies may include unpaid wages, liquidated damages, civil penalties, fines, and interest. The remedial scheme is highly-specific and set forth in the Ordinance in detail.⁵⁹⁸

⁵⁹³ SMC 14.16.055.

⁵⁹⁴ See [Paid Sick and Safe Time Ordinance Questions and Answers](#), Section L.

⁵⁹⁵ SMC 14.16.060-14.16.075.

⁵⁹⁶ *Id.*; SMC 14.16.085-14.16.100; [SHRR Chapter 140](#).

⁵⁹⁷ SMC 14.16.110.

⁵⁹⁸ SMC 14.16.080.

9. Employment Discrimination

Washington protects employees from protected class discrimination, harassment, and retaliation under the Washington Law Against Discrimination. Washington promotes gender pay equity through the Washington Equal Employment Opportunities Act. Washington also prohibits criminal history discrimination through the Washington Fair Chance Act. This Chapter explains Washington's and Seattle's discrimination laws in the context of on-going employment. Chapter 11 explains some of these same laws in the context of hiring and termination.

9.1. The Washington Law Against Discrimination

The Washington Law Against Discrimination (WLAD) ([RCW 49.60](#)) prohibits discrimination in various areas including in employment.

The law prohibits employers from refusing to hire, terminating, or discriminating against any person with respect to wages or in other terms or conditions of employment because of their membership in one or more of the aforementioned protected classes. It also bars employers from printing or circulating discriminatory statements, advertisements, or publications and using discriminatory applications forms or making discriminatory inquiries in connection with prospective employment.⁵⁹⁹

The Washington State Human Rights Commission ("WSHRC") administers and enforces the WLAD, and complaints under the WLAD must be filed with the WSHRC within six months after the alleged act of discrimination (although complainants have three years to file a private action in court regardless of whether they file a complaint with the WSHRC).⁶⁰⁰

9.1.1. Key Comparisons Between WLAD and Federal Employment Discrimination Statutes

Key differences between Washington law and federal law on various aspects of employment discrimination law appear below.

Issue	Washington Statutes	Federal Statutes
How many employees must an employer have to be covered?	Eight or more. ⁶⁰¹	15 or more employees, as to race, color, religion, disability, gender, national origin, and 20 or more employees, as to age. ⁶⁰²

⁵⁹⁹ RCW 49.60.180.

⁶⁰⁰ RCW 49.60.230.

⁶⁰¹ RCW 49.60.040(11).

⁶⁰² 42 U.S.C. 2000e, 2000e(b); 29 U.S.C. § 630(b).

Issue	Washington Statutes	Federal Statutes
Is there individual liability for harassment by a supervisor or co-worker?	Yes. Supervisors can be held individually liable for discriminatory acts against employees under the WLAD because it includes any person acting in the interest of an employer in the definition of "employer". ⁶⁰³	No.
Is it specifically unlawful to "aid, abet, incite, compel, or coerce" discrimination?	Yes. ⁶⁰⁴	No.
Are there caps on punitive and compensatory damages?	The WLAD does not authorize punitive damages. ⁶⁰⁵	Title VII has caps of \$50,000- \$300,000, depending on employer size. ADEA does not authorize recovery for emotional distress, and authorizes penalties only in the form of liquidated damages. ⁶⁰⁶
Is the employer automatically liable for a hostile environment created by a supervisor?	If the employee fails to show the affirmative defense described below.	Only if employer fails to show the affirmative defense described below. ⁶⁰⁷

⁶⁰³ RCW 49.60.040(11); *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 357-58 (2001) (holding that managers and supervisors may be personally liable under the WLAD when acting in their employer's interest, recognizing that RCW 49.60.020 mandates a liberal construction of the WLAD and that the broad definition of "employer" includes any "person acting within the interest of an employer.").

⁶⁰⁴ RCW 49.60.220.

⁶⁰⁵ *Blaney v. Int'l Ass'n of Machinists and Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 87 P.3d 757 (2004)

⁶⁰⁶ 42 U.S.C. § 1981(a)(b)(3); *Vaughan v. Anderson Reg'l Med. Ctr.*, 849 F.3d 588, 594 (5th Cir. 2017); *Comm'r of Internal Revenue v. 4 Schleier*, 515 U.S. 323, 326 (1995).

⁶⁰⁷ *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998).

Issue	Washington Statutes	Federal Statutes
Can employers avoid liability for harassment by supervisors by showing they took reasonable steps to prevent and correct harassment and that the plaintiff unreasonably failed to follow those steps?	To hold an employer responsible for the discriminatory work environment created by a plaintiff's supervisor(s) or co-worker(s), the employee must show that the employer (a) authorized, knew, or should have known of the harassment and (b) failed to take reasonably prompt and adequate corrective action. This may be shown by proving (a) that complaints were made to the employer through higher managerial or supervisory personnel or by proving such a pervasiveness of harassment at the work place as to create an inference of the employer's knowledge or constructive knowledge of it and (b) that the employer's remedial action was not of such nature as to have been reasonably calculated to end the harassment. ⁶⁰⁸	Yes. An employer can avoid liability by showing (1) it took reasonable steps to prevent and correct harassment and (2) the plaintiff unreasonably failed to use the steps provided. ⁶⁰⁹
What is the deadline for filing an administrative complaint?	In Washington, an employee is not required to file an administrative complaint prior to bringing a lawsuit for state claims. Any complaint filed with the WSHRC must be filed within six months after the alleged unfair practice, except complaints alleging: • whistleblower retaliation, which must be filed within two years; and • pregnancy discrimination, which must be filed within one year.⁶¹⁰	180 days. The deadline is extended to 300 calendar days if a state or local agency enforces a state or local law that prohibits employment discrimination on the same basis.

⁶⁰⁸ *Glasgow v. Georgia-Pac. Corp.*, 103 Wn.2d 401, 407 (1985); see also *Matewos v. Nat'l Beverage Corp.*, 24 Wn. App. 2d 1008 (2022) (holding that genuine issues of material fact existed as to whether the employer's corrective action was reasonably prompt with respect to a racial hostile work environment claim.)

⁶⁰⁹ 42 U.S.C. § 2000e-5(e)(1).

⁶¹⁰ RCW 49.60.230(2)(b) and (c); RCW 49.60.180; WAC 162-08-071(5).

Issue	Washington Statutes	Federal Statutes
What is the deadline for suing after getting a right-to-sue letter?	Plaintiffs have three years from the date of alleged discrimination to file a lawsuit under the WLAD, regardless of whether they receive a right-to-sue letter.	90 days. ⁶¹¹
What is a protected disability?	A person is disabled under the WLAD if they have a sensory, mental, or physical impairment that is: • Medically recognizable or diagnosable. • Recorded in their medical records. • Perceived to exist, regardless of whether it actually exists.⁶¹²	An impairment that substantially limits a major life activity, such as walking, talking, seeing, hearing, or learning. In the case of visual impairment, one considers if ordinary corrective lenses would correct the substantial limitation. ⁶¹³

⁶¹¹ 42 U.S.C. 2000e-5(f)(1).

⁶¹² RCW 49.60.040(7)(a).

⁶¹³ 42 U.S.C. 12102(1)(A).

Issue	Washington Statutes	Federal Statutes
What statuses are protected?	The WLAD prohibits discrimination and retaliation based on: • Race, including traits historically associated or perceived to be associated with race, including, but not limited to hair texture; and protective hairstyles, for example, afros, braids, locks, and twists. • Creed (religion). • National origin. • Age. • Color. • Sex (including pregnancy). • Citizenship or immigration status. • Honorably discharged veteran or military status. • Sexual orientation, including heterosexuality; homosexuality; bisexuality; and gender expression or identity. • Marital status. • Presence of any sensory, mental, or physical disability. • Use of a trained guide dog or service animal by a person with a disability.⁶¹⁴	Federal statutes afford for protection against various classes including: • Race, color, religion, sex (including gender, sexual harassment, gender identity and expression and pregnancy, family medical history, and national orientation);⁶¹⁵ • Disability;⁶¹⁶ • Age;⁶¹⁷ • Genetic Information;⁶¹⁸ and • Familial Status.⁶¹⁹

⁶¹⁴ RCW 49.60.040 and 49.60.180.

⁶¹⁵ 42 U.S.C. 2000e *et seq.*

⁶¹⁶ 42 U.S.C. 12101 *et seq.*

⁶¹⁷ 29 U.S.C. 621 *et seq.*

⁶¹⁸ 42 U.S.C. 2000ff *et seq.*

⁶¹⁹ 42 U.S.C. 3601 *et seq.*

Issue	Washington Statutes	Federal Statutes
Must plaintiffs overtly oppose an employer's action to engage in activity protected from retaliation?	No. ⁶²⁰	Yes, but Title VII does protect employees who speak out about discrimination during an employer's investigation into another employee's complaint of discrimination. ⁶²¹
To show discrimination "because of" a protected status, must plaintiffs prove their protected status was a "but for" cause of the adverse action, or can they prevail merely by showing that their status was a "substantial motivating factor"?	Under the WLAD, a plaintiff can prevail merely by showing that their protected trait was a substantial factor motivating the employer's adverse actions. ⁶²²	Proof of merely a motivating factor where the employer would have taken the same action in the absence of that factor, does not warrant a finding of employer liability. ⁶²³

9.1.2. WLAD Coverage of Employers and Employees and Protected Bases

The WLAD applies to any employer in Washington state with eight or more employees.⁶²⁴ Certain nonprofit religious or sectarian organizations and "distinctly private" fraternal organizations are exempt.⁶²⁵

The WLAD protects individuals from employment discrimination based on race, creed, national origin, age, color, sex, marital status, sexual orientation, honorably discharged veteran or military status, presence of any sensory, mental, or physical disability, and the use of a trained guide dog or service animal by a person with a disability.⁶²⁶

As set forth in the chart above and reiterated here, the WLAD protects additional categories of characteristics as compared to federal statutes:

- Race includes traits historically associated or perceived to be associated with race, including, but not limited to:
 - Hair texture; and
 - Protective hairstyles, for example, afros, braids, locks, and twists.
- Marital Status.

⁶²⁰ RCW 49.60.210; *Alonso v. Qwest Commc'ns Co., LLC*, 178 Wn. App. 734, 749 (2013).

⁶²¹ *Crawford v. Metro. Gov't of Nashville & Davidson Cnty.*, 555 U.S. 271 (2009).

⁶²² *Demelash v. Ross Stores, Inc.*, 105 Wn. App. 508, 525 (2001).

⁶²³ *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009) (under the federal ADEA, plaintiff alleging that adverse action was "because of" his age must "establish that age was the 'but-for' cause of the employer's adverse action"); *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 657 (2020) (focusing on the more traditional but-for causation standard that continues to afford a viable, path to relief under Title VII).

⁶²⁴ RCW 49.60.040(11).

⁶²⁵ RCW 49.60.040.

⁶²⁶ RCW 49.60.040(1)(f); RCW 49.60.180. There are additional age-related protections built into [RCW 49.44.090](#) outside of WLAD.

- Use of a trained guide dog or service animal by a person with a disability.
- Honorably discharged veteran or military status.
- Sexual orientation.
- Gender identity.
- Pregnancy.
- Political Activity or affiliation.⁶²⁷

In addition to the WLAD's traditional discrimination claims akin to Title VII, the Washington Legislature affords protections to employees and job applicants with respect to their wages and other means of compensation under the Equal Pay and Opportunities Act ("EPOA"), which is detailed in Section 9.2. below.

9.1.3. Harassment

In Washington, an aggrieved employee may bring a harassment claim against their employer by alleging a hostile work environment. To establish a *prima facie* case for hostile work environment, the plaintiff must allege facts showing (1) the harassment was unwelcome, (2) the harassment was because the plaintiff was a member of a protected class, (3) the harassment affected the terms and conditions of employment, and (4) the harassment is imputable to the employer.⁶²⁸

Harassment is actionable only if it is sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment.⁶²⁹ In Washington, casual, isolated, or trivial actions do not sufficiently affect the terms or conditions of employment such that there is a violation of the WLAD. Whether the harassment is sufficiently severe and persistent is determined through a totality-of-the-facts-and-circumstances analysis.⁶³⁰

9.1.4. No Administrative Exhaustion Requirement

Under the WLAD, a complainant is not required to file an administrative charge before filing a lawsuit. However, if a complainant wants to pursue an investigation by the WSHRC, the complainant must file a charge within six months from the alleged adverse action.⁶³¹

9.1.5. No Punitive Damages

Under the WLAD, punitive damages are not available to plaintiffs.⁶³²

9.1.6. Individual Liability

Under the WLAD, supervisors can be held individually liable for discriminatory acts against employees or aiding and abetting the same.⁶³³ Additionally, coworkers may be held individually liable for aiding and abetting an employer's discriminatory conduct.⁶³⁴

⁶²⁷ RCW 42.17A.495(2).

⁶²⁸ *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 275 (2012).

⁶²⁹ *Antonius v. King County*, 153 Wn.2d 256, 261 (2004).

⁶³⁰ *Glasgow v. Georgia-Pac. Corp.*, 103 Wn.2d 401, 406–07 (1985); *Alonso v. Qwest Commc'ns Co., LLC*, 178 Wn. App. 734, 749 (2013).

⁶³¹ RCW 4.16.080(2); WAC 162-08-061, 071(5); *Goodman v. Boeing Co.*, 75 Wn. App. 60 (1994).

⁶³² *Korslund v. Dynacorp Tri-Cities Servs., Inc.*, 121 Wn.App. 295 (2004), *aff'd*, 156 Wn.2d 168 (2005); *Martini v. Boeing Co.*, 137 Wn.2d 357, (1999).

⁶³³ RCW 49.60.040(11) ("Employer" includes any person acting in the interest of an employer, directly or indirectly..."); *Brown v. Scott Paper Worldwide Co.*, 98 Wn. App. 349 (1999), *aff'd*, 143 Wn.2d 349 (2001).

9.1.7. Statute of Limitations

WLAD (Civil Action): There is a three year statute-of-limitations for claims under the WLAD filed in court.⁶³⁵ In a hostile work environment claim, where an act contributing to the claim occurs within the filing period, the entire time period of the hostile work environment (*i.e.*, including conduct occurring outside the three-year filing period) may be considered by a court for the purposes of determining liability.⁶³⁶

WLAD (WSHRC Charge): Any employment-related complaint filed with the WSHRC must be filed within six months after the alleged act of discrimination, except that complaints alleging:

1. Pregnancy discrimination must be filed within one year after the alleged unfair practice.
2. Whistleblower retaliation must be filed within two years after the alleged retaliation.⁶³⁷

9.2. Equal Pay and Opportunities Act

The Equal Pay and Opportunities Act (EPOA) ([RCW 49.58](#)) requires gender pay equity through equal pay, equal career advancement opportunities, open wage discussions, prohibited retaliation, and other protections for employee and job applicants. All employers, private and public, doing business in Washington are required to comply with the EPOA. Similarly, all employees working in Washington and job applicants seeking employment with a Washington employer are protected by the EPOA. L&I has issued detailed guidance about the EPOA.⁶³⁸

Importantly, **beginning on July 1, 2025**, the EPOA will apply to all protected classes, not just gender.⁶³⁹ In Washington, this includes age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. On and after July 1, 2025, employers should read the terms “gender” in this Chapter to include all of these protected classes.

9.2.1. Unequal Compensation Based on Gender

Under the EPOA, gender cannot be a reason for pay differences between employees with similar jobs.⁶⁴⁰ Employees are similarly employed if they have the same employer and performance of their job requires similar skill, effort, responsibility, and working conditions.⁶⁴¹ Job titles alone do not determine if employees are similarly employed.⁶⁴²

Unequal compensation between employees of different genders may be acceptable if the difference is not based on gender.⁶⁴³ Permissible factors for difference in pay may include:

- Differences in educations, training, or experience;
- Seniority;
- Merit/work performance;

⁶³⁴ RCW 49.60.220; *Brown*, 98 Wn. App. at 356.

⁶³⁵ *Adler v. Fred Lind Manor*, 153 Wn.2d 331 (2004).

⁶³⁶ *Antonius v. King Cnty.*, 153 Wn.2d 256, 262 (2004).

⁶³⁷ RCW 49.60.230(2).

⁶³⁸ Wash. Lab & Indus. Admin. Pol’y: [E.S.A.13](#).

⁶³⁹ H.B. 1905, available [here](#).

⁶⁴⁰ RCW 49.58.020.

⁶⁴¹ RCW 49.58.020(2).

⁶⁴² *Id.*

⁶⁴³ RCW 49.58.020(3).

- Compensation based on quantity or quality of production;
- Regional differences in compensation; and
- Difference in local minimum wages.⁶⁴⁴

To determine whether an employer is in violation of equal pay requirements, L&I the following factors:

- Whether comparable employees are similarly employed;
- Whether comparable/similarly employed employees are of a different gender;
- Whether the employer caused systemic gender pay discrimination through the employer's formal or informal employment policies or practices; and
- Whether there was a gender pay difference and there are no permissible job-related factors to justify the compensation difference.⁶⁴⁵

Employers bear the burden of proof to justify why pay difference exist.⁶⁴⁶

9.2.2. EPOA Key Definitions

Compensation. Under the EPOA, compensation means wages and benefits provided by an employer to an employee.⁶⁴⁷ L&I includes, but does not limit, the following as “wages” for EPOA purposes: salaries, hourly rates, commissions, and non-discretionary bonuses.⁶⁴⁸ “Benefits” include compensation given to employees not based on performance such as gifts, medical insurance plans, retirement plans, paid time off, and discretionary bonuses.⁶⁴⁹

Skills. For purposes of comparing jobs under the EPOA, skill includes, but is not limited to, factors such as experience, training, education, and ability required to perform the job.⁶⁵⁰ Skill does not mean the traditional sense of skills an employee happens to have.⁶⁵¹ Instead, it must be measured in terms of the performance requirements of a job.⁶⁵² Skills that are not necessary to perform a particular job are not relevant in determining whether the jobs are substantially similar.⁶⁵³

Effort. According to L&I, “effort” encompasses the amount of physical or mental exertion needed to perform the job. Job factors that cause mental fatigue and stress, as well as those which alleviate fatigue, are to be taken into account for purposes of equal pay determinations.⁶⁵⁴

Responsibility. L&I interprets “responsibility” as the level of discretion and accountability required in carrying out the essential functions of a job, as well as the regular duties involved. Responsibility encompasses factors such as the amount of supervision the employee receives and whether they oversee others. Additionally, responsibility includes the employee's involvement in decision-making

⁶⁴⁴ RCW 49.58.020(3)(b)(i)-(v).

⁶⁴⁵ Equal Pay and Opportunities Act (RCW 49.58): *Employer's Guide*, L&I Publication F700-216-0000 (2022).

⁶⁴⁶ RCW 49.58.020(e).

⁶⁴⁷ RCW 49.58.010(1).

⁶⁴⁸ Equal Pay and Opportunities Act (RCW 49.58): *Employer's Guide*, L&I Publication F700-216-0000 (2022).

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.*

⁶⁵¹ *Id.*

⁶⁵² *Id.*

⁶⁵³ *Id.*

⁶⁵⁴ *Id.*

processes, including policy formulation, procedural guidelines, purchasing, investments, and other related activities.⁶⁵⁵

Working Conditions. “Working conditions” refers to the environmental and situational factors typically considered when determining salary or wages. This includes aspects such as the physical surroundings and potential hazards that employees may face while performing their jobs. However, variations in the time of day that a shift is worked are generally not “differing” working conditions.⁶⁵⁶

9.2.3. Pay Negotiations

See Chapter 11, Section 1.1.a.

9.2.4. Career Advancement Opportunities

Unequal career advancement opportunities based on gender are protected under [RCW 49.58.030](#). The Washington Legislature found that limiting or providing unequal career advancement opportunities based on gender contributes to pay inequity and is thus unlawful.⁶⁵⁷ While differences in career advancement opportunities between employees of different genders may be acceptable if they are not based on gender, valid factors for such differences may include:

- Variations in education, training, or experience;
- Seniority;
- Merit or work performance; and
- Compensation based on quantity or quality of production.⁶⁵⁸

To determine whether an employer is violating equal career advancement opportunity requirements, L&I will consider the following factors:

- Whether the employer provided unequal career advancement opportunities based on gender;
- Whether there was a pattern of violations in granting career advancement opportunities based on gender;
- Whether the employer engaged in systemic discrimination through formal or informal employment policies or practices; and
- Whether there were permissible, job-related factors justifying differences in career advancement opportunities.⁶⁵⁹

Employers bear the burden of proof to explain why different career advancement opportunities are provided to employees.

9.2.5. Gender-Specific Training

Offering gender-based training may be permissible under the law if the same course is made available to all similarly-employed employees, regardless of their gender. However, providing gender-specific training exclusively to employees of one particular gender (or to some genders but not others) may be deemed a

⁶⁵⁵ *Id.*

⁶⁵⁶ *Id.*

⁶⁵⁷ RCW 49.58.030(1).

⁶⁵⁸ RCW 49.58.030(3); RCW 49.58.020(3)(a)(i)-(iii); RCW 49.58.020(3)(b)(i)-(v).

⁶⁵⁹ RCW 49.58.030(4); Equal Pay and Opportunities Act (RCW 49.58): *Employer's Guide*. L&I Publication F700-216-0000 (2022).

violation of the law. L&I has said that such practices can limit or deprive excluded employees of career advancement opportunities that would otherwise be accessible to them.⁶⁶⁰

9.2.6. Wage Discussions

Washington employers cannot prohibit employees from disclosing their wages to others.⁶⁶¹ Similarly, employers cannot require employees to sign a non-disclosure agreement or any other document that prevents employees from disclosing their wages.⁶⁶²

9.2.7. Retaliation Prohibited

Washington employers cannot retaliate, discharge, or discriminate against employees for exercising their protected rights under the law. These rights include:

- Inquiring about or filing a complaint (formally or informally) regarding an alleged violation of the law;
- Communicating with others, including coworkers, about a potential violation;
- Filing a complaint with L&I;
- Testifying or participating in an investigation or proceeding related to an alleged violation of the law; and
- Informing others about their rights under the law.⁶⁶³

Unlawful retaliation may include:

- Termination, suspension, demotion, or denial of promotion;
- Reduction of hours or compensation;
- Threatening to take, or taking action based on, the immigration status of an employee or their family member; and
- Any other adverse action against an employee for exercising or attempting to exercise their protected rights.⁶⁶⁴

In assessing whether an employer has retaliated against an employee, L&I will consider the following factors:

- Whether the employee exercised a protected right or engaged in a protected activity under the EPOA;
- Whether the employer was aware of the protected activity (this does not require knowledge of the law, only awareness of the situation); and
- Whether the employer's adverse action was connected to the employee exercising a protected right or engaging in a protected activity.⁶⁶⁵

⁶⁶⁰ Equal Pay and Opportunities Act (RCW 49.58): *Employer's Guide*. L&I Publication F700-216-0000 (2022).

⁶⁶¹ RCW 49.58.040.

⁶⁶² *Id.*

⁶⁶³ RCW 49.58.050; Equal Pay and Opportunities Act (RCW 49.58): *Employer's Guide*. L&I Publication F700-216-0000 (2022).

⁶⁶⁴ *Id.*

⁶⁶⁵ *Id.*

9.2.8. Wage and Salary History of Job Applicants

See Chapter 11, Section 1.1.e.

9.2.9. Disclosure of Salary Range in Job Postings

See Chapter 11, Section 1.1.

9.2.10. Liability and Enforcement

9.2.10.a. L&I

Applicants and employees who believe their rights under the EPOA have been violated may file a complaint with L&I.⁶⁶⁶ Affected individuals have up to four years from the date of the alleged violation to file a complaint with L&I.⁶⁶⁷

L&I is required to review and investigate all complaints to assess compliance with the EPOA.⁶⁶⁸ If, during an investigation, L&I discovers that other applicants or employees may also have been subject to violations, it can initiate a broader investigation.⁶⁶⁹ L&I may request witness testimony and require employers to provide documentation as part of the investigation process.⁶⁷⁰

L&I does not need to prove an employer's intent to discriminate to determine if a violation has occurred.⁶⁷¹ If a gender pay difference exists between similarly-employed individuals and there are no justifiable, job-related factors to explain that difference, the employer will be found to have violated the EPOA.⁶⁷²

Employers bear the burden of proof to demonstrate that no violation of the EPOA has occurred. If a violation of the EPOA is found, L&I must attempt to resolve the complaint through conference and conciliation.⁶⁷³

Any enforcement by the Department stops after an employee brings a separate lawsuit.⁶⁷⁴

9.2.10.b. Liability & Enforcement - Civil Action

While an applicant or employee may file a complaint with L&I, an individual may forego an L&I investigation and instead, bring a civil action against an employer for damages, interest, statutory penalties, costs, and reasonable attorneys' fees.⁶⁷⁵ If the employee chooses to bring a civil action, the statute of limitations is reduced from four years to three years.⁶⁷⁶

Violations of the EPOA may lead to actual damages, statutory damages equal to the actual damages or \$5,000 (whichever is greater), interest, costs, and attorney's fees, and the court may order the employer to take specific actions.⁶⁷⁷ A court may also order reinstatement and injunctive relief.⁶⁷⁸ Additionally, employers who commit wage discrimination based on gender will be guilty of a misdemeanor.⁶⁷⁹ If it is

⁶⁶⁶ RCW 49.58.060(1).

⁶⁶⁷ RCW 49.58.060(5).

⁶⁶⁸ RCW 49.58.060(1).

⁶⁶⁹ *Id.*

⁶⁷⁰ *Id.*

⁶⁷¹ Equal Pay and Opportunities Act (RCW 49.58): *Employer's Guide*. L&I Publication F700-216-0000 (2022).

⁶⁷² *Id.*

⁶⁷³ *Id.*

⁶⁷⁴ *Id.*

⁶⁷⁵ RCW 49.58.070.

⁶⁷⁶ *Id.*

⁶⁷⁷ *Id.*

⁶⁷⁸ RCW 49.58.070(1).

⁶⁷⁹ RCW 49.58.020(1).

determined that an employer committed a pattern of violations of this section, the employee is entitled to remedies.⁶⁸⁰ The statute of limitations to bring a civil action under the EPOA is three years from the date of the alleged violation.⁶⁸¹

9.3. Washington Fair Chance Act (“Ban the Box”)

See Chapter 11, Section 1.2.

9.4. Immigration Status

At the time this Book was being finalized for publication, on April 18, 2025, the Washington Legislature passed a new law that protects employees from coercion related to immigration status. The passed bill is available [here](#). Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. If the passed bill is signed into law, it would become effective on July 1, 2025. If the passed bill becomes law, we will detail the new law in future editions of this Book.

9.5. Genetic Screening

Washington employers cannot require, directly or indirectly, any applicant or employee to submit genetic information or to submit to genetic screening as a condition of employment. In Washington, “genetic information” is “inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination.” “Genetic information” does not include routine “physical measurements, including chemical, blood, and urine analysis” or drug and alcohol test results, unless such analysis and testing is to diagnose generic or inherited characteristics.⁶⁸²

9.6. Isolated Worker Protections

Washington employers with employees who work as janitors, security guards, and hotel room attendants and who spend a majority of their time working alone are required to adopt policies and provide trainings to prevent sexual harassment and assaults. Future editions of this Book will detail these requirements. In the meantime, the law is available at [RCW Chapter 49.60.515](#) and has been amended by a new session law available [here](#) (effective January 1, 2026).

9.7. Seattle Fair Employment Practices Ordinance

Washington municipalities may enact their own non-discrimination and anti-harassment ordinances. Because there are so many employers in Seattle, we detail the Seattle ordinance here.

The Seattle Fair Employment Practices Ordinance assures equal opportunities to protected individuals.⁶⁸³ Protected classes include, but are not limited to, race, sex, marital status, and political ideology.⁶⁸⁴ The ordinance specifies that employers may not:

- Discriminate against any person with respect to any matter related to employment including, but not limited to, hiring, tenure, opportunities, and promotions;
- Print or circulate any statement, advertisement, or publication relating to employment or membership that indicates any preference, limitation, specification, or discrimination based upon one of the enumerated groups; or

⁶⁸⁰ RCW 49.58.030(4)(a).

⁶⁸¹ RCW 49.58.070(1).

⁶⁸² 49.44.180.

⁶⁸³ SMC 14.04.020.

⁶⁸⁴ *Id.*

- Discriminate against a person because they opposed any practice forbidden by this Ordinance.⁶⁸⁵

Employers who are convicted of violating Seattle's Fair Employment Practices Ordinance will be punished by a civil fine or forfeiture not to exceed \$500.⁶⁸⁶

⁶⁸⁵ SMC 14.04.040.

⁶⁸⁶ SMC 14.04.210.

10. Covenant Not to Compete

Employers in Washington have several tools at their disposal to protect themselves from unfair competition. Under certain circumstances, Washington employers can require their employees to sign noncompete agreements and non-solicitation agreements to limit the risk that an employee will take valuable intellectual property or confidential information and use it to compete against the employer.

10.1. Noncompete Agreements Defined

Washington's statutory restrictions on noncompete agreements apply to more than the contracts that prohibit former employees from going to work for a competitor. Washington's restrictions apply broadly to "every written or oral covenant, agreement, or contract by which an employee or independent contract is prohibited or restrained from engaging in a lawful professional, trade, or business of any kind."⁶⁸⁷

Exemptions from these statutory requirements are available for certain non-solicitation agreements. If the agreement only prohibits solicitation of current employees to leave employment with the company or current customers to reduce or eliminate the amount of business they conduct with the employer, then it need not comply with [RCW 49.62](#).⁶⁸⁸ Notably, some agreements that are traditionally thought of as non-solicitation agreements fall under this broad definition. For example, the definition of noncompete agreements expressly includes any contract "that directly or indirectly prohibits the acceptance or transaction of business with a customer."⁶⁸⁹ Whether non-solicitation agreements are noncompete agreements in disguise and what constitute impermissible "solicitation" continue to be litigated issues in Washington, as they are in other jurisdictions.

Statutory exemptions for these restrictions are also available for confidentiality agreements, certain business sale agreements, and certain franchise agreements.⁶⁹⁰ Separate rules apply to franchisors.⁶⁹¹

10.2. Statutory Requirements for Noncompete Agreements

[RCW 49.62](#) contains several statutory requirements that must be met before a noncompete agreement may be enforced.⁶⁹²

First, only highly-paid employees may be subject to noncompete agreements. L&I announced these earnings thresholds for 2025 are \$123,394.17 for employees and \$308,485.43 for independent contractors.⁶⁹³ These earnings thresholds are automatically adjusted annually to the consumer price index.

Second, employers should be mindful of disclosure and timing requirements. The employer must disclose the terms of the noncompete agreement in writing before the employee accepts their job offer.⁶⁹⁴ As a best practice, these agreements should be provided along with the job offer.

Third, if the employee's compensation does not initially satisfy the earnings threshold, the employer must specifically disclose that the agreement may be enforceable against the employee in the future.

⁶⁸⁷ RCW 49.62.010(4).

⁶⁸⁸ RCW 49.62.010(5).

⁶⁸⁹ *Id.*

⁶⁹⁰ *Id.*

⁶⁹¹ RCW 49.62.060 (prohibiting franchisors from restricting franchisees from soliciting the franchisors' employees or employees of the franchisor's other franchisees).

⁶⁹² [RCW 49.44.190](#) contains additional requirements for noncompetition agreements for broadcasting industry employees.

⁶⁹³ RCW 49.62.010(1); <https://lni.wa.gov/workers-rights/workplace-policies/noncompete-agreements>.

⁶⁹⁴ RCW 49.62.020(1)(a)(i).

Washington provides some flexibility for employers that require current employees to sign noncompete agreements. Those employers must provide new and independent consideration in exchange for the noncompete agreement, such as, a one-time payment or other non-financial benefit that the employee is not otherwise eligible for.⁶⁹⁵ Critically, employers should not rely on continued at-will employment as consideration for noncompete agreements entered midstream through an individual's employment.⁶⁹⁶

10.3. Rule of Reasonableness

Washington's statutory scheme does not displace common law requirements that all restrictive covenants, including non-solicitation agreements, must satisfy.⁶⁹⁷ Under the common law, restrictive covenants must pass the rule of reasonableness test to ensure that the breadth of the restrictions are appropriate and balanced.

The rule of reasonableness considers:

1. whether the restraint is necessary to protect the employer's business or goodwill;
2. whether it imposes on the employee any greater restraint than is reasonably necessary to secure the employer's business or goodwill; and
3. whether enforcing the agreement would injure the public through loss of the employee's service and skill to the extent that a court should not enforce the agreement, *i.e.*, whether it violates public policy.⁶⁹⁸

To satisfy the first factor, an employer must demonstrate that it has a legitimate interest that the restrictive covenant protects.⁶⁹⁹ Employers may not rely on restrictive covenants for any reason; the agreements must specifically protect against unfair competition. For that reason, standing alone, the employee's skills, unique qualities, or training (even if provided by the employer) will not carry the day.⁷⁰⁰ Courts look to see if the agreement is necessary to protect the employer's goodwill, client relationships, and the confidentiality of its information.⁷⁰¹

The second factor focuses on the extent to which the agreement adversely affects the employee's ability to earn a living.⁷⁰² Courts typically consider three aspects of the agreement when analyzing how burdensome it is: (1) the length of the restricted period, (2) the geographic scope of the restrictions, and (3) the scope of work the employee is prohibited from performing.

Washington favors temporally-limited restrictions. Washington's statute specifies that any temporal period in a noncompete agreement longer than 18 months is presumptively overbroad, unless the employer can demonstrate by clear and convincing evidence that the lengthier restriction is "necessary to protect the party's business or goodwill."⁷⁰³ Courts may permit non-solicitation agreements to contain longer temporal restrictions.

⁶⁹⁵ RCW 49.62.020(1)(a)(i)(ii).

⁶⁹⁶ *Labriola v. Pollard Grp., Inc.*, 152 Wn.2d 828 (2004).

⁶⁹⁷ *Emerick v. Cardiac Study Center, Inc., P.S.*, 189 Wn. App. 711, 721 (2015).

⁶⁹⁸ *Id.* at 721-22.

⁶⁹⁹ *Id.* at 723.

⁷⁰⁰ *Id.* at 722.

⁷⁰¹ *Ed Nowogroski Ins., Inc. v. Rucker*, 137 Wn.2d 427, 441 (1999).

⁷⁰² *Emerick*, 189 Wn. App. at 721.

⁷⁰³ RCW 49.62.020(2).

Whether the geographic scope is reasonable depends on the nature of the employer's business and the markets it serves.⁷⁰⁴ Global noncompete agreements should be drafted with care and caution, as they are infrequently enforceable. In recognition that non-solicitation agreements are less burdensome in that they do not prevent former employees from accepting work from a competitor, geographic requirements are not always required.

Courts also consider how broadly the agreement defines the competitive work that the agreement restricts. Washington courts have not adopted several theories other jurisdictions have to invalidate noncompete agreements as overbroad and excessive. These theories include requirements that the scope of the restrictions must be reasonable in light of the specific employees' job duties as opposed to the business as a whole. In at least one case, the Washington Court of Appeals rejected such a limitation in the context of an employee's common law duty of loyalty.⁷⁰⁵

The third factor requires courts to balance possible harm to the public by not enforcing the agreement against the employer's right to protect its business.⁷⁰⁶ This rarely becomes an issue for most employers, but can create complications in certain cases. For example, if a dental clinic is the sole provider in the region and attempts to enforce a broad noncompete agreement, a court may conclude that the noncompete agreement is void because it harms the community by limiting access to vital medical care.

10.4. Risk, Enforcement, and Remedies

Even when enforceable, noncompete agreements can carry downside risk if the restrictions are not carefully crafted. This is because when restrictions are found to be overbroad, courts retain discretion to either invalidate the entire agreement or reform it so the restrictions are reasonable and balanced through blue penciling.⁷⁰⁷

In either of these cases, employees can seek \$5,000 in statutory penalties (or actual damages, if greater) as well as attorney's fees.⁷⁰⁸

10.5. Complications Arising Out of Layoffs

Washington law prohibits employers from enforcing their noncompete agreements against employees they laid off, unless they provide additional compensation. The amount of the additional compensation is the employee's base salary at the time of termination, minus any compensation the employee earns from other work during the period of enforcement.⁷⁰⁹

10.6. Other Unlawful Terms

Multistate employers should be mindful that noncompete agreements with Washington workers must be governed by Washington law and litigated in the state of Washington.⁷¹⁰

⁷⁰⁴ See *Wood v. May*, 73 Wn.2d 307, 314 (1968); *Armstrong v. Taco Time International, Inc.*, 30 Wn. App. 538 (1981) (concluding that a 25-mile geographic limitation might be insufficient to protect franchisees from competition); *Alexander & Alexander v. Wohlman*, 19 Wn. App. 670 (1978) (determining that a geographic location of the "greater Seattle area" was reasonable).

⁷⁰⁵ *David v. Freedom Vans, LLC*, 28 Wn. App. 2d 1037 (2023), review granted sub nom. *David v. Freedom Vans, LLC*, 544 P.3d 36 (Wash. 2024) (explaining that the common law duty prevents an employee from working for a competitor "with respect to the precise subject matter of the employer's mission... in the principal's direct commercial area" an employee does not escape the duty of loyalty by taking another job with different job responsibilities.).

⁷⁰⁶ *Emerick*, 189 Wn. App. at 728.

⁷⁰⁷ RCW 49.62.080(3).

⁷⁰⁸ RCW 49.62.080(1).

⁷⁰⁹ RCW 49.62.020(1)(c).

⁷¹⁰ RCW 49.62.050; Substitute Senate Bill 5935 § 4(3).

10.7. Safe-Harbor Provision

Some Washington courts have applied Washington's statutory requirements to noncompete agreements that were entered into before the laws took effect.⁷¹¹ This is a stark contrast to other jurisdictions' approaches. Courts ordinarily look at the statutory restrictions at the time the agreement was made. There are unresolved questions as to whether Washington's *ex post facto* restrictions withstand legal scrutiny.

Nonetheless, employers are provided some reprieve through a safe-harbor provision. No employee can challenge the lawfulness of a noncompete agreement entered into before January 1, 2020, if the employer does not first threaten to enforce it or leverage it.⁷¹²

10.8. Moonlighting Restrictions

An employer may not enact moonlighting restrictions that prevent an employee from accepting a second job, if they earn less than twice the applicable state minimum hourly wage.⁷¹³

Nonetheless, employers can restrict moonlighting to the extent that it raises issues of safety for the employee, coworkers, or the public or interferes with the reasonable and normal scheduling expectations of the employer.⁷¹⁴

Additionally, Washington's statute does not excuse employees from violating the other duties they owe their employer. For example, employees must still comply with their common law duty of loyalty, as well as their duties to avoid certain conflicts of interest under both the common law and the employer's policies.⁷¹⁵

10.9. Invention Assignments

Washington law restricts invention assignments. Employers cannot require employees to assign to the employer any invention for which the employee does not use employer equipment, supplies, facilities or trade secret information and that was developed on the employee's time unless the invention relates directly to the employer's business, the invention was the employer's actual or anticipated research or development, or the invention results from work performed by the employee.⁷¹⁶ If a Washington employer assigns employees' inventions as allowed by the law, then the employer must provide written notification to the employee that the assignment does not apply to inventions restricted by the law.⁷¹⁷

Employers may require employees to disclose all inventions being developed by the employee before and during employment.⁷¹⁸

10.10. Reminder of Obligations

Employers should consider providing letters reminding departing employees of their on-going obligations contained in a restrictive covenant. This practice facilitates enforcement through voluntary compliance and recognizes that many employees may not remember the terms of their agreements. It also underscores the seriousness with which an employer approaches their valuable restrictive covenants.

⁷¹¹ RCW 49.62.100.

⁷¹² RCW 49.62.080(3).

⁷¹³ RCW 49.62.070.

⁷¹⁴ *Id.*

⁷¹⁵ *Id.*

⁷¹⁶ RCW 49.44.140(1).

⁷¹⁷ RCW 49.44.140(3).

⁷¹⁸ RCW 49.44.150.

While there is no statutory requirement for employers to provide reminder-of-obligation letters, it remains a best practice.

10.11. Severance Agreements

Companies should be mindful that certain provisions contained in other standard agreements (including severance, separation, and settlement agreements) can complicate the enforcement of restrictive covenants. Overly broad integration clauses may release an employee of their obligations.

11. Hiring and Termination

When hiring employees in Washington, employers must be cognizant of legal requirements applicable to hiring practices such as the EPOA,⁷¹⁹ the Washington Fair Chance Act (“Fair Chance Act” or “Ban the Box”), and Seattle’s Fair Chance Employment Ordinance.⁷²⁰ While Washington is an employment-at-will state, employers must also be aware of legal requirements applicable to discharging an employee, such as the WLAD,⁷²¹ Washington’s final pay law, common law public policy violations associated with employment terminations, and the Silenced No More Act in conjunction with severance, separation, and settlement agreements.⁷²² Information about some of these same laws in the context of the on-going employment relationship is detailed in Chapter 9.

11.1. Hiring

11.1.1. Equal Pay and Opportunities Act

The EPOA establishes employer practices that provide equal employment and advancement opportunities. Washington amended the Act in 2022 to require employers to include salary disclosure in job postings.⁷²³ This Section details the EPOA requirements associated with hiring. For details regarding other EPOA requirements, see Chapter 9, Section 2.

Importantly, **beginning on July 1, 2025**, the EPOA will apply to all protected classes, not just gender.⁷²⁴ In Washington, this includes age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. On and after July 1, 2025, employers should read the terms “gender” in this Chapter to include all of these protected classes.

At the time this Book was being finalized for publication, on April 22, 2025, the Washington Legislature passed amendments to the EPOA that affect disclosure requirements in the EPOA. The passed bill is available [here](#). Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. Employers should be aware that when they are reading this section, there may be different requirements in place. If the passed bill is signed into law, then we will detail the new requirements in future editions of this Book.

Additionally, effective July 27, 2025, the EPOA prohibits employers from requiring employees to have a valid driver’s license as a condition of employment, unless driving is one of the essential job functions or is related to a legitimate business purpose for the position, or including prohibited statements in job postings that an applicant must have a valid driver’s license. Additional details about this newly enacted law, available [here](#), will be provided in future editions of this Book.

Importantly, the following sub-sections for Section 11.1.1 detail the law as it existed before this bill was passed by the Washington Legislature.

⁷¹⁹ RCW 49.58.

⁷²⁰ RCW 49.94.

⁷²¹ RCW 49.60.

⁷²² RCW 49.44.211.

⁷²³ RCW 49.58.110(1).

⁷²⁴ H.B. 1905, available [here](#).

11.1.1.a. Pay Negotiations

Washington employers may negotiate pay during the hiring process, but if the compensation offered to a new employee creates a gender pay gap with similarly-employed workers, any differences in pay must be based on justifiable, job-related factors rather than the negotiation itself. For additional detail about what these terms mean, see Chapter 9, Section 2.1. L&I recommends that employers take steps to address any gender pay disparities arising from hiring negotiation.⁷²⁵

Further, if an applicant discloses a competing offer's salary during the hiring process, Washington employers may match or exceed a competing job offer. Such conduct is permissible as long as any difference in compensation between similarly employed employees is not based on gender, and the pay difference can be justified by a job-related factor.⁷²⁶

11.1.1.b. Salary Ranges in Job Postings

Effective January 1, 2023, employers with fifteen or more employees must disclose certain information, including salary range or wage scale, and a general description of benefits and other compensation offered for the job position.⁷²⁷

11.1.1.c. Job Postings Covered by the EPOA

The EPOA defines “employers” as “any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in [Washington], including the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.”⁷²⁸ The term “employer” includes those who engage in business in Washington or who recruit for jobs that could be filled by a Washington-based employee.⁷²⁹

Unless an employer qualifies for the out-of-state exceptions, they cannot avoid making disclosures by indicating within the posting that the employer will not accept Washington applicants.⁷³⁰ An out-of-state exception to the disclosure requirement exists when:

- Jobs are performed entirely outside of Washington, even if the job posting reaches Washington-based applicants; and
- Hard copy postings are made and distributed entirely outside of Washington.⁷³¹

A job posting is “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.”⁷³² This includes electronic job postings.

11.1.1.d. Wage Scale or Salary Range Requirements

Under the EPOA, job postings must state the wage scale or salary range for the job. The posting must also generally describe all of the benefits and other applicants for the job.⁷³³

⁷²⁵ *Id.*

⁷²⁶ *Id.*

⁷²⁷ RCW 49.58.110.

⁷²⁸ RCW 49.58.010(5).

⁷²⁹ Wash. Lab & Indus. Admin. Pol’y: [ES.E.1\(3\)](#).

⁷³⁰ *Id.*

⁷³¹ *Id.*

⁷³² *Id.*

⁷³³ RCW 49.58.110(1).

The EPOA also requires employers who offer an employee an internal transfer to provide the wage scale or salary range for the new position.⁷³⁴

L&I has issued detailed guidance about the EPOA. This administrative policy provides that the salary range and wage scale should be the employer's most reasonable and genuinely expected range of compensation from the job.⁷³⁵ If there is an initial probationary period, employers must clearly list the "starting range" or "starting rate" along with the entire scale or range.⁷³⁶ Salary ranges and wage scales cannot be left open ended.⁷³⁷ Commission-based and piece-rate compensation must include the rate or rate range that will be offered.⁷³⁸

If a salary range or wage scale changes after a posting has been published, the employer should update the posting to reflect the change.⁷³⁹

11.1.1.e. Wage and Salary History

Under the EPOA, employers may not ask for or otherwise try to determine an applicant's wage or salary history during the hiring process—for example even looking at the salary ranges from their previous employer—or require that an applicant's wage or salary history meet a certain criterion.⁷⁴⁰ However, if an applicant voluntarily discloses their wage or salary history, employers may confirm it after an offer has been negotiated.⁷⁴¹

Additionally, employers cannot impose requirements that an applicant's prior wage or salary history meet certain criteria, such as requiring a minimum previous salary to be considered for a new position.⁷⁴²

11.1.1.f. Enforcement

See Chapter 9, Section 2.10.

11.1.2. Washington Fair Chance Act ("Ban the Box")

Sometimes employers ask applicants to disclose criminal history either on their applications, during interviews, or even through third parties (such as through background check vendors). The WA Legislature recently passed and Governor Ferguson signed into law a bill that amends the Washington Fair Chance Act. The new law becomes effective on July 27, 2025 and is available [here](#) (revisions to existing law in underline and strikethrough). We will detail the new requirements in future editions of this Book. In the meantime, a Seyfarth summary is available [here](#).

Importantly, the remaining content in the subsections of this Section 11.1.2 detail the law as it exists prior to July 27, 2025. With respect to the law in effect prior to July 27, 2025, the Washington Fair Chance Act⁷⁴³ requires employers in Washington to determine whether a job applicant is "otherwise qualified" for the position sought before asking about, or otherwise investigating, an individual's criminal history.⁷⁴⁴ An

⁷³⁴ RCW 49.58.110(2).

⁷³⁵ Equal Pay and Opportunities Act, Wash. Lab & Indus. Admin. Pol'y: [ES.E.1](#).

⁷³⁶ *Id.*

⁷³⁷ *Id.*

⁷³⁸ *Id.*

⁷³⁹ Wash. Lab & Indus. Admin. Pol'y: [ES.E.1\(5\)](#).

⁷⁴⁰ RCW 49.58.100(1).

⁷⁴¹ RCW 49.58.100(2).

⁷⁴² *Id.*

⁷⁴³ RCW 49.94.

⁷⁴⁴ RCW 49.94.010(1).

applicant is considered otherwise qualified if they meet the basic criteria for the position as set out in the advertisement or job description.⁷⁴⁵

The Washington Fair Chance Act defines employers as including “public agencies, private individuals, businesses and corporations, contractors, temporary staffing agencies, training and apprenticeship programs, and job placement, referral, and employment agencies.”⁷⁴⁶ However, some private employers, such as childcare providers and financial institutions are exempt.⁷⁴⁷

The Washington Fair Chance Act ([RCW 49.94](#)) protects job applicants with a criminal records. Specifically, the law protects against discrimination on the basis of criminal records. The Washington Fair Chance Act covers Washington employers of any size.⁷⁴⁸

11.1.2.a. Washington Fair Chance Act Key Definitions

Criminal Record. The term “criminal records” includes any record about a citation or arrest for criminal conduct, including records relating to probable cause to arrest, and any record about a criminal or juvenile case filed with any court, whether or not the case resulted in a finding of guilt.⁷⁴⁹

Otherwise Qualified. The term “otherwise qualified” means that the applicant meets the basic criteria for the position as stated in the advertisement or job description, without consideration of a criminal record.⁷⁵⁰

11.1.2.b. Unlawful Practices

During the hiring process, employers may not include any question on any application for employment, inquire either orally or in writing, or otherwise obtain information about an applicant’s criminal record until after the employer initially determines the applicant is otherwise qualified for the position.⁷⁵¹ After such a determination, the employer may inquire into or obtain information regarding the applicant’s criminal record.⁷⁵² In addition, an employer may not advertise employment openings in a way that categorically excludes individuals with a criminal record from consideration.⁷⁵³

An employer is not required to make accommodations or job modifications for an employee or an applicant who has a criminal record or pending criminal charges.⁷⁵⁴ For example, an employer would not be required to excuse an employee’s unapproved absence due to having to make an appearance in court.

The Washington Fair Chance Act should not be construed to interfere with any provision in a collective bargaining agreement or to impede on employees’ right to collectively bargain.⁷⁵⁵ The Washington Fair Chance Act allows for existing local laws and local governments to provide “additional protections to applicants or employees with criminal records,” so be sure to consult your local jurisdiction for additional restrictions.⁷⁵⁶

⁷⁴⁵ RCW 49.94.005(3).

⁷⁴⁶ RCW 49.94.005(2).

⁷⁴⁷ RCW 49.94.010(4).

⁷⁴⁸ RCW 49.94.005(2).

⁷⁴⁹ RCW 49.94.005(1).

⁷⁵⁰ RCW 49.94.005(3).

⁷⁵¹ RCW 49.94.010.

⁷⁵² *Id.*

⁷⁵³ *Id.*

⁷⁵⁴ RCW 49.94.020(3).

⁷⁵⁵ RCW 49.94.020(1).

⁷⁵⁶ RCW 49.94.030(5).

11.1.2.c. Enforcement and Penalties

The Washington Fair Chance Act does not provide an aggrieved individual with a private right of action against a covered employer;⁷⁵⁷ rather the Attorney General has the authority to enforce the laws.⁷⁵⁸ Aggrieved individuals are able to submit complaints to the Attorney General's Civil Rights Division.⁷⁵⁹

Employers that violate the Washington Fair Chance Act are subjected to a “stepped enforcement approach, by first educating violators, then warning them, then taking legal, including administrative, action.”⁷⁶⁰ On a first violation, the Attorney General will issue a warning and provide agency assistance.⁷⁶¹ Additional violations result in fines up to \$750 for a second violation and up to \$1,000 for each subsequent violation.⁷⁶²

11.1.3. Other Background Screening Laws

Washington employers have background screening restrictions on applicants and employees for certain jobs. If the expected salary of an applicant or employee is \$20,000 or less there is a 10-year limitation on bankruptcy, a 7-year limitation on convictions from date of disposition, release, or parole, and a 7-year limitation on other adverse information.⁷⁶³

Washington employers may not procure consumer reports addressing an applicant's or employee's credit worthiness, credit standing, or credit capacity unless the information is substantially job related and the employer discloses the reasons for the use of such information to the applicant or employee in writing or unless the information is otherwise required by law. Before taking any adverse action against an applicant or employee based on a consumer report, the employer must provide the applicant or employee with the name, address, and telephone number of the consumer reporting agency that provided the report, a description of the applicant's or employee's rights under Washington law, and a reasonable opportunity to respond to any information in the report that is disputed by the applicant or employee. The employer must provide written notice of the adverse action.⁷⁶⁴

Effective July 27, 2025, Washington prohibits employers from requiring employees to have a valid driver's license as a condition of employment, unless driving is one of the essential job functions or is related to a legitimate business purpose for the position. Additional details about this newly enacted law, available [here](#), will be provided in future editions of this Book.

11.1.4. Immigration

Washington does not have an E-Verify mandate for private employers.

11.2. Termination

11.2.1. Reasons for Termination Should Not Be Discriminatory

Employers may not terminate an employee based on protected characteristics.⁷⁶⁵ Under applicable federal and Washington law, protected characteristics encompass race, color, national origin, sex, gender identity or expression, sexual orientation, age, disability, religion, marital status, pregnancy, citizenship or

⁷⁵⁷ RCW 49.94.020(6).

⁷⁵⁸ RCW 49.94.030.

⁷⁵⁹ Washington Fair Chance Act Overview; <https://www.atg.wa.gov/fair-chance-act>.

⁷⁶⁰ RCW 49.94.030(2).

⁷⁶¹ *Id.*

⁷⁶² *Id.*

⁷⁶³ RCW 19.182.040; RCW 19.182.060.

⁷⁶⁴ RCW 19.182.110; RCW 19.182.020; RCW 19.182.040.

⁷⁶⁵ RCW 49.60.180; *Mackey v. Home Depot USA, Inc.*, 12 Wn. App. 2d 557, 570 (2020).

immigration status, honorably discharged veteran or military status, genetic information, and family medical leave.⁷⁶⁶ The law defines race broadly to include “traits historically associated with race” such as hair texture and protective hair styles.⁷⁶⁷ Additionally, due to recent developments in the Ninth Circuit, “disability” may include behaviors that are results of a disability.⁷⁶⁸ For additional detail on the WLAD and protected characteristics, see Chapter 9.

Along with statutory prohibitions on discrimination, Washington common law provides a cause of action for wrongful termination in violation of public policy.⁷⁶⁹ This is an exception to the at-will employment relationship.⁷⁷⁰ Employees are protected from being terminated when they:

- Refuse to commit an illegal act;
- Perform a public duty or obligation, such as serving on jury duty;
- Exercise a legal right or privilege, such as filing workers' compensation claims; and
- Engage in reporting employer misconduct.⁷⁷¹

11.2.2. Final Pay and Vacation Pay

When terminating an employee, employers must pay the wages due to the employee on account of their employment and any accrued vacation leave at the end of the established pay period.⁷⁷²

Washington employers may maintain a policy that provides for forfeiture of accrued and unused vacation at separation. Employers should follow their policies or contracts on this vacation payout because Washington courts will enforce such contracts.

11.2.3. Employment and Separation Agreements

When drafting employment and separation agreements, the Washington Silenced No More Act⁷⁷³ prohibits employers from:

- Requesting or requiring employees to enter into employee agreements with prohibited nondisclosure and non-disparagement provisions;
- Discharging, discriminating, or retaliating against an employee who discloses conduct they reasonably believed to be illegal discrimination, harassment, retaliation, a wage and hour violation, or sexual assault; or
- Attempting to enforce a provision that is prohibited by the Act, whether through a lawsuit, a threat to enforce, or any other attempt to influence a party to comply with the prohibited provision.⁷⁷⁴

The Washington Silenced No More Act covers agreements between employees and employers, including employment agreements, independent contractor agreements, settlement release claims, and other agreements made between an employer and employee (which, for purposes of this Act, includes “current,

⁷⁶⁶ RCW 49.60.180; 42 U.S.C. 2000ff; 42 U.S.C. 2000e.

⁷⁶⁷ 2019 Bill Text WA H.B. 2602.

⁷⁶⁸ *Humphrey v. Memorial Hosp. Ass'n*, 239 F.3d 1128, 1139-40 (9th Cir. 2001).

⁷⁶⁹ *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 232 (1984).

⁷⁷⁰ *Id.*

⁷⁷¹ *Strom v. Lake Washington Sch. Dist.*, 1996 Wn. App. LEXIS 787, *4.

⁷⁷² RCW 49.48.010(2); RCW 43.01.041.

⁷⁷³ RCW 49.44.211.

⁷⁷⁴ *Id.*

former, and prospective employees or independent contractors”).⁷⁷⁵ Additionally, employees are protected from retaliation when reporting illegal conduct.⁷⁷⁶

Employers may still enforce confidentiality regarding the amount paid in a settlement of a disputed claim. The law does not apply to agreements protecting trade secrets, proprietary information, or confidential information, as long as they do not involve illegal acts.⁷⁷⁷ See Chapter 10.

The Washington Silenced No More Act applies retroactively to invalidate agreements that were entered into at hiring or during employment created before June 9, 2022, but does not apply to settlement agreements to resolve legal claims.⁷⁷⁸

Employers who violate the Washington Silenced No More Act could be liable for a minimum of \$10,000 in actual or statutory damages, whichever is more, plus reasonable attorney’s fees and costs.⁷⁷⁹ These penalties do not apply to agreements that were invalidated retroactively unless an employer attempts to enforce them.⁷⁸⁰

11.2.4. WARN Act

At the time this Book was being finalized for publication, Washington did not have a state WARN Act. However, the Washington Legislature passed a state WARN Act on April 22, 2025. The passed bill is available [here](#). Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. Employers should be aware that when they are reading this section, there may be a state WARN Act in place, in which case they should follow it. We will also detail new law in future editions of this Book. If the passed bill is not signed into law, then employers should follow federal WARN.

11.3. Seattle Fair Chance Employment Ordinance

The Seattle Fair Chance Employment Ordinance restricts how employers can consider conviction and arrest records during the hiring process and course of employment within Seattle city limits.⁷⁸¹ The ordinance requires employers to perform an initial screening of applications or resumes before performing a criminal background check or requiring an applicant to provide criminal history information.⁷⁸²

The ordinance defines employers as “any individual, partnership, association, business trust, or any entity, person or group of persons, or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of an employer in relation to an employee.”⁷⁸³ However, federal, state, and local governments are exempt.⁷⁸⁴

The ordinance specifies that during the hiring process, employers may not:

- Advertise, publicize, or implement any policy or practice that categorically or automatically excludes all individuals with any arrest or conviction record from any employment position; or

⁷⁷⁵ *Id.*

⁷⁷⁶ *Id.*

⁷⁷⁷ *Id.*

⁷⁷⁸ RCW 49.44.211(11).

⁷⁷⁹ RCW 49.44.211(7).

⁷⁸⁰ 2022 c 132 § 2.

⁷⁸¹ <https://seattle.gov/laborstandards/ordinances/fair-chance-employment>.

⁷⁸² SMC 14.17.20.

⁷⁸³ *Id.*

⁷⁸⁴ *Id.*

- Carry out a tangible adverse employment action based solely on conduct relating to an arrest or criminal conviction, unless the employer has a legitimate business reason for taking such action.⁷⁸⁵

Employers who violate Seattle's Fair Chance Employment Ordinance can be liable for a minimum of \$500 in penalties.⁷⁸⁶ An employer found to be in violation for retaliation may face penalties including, but not limited to, reinstatement, front pay plus interest, and additional liquidated damages in an amount up to twice the unpaid wages.

⁷⁸⁵ *Id.*

⁷⁸⁶ SMC 14.17.050.

12. Health and Safety Laws

The Washington Industrial Safety and Health Act (WISHA) ([RCW 49.17](#)) requires all Washington employers to maintain work practices and work environments that do not endanger the health or safety of employees.⁷⁸⁷ L&I inspectors within the Division of Occupational Safety & Health (DOSH) enforce safety and health rules by inspecting workplaces without advance notice and investigating work-related deaths, injuries, and employee complaints. In Washington, WISHA covers nearly all employers and employees, including most employees who work in the private sector and those who work for the state, counties, and cities.⁷⁸⁸ Employers must provide a workplace free from recognized hazards;⁷⁸⁹ provide and use means to make their workplace safe;⁷⁹⁰ prohibit employees from entering, or being in, any workplace that is not safe;⁷⁹¹ construct the workplace so it is safe;⁷⁹² prohibit alcohol and narcotics from the workplace;⁷⁹³ prohibit employees from using tools and equipment that are not safe;⁷⁹⁴ establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice;⁷⁹⁵ control chemical agents;⁷⁹⁶ and protect employees from biological agents.⁷⁹⁷

The United States Congress created the federal Occupational Safety and Health Act (OSHA) in 1971 to develop and enforce workplace safety and health rules throughout the country. States may choose to run their own safety and health programs, as long as they are at least as effective as OSHA.⁷⁹⁸ Washington is among the 27 states to have its own OSHA-approved state plan.⁷⁹⁹ States that operate their own OSHA approved state plans are required to adopt maximum penalty levels that are at least as effective as OSHA's.⁸⁰⁰ While OSHA covers all careers and workplaces in the country, WISHA sets state-specific regulations covering the health and safety of all employees and workplaces in Washington.

12.1. Overview of the Division of Occupational Safety and Health Investigation Process

The Washington State Plan is administered by DOSH.⁸⁰¹ DOSH is responsible for the enforcement of occupational safety and health standards and utilizes the DOSH Compliance Manual to provide guidance for the enforcement program. DOSH offers three types of **consultations** to help employers provide safe and healthy workplaces:⁸⁰²

- Safety and/or Health: Focuses on physical hazards and procedures, or chemicals, noise control, or confined space.

⁷⁸⁷ RCW 49.17.010. There are additional requirements under separate laws for safety of underground workers ([RCW 49.24](#)) and safety of workers handling asbestos ([RCW 49.26](#)).

⁷⁸⁸ <https://www.osha.gov/stateplans>; WAC 296-800-100.

⁷⁸⁹ WAC 296-800-11005.

⁷⁹⁰ WAC 296-800-11010.

⁷⁹¹ WAC 296-800-11015.

⁷⁹² WAC 296-800-11020.

⁷⁹³ WAC 296-800-11025.

⁷⁹⁴ WAC 296-800-11030.

⁷⁹⁵ WAC 296-800-11035.

⁷⁹⁶ WAC 296-800-11040.

⁷⁹⁷ WAC 296-800-11045.

⁷⁹⁸ WAC 296-800-100.

⁷⁹⁹ <https://www.wolterskluwer.com/en/expert-insights/oshaapproved-state-plans-how-theyre-different>.

⁸⁰⁰ <https://www.osha.gov/penalties/>.

⁸⁰¹ <https://www.osha.gov/stateplans/wa>.

⁸⁰² <https://www.lni.wa.gov/forms-publications/F416-132-000.pdf>.

- Sprains and Strains Prevention/Ergonomics: Focuses on how the design of workstations, work practices, and work flow can create the best fit between people and their work.
- Risk Management: Focuses on safe workplace practices and profits.

DOSH conducts **inspections** without advance notice and in the following order of priority:⁸⁰³

- “Imminent danger” situations, where death or serious physical injury could happen immediately.
- Workplace fatalities and hospitalizations.
- Amputations or loss of an eye.
- Complaints and referrals concerning potentially hazardous conditions.
- Follow-up or monitoring inspections.
- Scheduled inspections.

DOSH inspections typically involve the following steps:⁸⁰⁴

- **An “Opening Conference”:** The inspector will present credentials, request permission to enter the work site, and outline the reason for and scope of the inspection. The inspector will verify the legal name of the business, the UBI number, industrial insurance account number, how many employees the business has and other general information. Other documents the inspector will ask to review include the employer’s written accident prevention program, any other required safety programs, and the employer’s injury and illness logs. Employee representatives must be included in the opening conference and the employer or employee representatives may request a separate opening conference. In such a case, both have the right to a written summary of the other’s opening conference.
- **“Walk-Around” Inspection:** The inspector will look for any potential hazards that might endanger employees and take notes and possibly photographs. The inspector will also determine whether the employer has complied with state and federal record-keeping requirements and whether the employer has posted the necessary documents, including the Job Safety and Health Law poster, that inform employees of their rights under the law.
- **Closing Conference:** The inspector will discuss any hazards discovered, ways to correct the hazards, and deadlines for correcting them. The employer also will be told of any potential monetary penalties related to any violations and how the employer can appeal the findings of the inspection.

When DOSH inspectors find a violation in a workplace, they issue a citation to the employer and a penalty may be attached.⁸⁰⁵

12.2. Division of Occupational Safety and Health Appeal Process

If DOSH inspectors find a violation in the workplace and a “citation and notice” is issued to the employer, employers can appeal those violations through a multi-step process. This process ultimately leads to a hearing before a Washington Board of Industrial Insurance Appeals “Industrial Appeals Judge,” also known as an “IAJ.” The steps employers must follow to appeal a citation and notice appear below.

⁸⁰³ <https://www.lni.wa.gov/forms-publications/F416-132-000.pdf>.

⁸⁰⁴ <https://www.lni.wa.gov/forms-publications/F416-132-000.pdf>.

⁸⁰⁵ WAC 296-800-100.

12.2.1. Who May Appeal

Employers may appeal citations and notices (C&N).

Employees of the cited employer, or their designated representatives, may appeal abatement dates.

Unlike federal OSHA, an appeal in Washington does not stay the abatement date for violations classified as serious, willful, repeat serious, or failure to abate serious. A specific request for a “stay of abatement” must be clearly included in an employer’s appeal documentation.⁸⁰⁶

12.2.2. Steps to Submitting an Appeal

Step 1: An employer must submit a written appeal to DOSH within 15 working days after receiving the C&N. The appeal must include the following information:

- Business name, address, and telephone number;
- Name, address, and telephone number of any employer representative;
- C&N number;
- What the employer believes is wrong with the C&N and any related facts;
- What the employer believes should be changed and why;
- Requests for stay of abatement (if applicable);⁸⁰⁷
 - If requesting a stay of abatement for violations classified as serious, willful, repeat serious, or failure to abate serious, the request must include: (1) each violation and item number for which a stay is requested and (2) the reason for the stay request. DOSH will review such requests and will stay the abatement date if it is unlikely that death or serious harm will affect the workers. If the stay of abatement is granted and an employer appeals, the stay will remain in place until there is a final order on the appeal. Conversely, if the stay of abatement date is denied and the employer appeals a corrective notice of redetermination further, the request for a stay of abatement date must be renewed with the Board of Industrial Insurance Appeals.⁸⁰⁸
 - A stay of abatement is not needed for violations classified as general.
- A signature and date.

Step 2: Send the appeal.

An employer may submit an appeal in any of the following ways:

1. Mail to Assistant Director for DOSH Services, Attn: DOSH Appeals, P.O. Box 44604 Olympia, WA 98504-4604;
2. Fax to 360-902-5581;
3. Email to DOSHappeals@lni.wa.gov; or
4. Taken to any department service location.

⁸⁰⁶ WAC 296-900-17005.

⁸⁰⁷ WAC 296-900-17006.

⁸⁰⁸ WAC 296-900-17010.

12.2.3. Appealing C&N Abatement Dates

Step 1: An employer may submit a written request to DOSH within 15 working days after the C&N is received. Include the following information:

- Name of employee, address, telephone number;
- Name, address, and telephone number of any designated representative;
- C&N number;
- What is believed to be wrong with the abatement date; and
- A signature and date.

Step 2: Send the appeal.

An employer can send the appeal in either of the following ways:

1. Mail to Assistant Director for DOSH Services, Attn: DOSH Appeals, P.O. Box 44604 Olympia, WA 98504-4604;
2. Fax to 360-902-5581;
3. Email to DOSHappeals@lni.wa.gov; or
4. Taken to any department service location.

12.2.4. What to Expect in an Appeal

DOSH will “reassume jurisdiction,” which means it will notify the person who submitted the appeal and provide them with an informal conference to discuss the appeal. At this conference, the parties have an opportunity to explain their positions and provide any additional information they would like DOSH to consider when reviewing the C&N and stay of abatement date requests.

DOSH may reassume jurisdiction over a C&N to do any of the following:

- Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions.
- Give an employer, affected employees, or a department an opportunity to resolve appeals rapidly.
- Educate employers about C&N, the DOSH appeals process, and DOSH compliance.
- Review citations, penalties, and abatement dates.
- Review requests to stay abatement dates.

An alternative course of action is that DOSH may forward the appeal directly to the BIA, and the Board will send a notice containing a time and location for any board proceedings.

12.2.5. Timeline

DOSH has 30 working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The period may be extended for up to an additional 45 days, so long as everyone agrees within the initial 30-day period. Either on or before the initial 30-day review period, or up to 75 working days later (provided everyone agreed to the extension), DOSH will issue a “corrective notice of redetermination” (“CNR”), which reflects any changes to the C&N and grants or denies requests to stay abatement dates (including the basis for that decision).

The CNR is sent to the employer, employees, and employee representatives who participated in the appeal process.

12.2.6. Post-Decision Options

An appeal must be filed with the BIIA within 15 working days of receipt of the CNR.⁸⁰⁹ The appeal should include:

- The name and address of the appealing party (and representative).
- The inspection number and date of the CNR being appealed.
- The reasons why L&I's decision is incorrect.
- The name and address of any union representing affected employees.
- The county in which proceedings should be held.

12.2.6.a. Notice to Employees

Every employer who files an appeal with the BIIA must notify its employees by either:

- Providing copies of the appeal to each employee member of the employer's safety committee; or
- Posting a copy of the appeal in a conspicuous place at the worksite at which the alleged violation occurred. Any posting must remain during the pendency of the appeal.

12.2.6.b. Certification of Unions and Notice to Employees

Within 14 days of receipt of the BIIA's notice acknowledging an appeal, every employer must:

1. Certify to the BIIA that employees have been notified.
2. Certify to the BIIA whether affected employees are represented by unions, and if so, provide the names and addresses of unions.

12.2.6.c. Requesting Stay of Abatement

A stay of abatement can be requested for any alleged serious, willful, repeated serious violation, or alleged failure to abate a serious violation. There are strict requirements to make this request under WAC 263-12-059, and these requirements must be followed.

12.2.7. Posting Requirements

Employers are required to immediately post notices and information related to any appeal or stay of abatement date request in the same place where they post the C&N. The notices must include: (1) the notice of appeal until the appeal is resolved, (2) notices about DOSH reassuming jurisdiction and any extension to the review period that has been agreed upon, (3) a notice of an informal conference, and (4) a corrective notice of redetermination.⁸¹⁰

12.2.8. Untimely Appeals

An appeal must be filed with L&I within 15 working days of receipt of the C&N. If the employer doesn't respond within that time, the citation and assessment become final and cannot be reviewed by any court or agency.⁸¹¹ A submission of a notice of appeal by mail is not considered "mailed" if the envelope has

⁸⁰⁹ WAC 263-12-059.

⁸¹⁰ WAC 296-900-17015.

⁸¹¹ RCW 49.17.120.

insufficient postage and is returned to the sender. The mailing of the notice of appeal with sufficient postage must occur within the 15-day period for it to be considered timely.⁸¹² Sending an email to an incorrect address, even if using the correct email domain, within the 15-day timeframe does not meet the appeal requirements.⁸¹³ The email must be sent to the correct address within 15 days in order to be considered timely.

If WISHA citations are mailed to the locations where the inspections occurred, rather than to the corporate headquarters, the citations are considered to be properly communicated. As a result, the strict 15-day limitation for appeals applies.⁸¹⁴ If the citation is mailed to the corporate headquarters, that is also considered proper communication; thus, the 15-day limitation for appeals apply.⁸¹⁵ The timeliness of an appeal is contingent upon whether the entity receiving the citation had the authority to accept it on behalf of the employer. Specifically, if a UPS Store had the authority to accept certified mail for an employer, and the employer did not file the appeal within the 15-day appeal period, the appeal would be considered untimely. Conversely, if the UPS Store lacked such authority, the appeal could be timely.⁸¹⁶

If an employer fails to file a timely WISHA appeal, the Board or the courts are prohibited from exercising jurisdiction.⁸¹⁷

Under [RCW 51.52.104](#) and [RCW 51.52.106](#), the BIIA has the authority to review and amend citations to conform to the evidence presented, provided the employer had a fair opportunity to address the issues and was not prejudiced in its defense.⁸¹⁸

L&I will either take further action or send the appeal to the BIIA. If L&I takes further action, it will issue a CNR; L&I has 30 days to so.⁸¹⁹ The employer must file an appeal with the BIIA within 15 working days of receipt of the CNR, if it wants to appeal the redetermination.⁸²⁰ If L&I takes no further action or is unable to complete the redetermination process within the required time period, it must forward the appeal directly to the Board.⁸²¹ However, due to changes in legislation, parties can now agree to extend the time to complete redetermination for an additional 45 days.⁸²²

12.3. Top 10 Most Cited Safety and Health Regulations in Washington

12.3.1. Accident Prevention Program (APP) – Construction

Employers must create and document in writing a tailored accident-prevention program based on their specific plant or operation and hazard types. The minimal program elements for all employers shall include a safety orientation program that provides reporting procedures, personal protective equipment use, emergency actions, and hazardous material handling.⁸²³

⁸¹² *Waste Connections of Wash., Inc. v. Dep't of Lab. & Indus.*, 5 Wn. App. 2d 902 (2018).

⁸¹³ *Kast v. Washington State Dep't of Lab. & Indus.*, 26 Wn. App. 2d 1046 (2023).

⁸¹⁴ *In re: Rhino Linings of Northwest, Inc.*, BIIA Dec., 04 W2061, 04 W0262, 04 W0356 (2006).

⁸¹⁵ *In re: Discount Tire Co. of Wash., Inc.*, BIIA Dec., 05 W1191 (2006).

⁸¹⁶ *In re: Stoneridge Contractors, LLC*, BIIA Dec., 16 W0085 (2017).

⁸¹⁷ *Waste Connections of Wash., Inc. v. Dep't of Lab. & Indus.*, 5 Wn. App. 2d 902 (2018).

⁸¹⁸ *In re: Guy F. Atkinson Construction, LLC*, BIIA Dec., 04 W0274 (2006).

⁸¹⁹ <https://biia.wa.gov/documents/Publications/WISHAAppeal.pdf>.

⁸²⁰ <https://biia.wa.gov/WISHA.html>.

⁸²¹ *The Erection Co. v. Dep't of Lab. & Indus.*, 121 Wn.2d 513 (1993).

⁸²² RCW 49.17.140.

⁸²³ See WAC 296-155-110 for further details.

12.3.2. Chemical Hazard Communication

At a minimum, employers are required to develop and follow a written Chemical Hazard Communication Program when employees work with or around hazardous chemicals.⁸²⁴ Employers who import, manufacture, or distribute hazardous chemicals have additional responsibilities. Employers must provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard the employees have not previously been trained about is introduced into their work area.⁸²⁵

12.3.3. Fall Protection at Four Feet or More

Employers must provide fall arrest systems, fall restraint systems, or positioning device systems when employees are exposed to fall hazards.⁸²⁶ Employees must be protected from falling into or through holes four feet or more to the ground by a guardrail system, a cover, a warning line system, or personal fall arrest systems or personal fall restraint systems.⁸²⁷ Some employees are exempt from fall protection requirements during the initial installation or disassembly of the fall protection anchor and when inspecting, investigating, or assessing conditions on low pitch roofs before or after work activities.⁸²⁸

12.3.4. Safety Committees and Safety Meetings

If the employer falls under general industry safety requirements (*i.e.*, not construction or agriculture), the employer is required to have a safety committee if eleven or more employees work during the same shift at the same location. If there are ten or fewer employees in either the same shift or the same location, then the employer may choose to safety meetings instead of a safety committee.⁸²⁹ Safety meetings should be held monthly with at least one management representative, where the committee reviews safety reports, evaluates accident investigations and prevention programs, and documents attendance and discussion topics.⁸³⁰

12.3.5. Fall Protection at 10 Feet or More and Training

Employers are required to create and implement a detailed fall protection plan for workplaces with fall hazards of ten feet or more, which includes identifying hazards, outlining safety procedures, and ensuring on-site availability for inspection. Before employees can enter these areas, they must be trained in these safety procedures.⁸³¹

12.3.6. Personal Protective Equipment (PPE)

Before PPE is used, employers must conduct and document a PPE assessment to identify hazards, determine what PPE is appropriate, and provide and document training to ensure correct use and maintenance.⁸³²

⁸²⁴ WAC 296-901-14010; Visit https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.lni.wa.gov%2Fsafety-health%2F_docs%2FHT9-CR.doc&wdOrigin=BROWSELINK for a sample Chemical Hazard Communication Program.

⁸²⁵ WAC 296-901-14016.

⁸²⁶ WAC 296-880-20005.

⁸²⁷ WAC 296-880-20005.

⁸²⁸ WAC 296-880-20010.

⁸²⁹ WAC 296-800-130.

⁸³⁰ WAC 296-800-13025.

⁸³¹ WAC 296-880-10020.

⁸³² WAC 296-800-160; Visit https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.lni.wa.gov%2Fsafety-health%2F_docs%2FHazAssessForPPE.doc&wdOrigin=BROWSELINK to see if the employees need to use PPE.

12.3.7. Accident Prevention Program – General Industry

Every employer in Washington is required to create an effective written Accident Prevention Program (APP) to address the safety and health hazards found in their workplace.⁸³³ Employers must also develop, supervise, implement, and enforce safety and health training programs that are effective in practice.⁸³⁴

12.3.8. Specific Fall Protection Requirements

Employers have industry-specific fall protection requirements.

- **Construction Work:** The construction safety standards mandate employers to provide fall protection systems when employees are exposed to fall hazards of six feet or more while engaged in roofing work or constructing a leading edge.⁸³⁵
- **Elevating Work Platforms:** The employer must ensure that all persons operating an order picker are protected by standard guardrails on all open sides, or a full body harness and lanyard that are connected to a tie-off point that has been approved by the PIT manufacturer.⁸³⁶
- **Power Platforms:** Employers must prohibit employees from using the installation until the required written certifications are provided by the building owner. Employees on working platforms must be protected with a personal fall arrest system that meets the requirements of WAC 296-880-40020. Additionally, employees working on a roof or other elevated working surface four feet or more above a lower level must be protected in accordance with WAC 296-880-200.⁸³⁷
- **Window Cleaning:** For window cleaning activities in buildings where the work is done more than four feet above ground level, employers must ensure that employees working on elevated surfaces are protected.⁸³⁸
- **Scaffolds:** Employers must protect each employee on a scaffold from falling ten feet or more to a lower level, by providing either a personal fall arrest system or guardrails. The employer must additionally provide fall protection for persons erecting or dismantling supporting scaffolds.⁸³⁹
- **Cranes:** For nonassembly/disassembly work, employers must provide fall protection for employees six feet or more above a lower level. Specific rules apply when moving point-to-point and while at a work station on any part of the crane. For assembly/disassembly work, employers must provide fall protection for employees ten feet or more above a lower level.⁸⁴⁰
- **Telecommunications:** There are minimum requirements for employers to protect employees from the hazards associated with working on communication towers, structures, and poles. This includes antenna and antenna supporting structures and broadcast and other similar structures that support communication-related equipment and during construction, alteration, repair, operation, inspection, maintenance, demolition activities, and any other activities connected to

⁸³³ WAC 296-800-140; WAC 296-800-14025.

⁸³⁴ WAC 296-800-14020.

⁸³⁵ WAC 296-880-30005.

⁸³⁶ WAC 296-880-30010.

⁸³⁷ WAC 296-880-30020.

⁸³⁸ WAC 296-880-30025.

⁸³⁹ WAC 296-880-30030.

⁸⁴⁰ WAC 296-880-30035.

accomplishing related work.⁸⁴¹ Facilities involving telecommunications work must also abide by certain guidelines.⁸⁴²

- **Ship Repairing, Shipbuilding, and Shipbreaking:** Employers in ship repairing, shipbuilding, and shipbreaking industries must provide fall protection for employees working at elevations over five feet and ensure the guarding of deck openings and edges. Additional safety measures include the use of guardrails and personal flotation devices, and the provision of safe walking surfaces where floor plates or gratings have been removed.⁸⁴³
- **Longshore, Stevedore, and Waterfront Related Operations:** Employers must ensure employees working at heights wear a harness and lanyard. Employers must provide guardrails at locations where employees are exposed to falls, with exceptions for certain areas, and where impractical, alternate fall protection must be used. The guardrails and stair railings must meet specific criteria regarding construction, height, and strength, and toeboards should be provided when there's a risk of falling objects.⁸⁴⁴
- **Ski Area Facilities and Operations:** Employers must mandate the use of personal fall arrest or restraint systems for employees working at heights of four feet or more in ski areas and facilities, with exceptions for standard lift chair use and emergency situations. Employers should meet specific requirements for guardrails and lanyard attachment rings on ski lift aerial work platforms, and for the use of personal fall protection systems when passengers' positions are not protected by a standard guardrail.⁸⁴⁵

12.3.9. Portable Ladder Use

Employers must ensure that a portable ladder is being used safely for its intended purpose without exceeding the maximum load or manufacturer's rated capacity.⁸⁴⁶ Employers must protect ladders that are set up in a location where they could be displaced by workplace activities or traffic according to set guidelines. Employees must use nonconductive ladders near energized lines or equipment, but if this poses a greater hazard, conductive ladders may be used if they are clearly marked, grounded, and designed for grounding or static electricity dissipation.⁸⁴⁷

12.3.10. First-Aid

Employers must make sure that first-aid trained personnel are available to provide quick and effective first aid, appropriate first-aid supplies are readily available, emergency washing facilities are functional and readily accessible, emergency washing facilities are inspected and activated, and supplemental flushing equipment provides sufficient water.

12.4. Workplace Safety Laws Stricter than Federal OSHA

Washington is among several states that has an approved State Plan to protect the safety and health of employees in the workplace. General Industry, Agricultural Industry, and the Construction Industry have

⁸⁴¹ WAC Chapter 296-32.

⁸⁴² WAC 296-32-22535.

⁸⁴³ WAC 296-880-30045.

⁸⁴⁴ WAC 296-880-30050.

⁸⁴⁵ WAC 296-880-30055.

⁸⁴⁶ WAC 296-876-40005.

⁸⁴⁷ WAC 296-876-400.

unique standards that differ from federal OSHA.⁸⁴⁸ Washington's State Plan is stricter than federal OSHA for many areas of workplace safety.

Washington's safety and health rules apply to private, state, and local government workers. However, the State Plan does not cover federal government workers, who are covered by federal OSHA. Within the same vein, issues that are not covered by Washington's rules are covered by federal OSHA.

Finally, state enforcement is exempt at employers' establishments that are federally recognized as Indian Tribes (or enrolled members of these tribes), within the boundaries of the Hanford Reservation, and the Hanford National Monument.

Washington has adopted many rules that are stricter than analogous federal OSHA rules, such as heat illness protection, wildfire smoke protection, accident prevention programs, and safety committees. There are other rules that are stricter than federal OSHA rules, but the following are the major rules that apply to the vast majority of employers, regardless of industry.

12.4.1. Heat Illness

Washington's heat illness accident prevention plan requirement has been in place since July 2008. The 2008 rule only applied to certain industries and workplaces and was only effective during summer months.

On June 27, 2023, L&I adopted a new set of heat exposure rules vastly expanding requirements for heat illness protection. These new rules went into effect on July 17, 2023. The changes to the Outdoor Heat Exposure have notable differences from the previous rule. To begin, the rules no longer apply to select industries and now apply to all employers who have employees exposed to outdoor heat. In addition, the rules now apply year-round instead of only between May 1st through September 30th.

12.4.1.a. Action Threshold Temperature Levels

The new rules require employer action when the outdoor temperature reaches 80 degrees Fahrenheit, regardless of the worker's form of clothing. Alternatively, when an employee is wearing non-breathable clothing, including vapor barrier clothing or personal protective equipment (PPE) that does not breathe, the employer must take action if the outdoor temperature is 52 degrees Fahrenheit.⁸⁴⁹

12.4.1.b. Heat Exposure Safety Program

Employers are required to include an outdoor heat exposure safety program in their written accident prevention program in a language that the employees understand.⁸⁵⁰ The program must contain (at a minimum):

- Procedures for providing cool drinking water;
- Procedures for providing shade to reduce body temperature;
- The emergency response procedures for an employee demonstrating signs or symptoms of heat-related illness;
- Acclimatization methods and procedures;⁸⁵¹

⁸⁴⁸ See [Washington State Plan](#) for more information.

⁸⁴⁹ WAC 296-307-09730.

⁸⁵⁰ *Id.*

⁸⁵¹ Acclimatization is the body's temporary adaptation to working in heat. Acclimatization occurs after 7 to 14 days of work in heat but can be lost after 7 consecutive days away from working in the heat.

- High heat procedures; and
- The method that the employer uses to observe signs and symptoms for heat-related illness.

Employers must encourage and allow their employees to take preventative cool-down rest periods when the employee feels the need to do so in order to prevent overheating. This rest period must be paid unless it is taken during a meal period.

12.4.1.c. Requirements for Shade, Drinking Water, and Acclimatization

- **Shade:** Employers with employees exposed to outdoor heat above the threshold temperature must provide and maintain a shaded area at all times when employees are present. The shade must be located as close as practicable to the areas where the employees are working and must be either open to the air or have artificial ventilation or cooling. The size of the shaded area must be large enough to accommodate the full number of employees on a meal or rest period. In lieu of shade, employers may use means that are equally or more effective than shade (such as misting stations, cooling vests, or air-conditioned areas).⁸⁵²
- **Drinking Water:** Employers must supply access to at least one quart of cool drinking water per employee per hour. Employers must ensure that all employees have the opportunity to drink at least a quart of water per hour.⁸⁵³
- **Acclimatization:** Employers must closely observe employees for 14 days for signs and symptoms of heat-related illness when employees are either (1) newly assigned to work at or above the threshold temperatures or (2) when employees return to work after being away from work for seven or more consecutive days.⁸⁵⁴ Employers must also closely observe employees for signs and symptoms of heat-related illness during a heat wave.⁸⁵⁵ It is not entirely clear what L&I means by “closely observe,” but recommendations contained in L&I’s fact sheets include implementing a “buddy system,” ensuring employees have radios or other means of communication, or regular supervisor site-walks.

12.4.1.d. High Heat Procedures

Employers must implement additional measures when temperatures exceed 90 degrees Fahrenheit.⁸⁵⁶

12.4.1.e. Mandatory Cool-Down

Mandatory cool-down rest periods (referenced below), unless engineering or administrative controls – such as air-conditioning – are used to lower the employees’ exposure to temperatures below 90 degrees Fahrenheit.

- When the outdoor air temperature is at or above 90 degrees Fahrenheit, the employee must have a 10-minute cool-down rest period every two hours.
- When the outdoor air temperature is at or above 100 degrees Fahrenheit, the employee must have a fifteen-minute cool-down rest period every hour.

⁸⁵² WAC 296-307-09735.

⁸⁵³ WAC 296-307-09740.

⁸⁵⁴ WAC 296-307-09745.

⁸⁵⁵ “Heat wave” refers to days when the predicted high temperature is at least at the “action threshold temperature level” and at least 10 degrees Fahrenheit higher than the average daily high temperature in the preceding 5 days.

⁸⁵⁶ WAC 296-62-0947.

These cool-down rest periods may be provided at the same time as any other required meal or rest period and must be paid unless taken during a meal period.⁸⁵⁷ In addition, employers must closely observe employees for heat-related illness through either regular communication with employees who work alone, through a mandatory buddy system or via other effective means.

12.4.1.f. Responding to Signs and Symptoms of Heat-Related Illness

Employers must ensure effective communication with employees at the work site for purposes of reporting signs and symptoms of heat-related illness and to get medical attention when necessary.⁸⁵⁸ Electronic devices (including cell phones and text messaging) may be used for this purpose only if reception in the area is reliable. Employees exhibiting signs or symptoms of heat-related illness must be relieved from duty and monitored to determine whether medical attention is necessary.

12.4.1.g. 12.41.g. Information and Training

All employees and supervisors who may be exposed to outdoor heat must be trained on appropriate emergency response procedures prior to working outdoors.⁸⁵⁹ Training must reoccur at least annually after the initial training.

Employee training must:

- Include information on the environmental factors and work conditions that contribute to heat-related illness.
- Provide a general awareness of personal factors that may increase an individual's susceptibility to heat-related illness.
- Explain the importance of removing heat-retaining PPE – such as hard hats, non-breathable clothing, and waterproof boots, the importance of frequently drinking water, and the importance of acclimatization. Specifically, employees should understand the importance of frequent cool-down rest periods and when they are available;
- Explain the employer's procedures for providing shade; and
- Provide information on the different types of heat-related illness, the common signs and symptoms, the importance of immediately reporting these signs or symptoms, and the appropriate procedure to follow for first aid and emergency response.

Simply telling employees that if they get thirsty, they need to stop and get water constitutes as insufficient training and may lead to citations.⁸⁶⁰

In addition to the training for employees, supervisors of employees working outdoors must be trained on the procedures to follow if an employee is showing signs or symptoms of heat-related illness. Supervisors must also be trained on the importance of considering engineering or administrative controls, such as air-conditioning and scheduling work during cooler hours of the day. Supervisors should be familiar with procedures for moving employees to a place where they can be reached by emergency medical service providers, if necessary.

⁸⁵⁷ Mandatory cool-down rest periods are not required during emergency response operations.

⁸⁵⁸ WAC 296-62-09550.

⁸⁵⁹ WAC 296-62-09560.

⁸⁶⁰ *In Re: Hood Canal Oyster Co., Inc.*, BIIA Dec., 08 W0028 (2009).

12.5. Wildfire Smoke

Washington employers have a responsibility to protect their workers from wildfire smoke.⁸⁶¹

12.5.1. Covered Workplaces

The wildfire smoke rules apply to employers that have employees working in outdoor environments. Workplaces where doors or windows are opened frequently, such as public transportation, are not exempt from the rules, as these locations can have similar air quality to the outdoors.

Indoor workplaces, where doors and windows remain closed, are not covered by this rule. Firefighting, when under the scope of chapter 296-305 WAC, is exempt from the wildfire smoke rules. The wildfire smoke rules do not apply to wildland firefighters or to other workers performing prescribed burns. However, the rules do apply to workplaces impacted by smoke from prescribed fires.

12.5.2. Requirements

Employers are required to have provisions for prompt medical attention for employees who display symptoms of wildfire smoke exposure. Specifically, when the PM_{2.5} level is 20.5 ug/m³ (AQI 69) or more, employers are encouraged to implement exposure controls. If the PM_{2.5} level reaches 35.5 ug/m³ (AQI 101) or more, employers must implement effective exposure controls. These controls can include providing enclosed buildings, structures, or vehicles where the air is adequately filtered, providing portable HEPA filters in enclosed areas, relocating work to a location with a lower ambient air concentration of PM_{2.5}, changing work schedules to a time with a lower ambient air concentration of PM_{2.5}, and avoiding or reducing outdoor work.

Employers are also required to prepare a written wildfire smoke response plan, provide wildfire smoke training to employees, watch the PM_{2.5} conditions and forecasts, prepare a two-way communication system, and make provisions for prompt medical attention. Employees are encouraged to report symptoms of wildfire smoke exposure so that appropriate responses can be made.

12.5.3. Claims

Employees have the right to file a workers' compensation claim to have wildfire-related symptoms evaluated. Employers cannot prevent employees from or retaliate against employees for filing a workers' compensation claim. In most cases, L&I will pay for employee's initial medical evaluation, even if the claim is denied. If employee's claim is allowed, the workers' compensation system will cover medical bills directly related to the condition and partial wage replacement benefits if employee cannot work.

12.5.4. Training

Employers must provide training regarding wildfire smoke before work that exposes the worker to a current PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more at least once a year and in a language that the workers can readily understand. The training must cover:

1. The health effects and adverse symptoms of wildfire smoke exposure.
2. The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure.
3. The right to obtain medical treatment without fear of reprisal.
4. The requirements of the Wildfire Smoke Rule.

⁸⁶¹ The entirety of the rules can be found at WAC Chapter 296-820, available [here](#).

5. How employees can obtain the current PM_{2.5}, and the employer's methods to communicate the current PM_{2.5}.
6. The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke and the exposure symptom response procedures.
7. The importance, benefits, and limitations of using a properly-fitted respirator when exposed to wildfire smoke.
8. The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation.
9. How to properly put on, use, and maintain the respirators provided by the employer.

Supervisors must receive additional training such as:

1. The procedures the supervisor must follow to implement the applicable provisions of the Wildfire Smoke Rule.
2. The procedures the supervisor must follow if an employee exhibits adverse symptoms of wildfire smoke exposure.
3. Procedures for moving or transporting employees to an emergency medical service provider, if necessary.

12.6. Fall Protection

Washington recently updated its Unified Safety Standards for Fall Protection to consolidate and bring fall protection requirements for various industries into alignment.⁸⁶²

12.6.1. General Requirements

There are several requirements that apply to all industries. Generally, employers are required to "ensure that all surfaces on which employees will be working or walking on are structurally sound and will support them safely prior to allowing employees to work or walk on them."⁸⁶³ Details on inspection criteria as well as additional factors for employers to abide by in their workplaces can be found within the rules.

12.6.2. Fall Protection Training

Employers must provide fall protection training for employees exposed to fall hazards.⁸⁶⁴ Prior to an employee being allowed to perform work that requires the use of fall protection, the employee must:

1. Demonstrate an understanding of the training specified above; and
2. Demonstrate the ability to use fall protection properly.

A citation based on the failure to document that workers were properly trained and warned regarding proper fall protection can be cited as a serious violation.⁸⁶⁵ Under WISHA, a repeat violation for fall protection occurs when an employer is cited for the same type of hazard more than once, regardless of the specific conduct involved. Failure to comply can result in citations and increased penalties for repeat offenses.⁸⁶⁶

⁸⁶² The entirety of the rules can be found under WAC Chapter 296-880, available [here](#).

⁸⁶³ WAC 296-880-10005.

⁸⁶⁴ WAC 296-880-10015(3).

⁸⁶⁵ *In re North Coast Iron Corp.*, BIIA Dec., 14 W1086 (2016).

⁸⁶⁶ *Cobra Roofing Servs., Inc. v. State Dep't of Lab. & Indus.*, 157 Wn. 2d 90 (2006).

The training must be conducted by a person who is competent on matters of fall protection.⁸⁶⁷ This can be an employee or a third-party.

Employees who use fall protection need to be retrained when necessary, such as when they are involved in an incident involving fall protection or are seen improperly utilizing fall protection equipment.⁸⁶⁸

Retraining can also be provided by an employee or a third-party.

Employers must document fall protection training. The document must include:

- Name of each employee
- Date(s) of training
- Subject(s) of the training; and
- Name or signature of the competent person who conducted the training, signature of the employer, or employer's designee.⁸⁶⁹

12.6.3. Specific Job Requirements

L&I's unified fall protection rule addresses specific fall protection requirements for particular job duties or industries that are not addressed under the rule's general requirements.⁸⁷⁰ The requirements include:

- **Construction Work:** The construction safety standards mandate employers to provide fall protection systems when employees are exposed to fall hazards of six feet or more while engaged in roofing work or constructing a leading edge.⁸⁷¹
- **Order Pickers (PITS):** The employer must ensure that all persons operating an order picker are protected by standard guardrails on all open sides, or a full body harness and lanyard are connected to a tie-off point that has been approved by the PIT manufacturer.⁸⁷²
- **Elevating Work Platforms:** Before elevating any platform, the employer must ensure all persons on the platform wear a full body harness with a lanyard attached to either the manufacturer's recommended attachment point or the boom/platform if no attachment point is specified.⁸⁷³
- **Powered Platforms:** Employers must prohibit employees from using the installation until the required written certifications are provided by the building owner. Employees on working platforms must be protected with a personal fall arrest system that meets the requirements of WAC 296-880-40020.⁸⁷⁴
- **Window Cleaning:** For window cleaning activities in buildings where the work is done more than four feet above ground level, employers must ensure that employees working on elevated surfaces are protected, workers suspended from a boatswain's chair or rope descent system use an independent fall arrest system where the fall arrest anchorage is separate from the suspension system anchorage, workers assemble and wear their personal fall arrest equipment

⁸⁶⁷ WAC 296-880-10015(2)(a)-(h).

⁸⁶⁸ WAC 296-880-10015(4)(a)-(c).

⁸⁶⁹ WAC 296-880-10015(5).

⁸⁷⁰ WAC 296-880-300.

⁸⁷¹ WAC 296-880-30005.

⁸⁷² WAC 296-880-30010.

⁸⁷³ WAC 296-880-30015.

⁸⁷⁴ WAC 296-880-30020.

before they approach the point of suspension, and workers are connected at all times to the fall arrest system while they are suspended.⁸⁷⁵

- **Scaffolds:** Employers must protect each employee on a scaffold from falling ten feet or more to a lower level, by providing either a personal fall arrest system or guardrails. The employer must additionally provide fall protection for persons erecting or dismantling supporting scaffolds.⁸⁷⁶
- **Cranes:** For nonassembly/disassembly work, employers must provide fall protection for employees six feet or more above a lower level. Specific rules apply when moving point-to-point and while at a work station on any part of the crane.⁸⁷⁷
- **Telecommunication Requirements:** There are minimum requirements for employers to protect employees from the hazards associated with working on communication towers, structures, and poles.⁸⁷⁸ Facilities involving telecommunications work must also abide by certain guidelines.⁸⁷⁹
- A telecommunications employer was cited for fall violations under standards for operations involving construction work. It was not necessary to amend to a fall protection standard specific to the telecommunications industry because the work being performed when the violation occurred met the broad and inclusive definition for construction work found in WAC 296-115-012.⁸⁸⁰
- **Ship Repairing, Shipbuilding, and Shipbreaking:** Employers in ship repairing, shipbuilding, and shipbreaking industries must provide fall protection for employees working at elevations over five feet and ensure the guarding of deck openings and edges.⁸⁸¹
- **Longshore, Stevedore, and Waterfront-Related Operations:** Employers must ensure employees working at heights wear a harness and lanyard. Employers must provide guardrails at locations where employees are exposed to falls, with exceptions for certain areas, and where impractical, alternate fall protection must be used.
- **Ski Area Facilities and Operations:** Employers must mandate the use of personal fall arrest or restraint systems for employees working at heights of four feet or more in ski areas and facilities, with exceptions for standard lift chair use and emergency situations.

12.6.4. Threshold Height

Many fall protection requirements are based on a threshold height. A quick reference guide for the general and specific requirements based on threshold height can be found under WAC 296-880-090. Additionally, the rules include specific requirements for fall hazards that are four feet or more and⁸⁸² six feet or more,⁸⁸³ Several job duties permit employees to wear fall protection when working ten feet or more above the ground.⁸⁸⁴

⁸⁷⁵ WAC 296-880-30025.

⁸⁷⁶ WAC 296-880-30030.

⁸⁷⁷ WAC 296-880-30035.

⁸⁷⁸ WAC Chapter 296-32.

⁸⁷⁹ WAC 296-32-22535.

⁸⁸⁰ *In re Evergreen Utility Contractors*, BIIA Dec., 98 W0016 (1999).

⁸⁸¹ WAC 296-880-30045.

⁸⁸² WAC 296-880-20005.

⁸⁸³ WAC 296-880-30005(1).

⁸⁸⁴ Steel erection and trenching: WAC 296-880-30005(1); working on scaffolding: WAC 296-880-30030(1); working on cranes WAC 296-880-30035(3) and (4)(b).

Additionally, employers must take the following actions regardless of height:⁸⁸⁵

- Guard open-sided floors, walkways, platforms, or runways above or adjacent to dangerous equipment, such as dip tanks and material handling equipment, and similar hazards with a standard guardrail system.
- Guard holes into which an employee can trip, step into, or step through by a cover of standard strength and construction or a standard guardrail system.
- Protect employees from falling into or onto impalement hazards, such as: reinforcing steel (rebar), exposed steel, or wood.

12.6.5. Fall Protection System Specifications

Employers are required to follow specific provisions pertaining to each type of fall protection system.⁸⁸⁶

12.6.6. Differences between Washington's Fall Protection Requirements and OSHA's

While minor differences may exist, L&I's 2022 update to its Unified Safety Standards for Fall Protection were intended to bring Washington's requirements in-line with federal OSHA's.

12.6.6.a. Washington Fall Protection Requirements Need to Align with OSHA

While Washington has an approved State Plan, all standards must be "at least as effective" as those administered by OSHA, including fall protection. Therefore, on November 1, 2022, Washington updated its fall protection rules to align with OSHA's. These updates included revisions to roofing activities and work performed on low-pitched or flat roofs.

12.6.6.b. Construction Worksites

There are differences in Washington for fall protection requirements at construction worksites versus general industry worksites. For the two worksites, employers must ensure:

- **General Industry Worksites:** "that all surfaces on which employees will be working or walking on are structurally sound and will support them safely prior to allowing employees to work or walk on them."
- **Construction Worksites:** "that a fall arrest system, fall restraint system, or positioning device system is provided, installed, and implemented in accordance with WAC 296-880-400 Fall protection system specifications when employees are exposed to fall hazards of six feet or more to the ground or lower level while: (a) engaged in roofing work on a low pitched roof or (b) constructing a leading edge."

12.7. Accident Prevention Program

Every Washington employer is required to create a written Accident Prevention Program (APP). The APP must address the specific safety and health hazards in the employer's workplace. This is significantly different from federal OSHA, which does not require a formalized or written APP. Many employers with operations across the entire United States fail to recognize that Washington has an APP requirement.

12.7.1. Employer Responsibilities

Employers must meet the following requirements with respect to an APP:⁸⁸⁷

⁸⁸⁵ WAC 296-880-10010.

⁸⁸⁶ WAC 296-880-400.

- Develop a formal, written APP.
- Develop, supervise, and enforce safety and health training programs that are effective in practice.
- Make sure the APP is effective in practice.
- Take adequate steps to discover and correct safety violations to ensure the APP's effectiveness and compliance with workplace safety regulations.⁸⁸⁸
- Update the APP to incorporate new requirements from L&I.

12.7.2. Requirements of an APP

When drafting an APP, employers must tailor their APP to the specific needs of their workplace or operations. Additionally, each APP must contain a safety orientation and a safety and health committee.⁸⁸⁹

12.7.3. Safety Orientation

Employers must have a safety orientation for employees that includes:

- A description of the employer's overall safety and health program.
- On-the-job orientation showing employees what they need to know to perform their initial job assignments safely.
- How and when to report on-the-job injuries, including instruction about the location of first-aid facilities in the workplace.
- How to report unsafe conditions and practices.
- The use and care of required personal protective equipment (PPE).
- What to do in an emergency, including how to exit the workplace.
- Identification of hazardous gases, chemicals, or materials used.
- On-the-job and instruction about the safe use and emergency action to take after accidental exposure.⁸⁹⁰

12.7.4. Training Programs

Employers are required to "develop, supervise, implement, and enforce training programs to improve the skill, awareness, and competency of all your employees in the field of occupational safety and health."

The training must include instruction to employees prior to their job assignment about hazards such as:

- Safe use of powered materials-handling equipment, such as forklifts, backhoes, electronic pallet jacks, and others.
- Safe use of machine tool operations.
- Use of toxic materials.
- Operation of utility systems.⁸⁹¹

⁸⁸⁷ WAC 296-800-140.

⁸⁸⁸ *Potelco, Inc. v. Washington State Dep't of Lab. & Indus.*, 194 Wn. App. 428 (App. Div. 1 2016).

⁸⁸⁹ WAC 296-800-130.

⁸⁹⁰ WAC 296-800-14005(2)(a).

12.7.5. Template APPs

L&I provides several sample templates for businesses to use in drafting their APPs. Either the General Industry or Small Business APP Template should be sufficient for most businesses.⁸⁹²

L&I also provides sample templates for the following industries that have specific requirements:⁸⁹³

- Agriculture
- Firefighters
- Logging
- Restaurant Industry
- Sawmills
- Construction

12.8. Safety Committee

In addition to an accident prevention program, Washington employers are required to establish a safety committee or hold safety meetings to create and maintain a safe and healthy workplace for all employees. The requirements differ based on the number and type of employees. If an employer has:

- 10 or fewer employees, then the employer may choose to have safety meetings instead of a safety committee.
- 11 or more employees on the same shift at the same location, then the employer must have a safety committee.
- 11 or more employees, but they work on different shifts and there are 10 or fewer on each shift, then the employer may choose to have safety meetings instead of having a safety committee.
- 11 or more employees, but they work in widely separate locations and there are 10 or fewer at each location, then the employer may choose to have safety meetings instead of having a safety committee.

12.8.1. Safety Committees Versus Safety Meetings

Safety committees are meant to serve as an organizational structure. The members of the committee represent a group. Typically, safety committees are more effective for larger companies. Alternatively, safety meetings include all employees, but also includes a management person whose job is to ensure that all issues are being addressed. Typically, safety meetings are more effective for small companies.

12.8.2. Makeup of a Safety Committee

Employers are required to ensure their safety committee has employee-elected and employer-selected members. The number of employee-elected members must equal or exceed the number of employer-selected members. The term of employee-elected members must be a maximum of one year. (There is no limit to the number of terms a representative can serve.) If there is an employee-elected member vacancy, a new member must be elected prior to the next scheduled meeting. A safety committee must

⁸⁹¹ WAC 296-800-14020.

⁸⁹² <https://www.lni.wa.gov/safety-health/preventing-injuries-illnesses/create-a-safety-program/accident-prevention-program>.

⁸⁹³ https://lni.wa.gov/safety-health/_docs/ConstructionAPPSample.doc.

have an elected chairperson. The safety committee also must determine how often, when, and where, the safety committee will meet.⁸⁹⁴

Employers must ensure that the number of employee-elected safety committee members equals or exceeds the number of employer-selected members, as required by WAC 296-800-13020(1). Failure to comply with this requirement constitutes a general violation and may result in penalties, even if no monetary penalty is assessed.⁸⁹⁵

12.8.3. Responsibility

Safety committees must cover several topics, ranging from reviewing safety inspection reports to documenting attendance. A full list of required topics can be found at WAC 296-800-13020(2).

12.8.4. Requirements

Minutes must be taken for each safety committee meeting. These minutes must (a) be preserved for one year and (b) be made available “for review by safety and health consultation personnel of the department of labor and industries.”⁸⁹⁶

12.9. General Contractor Liability

The Washington Supreme Court has established that General Contractors (“GCs”) have “per se” liability for safety violations on construction sites. Thus, GCs are automatically liable for ensuring compliance with safety regulations for all workers on the site, regardless of whether the workers are their direct employees or subcontractors’ employees. GCs have a non-delegable duty to ensure compliance with all applicable WISHA regulations for every employee on the jobsite.⁸⁹⁷ This duty cannot be transferred to subcontractors or other parties. GCs are responsible for the safety violations of their subcontractors.

If a subcontractor commits a serious safety violation, then GC can be held liable. This is based on the principle that GCs are in the best position, both financially and structurally, to ensure compliance with safety regulations. If a subcontractor can successfully assert an affirmative defense, such as unpreventable employee misconduct, then no violation should be issued to either the subcontractor or the GC. However, the burden of proof lies with the subcontractor to establish this defense.

During compliance inspections, if a serious violation by a subcontractor is identified, a direct citation to the GC must be evaluated. The citation should specify that the GC did not fulfill their duty to ensure compliance with WISHA regulations for every employee on the jobsite. In situations where there is more than one GC on a site, they must coordinate safety and health activities to ensure compliance with safety regulations.

12.10. Statute of Limitations

Statutes of limitation pertaining to health and safety laws in Washington vary. This includes differences in limitation periods for L&I to issue a safety or health violation to an employer and for employees to file claims related to injuries in the workplace and occupational disease.

⁸⁹⁴ WAC 296-800-13020(1).

⁸⁹⁵ *In Re: Columbia Distrib., LLC*, No. 10 W0291, 2012 WL 4343134, at *3 (Wash. Bd. Ind. Ins. App. July 3, 2012).

⁸⁹⁶ WAC 296-800-13020(3).

⁸⁹⁷ *Crisostomo Vargas v. Inland Wash., LLC*, 194 Wn.2d (2019).

12.10.1. Timelines for DOSH

Under WISHA, when L&I believes that an employer has violated a requirement of any workplace safety standards, “the director shall with reasonable promptness issue citation to the employer.”⁸⁹⁸ The citation must be sent to the employer no later than “six months following a compliance inspection, investigation, or survey revealing any such violation.”⁸⁹⁹ DOSH interprets this to mean “within six8 months of the opening conference date.”

A second inspection of an employer commenced after the opening conference in the first inspection constitutes a separate inspection, not a continuation of the first. Therefore, the time for issuing the citation and notice for the second inspection began on the date of the second inspection and not the first.⁹⁰⁰

12.10.2. Statute of Limitation for Employee Injury Claims

Employees must fill a claim within one year of the “the day upon which the injury occurred or the rights of dependents or beneficiaries accrued.”⁹⁰¹ The one-year statute of limitations begins to run on the day after the injury.⁹⁰² The State may raise a statute of limitations defense to the filing of an application to reopen a claim even though the order on appeal did not deny the application on timeliness grounds.⁹⁰³

12.10.3. Statute of Limitation for an Employee Occupational Disease Claim

Employees must file a claim within two years of the date the employee “received written notice from a healthcare provider (physician or ARNP) of the condition and that a claim may be filed.”⁹⁰⁴ However, for hearing loss claims that were caused by occupational noise exposure, claims must be filed within two year of the employees “last injurious exposure to occupational noise in employment.”⁹⁰⁵

No cause of action for an occupational disease accrues until the worker receives notification from a physician that he has an occupational disease resulting in a compensable disability. A worker who is able to continue working without impairment does not have a compensable disability. The statute of limitations does not begin to run until the worker’s condition renders him temporarily totally disabled, even if he was earlier advised by his doctor that he had an occupational disease.⁹⁰⁶ The 1984 amendment to [RCW 51.28.055](#), extending the time for filing claims for occupational disease, was intended to operate prospectively only. Where the time for filing a claim under the former statute had started to run prior to the effective date of the amendment (June 7, 1984), the amendment cannot extend the time for filing a claim.⁹⁰⁷

12.10.4. Injury Versus Occupational Disease

An injury is “a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.”⁹⁰⁸

An occupational disease, on the other hand, “means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title.”⁹⁰⁹

⁸⁹⁸ RCW 49.17.120(1).

⁸⁹⁹ RCW 49.17.120(4).

⁹⁰⁰ *In re Aerojet General Corp.*, BIIA Dec., 10 W1285 (2012).

⁹⁰¹ RCW 51.28.050.

⁹⁰² *Kouvacs v. Dep’t of Labor & Indus.*, 186 Wn.2d 95 (2016).

⁹⁰³ *Hutchins v. Department of Labor & Indus.*, 44 Wn. App. 571, *review denied* 107 Wn.2d 1010 (1986).

⁹⁰⁴ RCW 51.28.055(1).

⁹⁰⁵ RCW 51.28.055(2).

⁹⁰⁶ *In re Robert Kutzer*, BIIA Dec., 44 305 (1976).

⁹⁰⁷ *In re Herbert Lovell*, BIIA Dec., 69 823 (1986).

⁹⁰⁸ RCW 51.08.100.

12.11. Worker and Community Right to Know Act

Washington requires employers to disclose hazardous substances in the workplace. Future editions of this Book will detail these requirements. In the meantime, the law is available at [RCW Chapter 49.70](#).

12.12. Warehouse Distribution Centers

Washington requires employers that operate warehouse distribution centers to adhere to detailed quota notification and strict time period requirements. Future editions of this Book will detail these requirements and enforcement procedures. In the meantime, the law is available at [RCW Chapter 49.84](#).

12.13. Workplace Violence in Health Care Settings

Washington requires adherence to detailed workplace violence plan requirements for health care employers. Future editions of this Book will detail these requirements. In the meantime, the law is available at [RCW Chapter 49.19](#).

12.14. Abusive and Challenging Behavior in Long-Term and Home Care Settings

Washington requires adherence to detailed abusive conduct and challenging behavior prevention and assistance plans for long-term and home care employers. Future editions of this Book will detail these requirements. In the meantime, the law is available at [RCW Chapter 49.95](#).

12.15. Drug Testing

The Washington Court of Appeals held in *Roe v. Quality Transp. Servs.*, that private employers are permitted to terminate employees who test positive for drugs or who refuse to drug test in violation of company policy.⁹¹⁰ Importantly, however, Washington's Law Against Discrimination (WLAD) may classify certain forms of addiction as a disability. Under such circumstances, the employer may need to make reasonable accommodations for the employee. For example, the court in *Rhodes v. URM Stores, Inc.* found that an accommodation can include a leave of absence for treatment, but only when the employee's drug or alcohol addiction stems from a medical condition.⁹¹¹

12.15.1. Marijuana Usage

Washington employers are prohibited from discriminating against an applicant based on their off-duty cannabis use. A Washington employer is, however, permitted to maintain a drug and alcohol-free workplace and may use drug screenings that do not test for non-psychoactive cannabis (or if the employer does not receive the cannabis screen results). Furthermore, if an employee gets into an accident or an employer is suspicious of impairment due to alcohol or drug use, the employer is permitted to screen the employee for controlled substances, including marijuana.

The law does not apply to certain industries, safety sensitive positions, or situations where federal laws require an applicant to be tested for controlled substances.

Additionally, employers are not required to make accommodation for medical use of cannabis.⁹¹²

⁹⁰⁹ RCW 51.08.140.

⁹¹⁰ 67 Wn. App. 604 (1992).

⁹¹¹ 94 Wn. App. 794 (1999).

⁹¹² RCW 49.44.240.

12.16. High Hazard Facilities

Washington maintains workforce requirements for high hazard facilities. Future editions of this Book will detail these requirements. In the meantime, the law is available at [RCW Chapter 49.80](#).

12.17. Crime Prevention in Late-Night Establishments

Washington requires adherence to requirements for late-night establishments operating after 11:00 p.m., including retail establishments. Future editions of this Book will detail these requirements. In the meantime, the law is available at [RCW Chapter 49.22](#).

13. Washington Labor Laws

There are a number of Washington laws that touch on organized labor-related issues and employees' protected and concerted rights, including strike rights. For readers unfamiliar with labor laws, federal laws provide the overarching labor laws for private-sector employers, and state laws affecting those rights are (or can be) preempted by these federal laws. However, there are some Washington laws that bear on these topics. We detail the Washington laws affecting private-sector employers here.

Washington maintains extensive public-sector labor statutes, including the Public Employees Collective Bargaining Act (Chapter 41.56 RCW) that affects public-sector employers, and the Health Care Activities Act ([Chapter 49.66 RCW](#)) that affects employees of public-sector health care institutions.

13.1. Right to Work

Washington is not a right-to-work state. Employers and employees may enter into agreements that require private-sector employees to pay representation fees as a condition of employment. Employers and their unions can also enter into agreements that require the deduction of union dues and representation fees.

13.2. Captive Audience Meetings

Washington employers cannot hold so-called captive audience meetings.⁹¹³ At the federal level, these meetings are typically associated with union elections. However, Washington's law is broader: it addresses any employer-sponsored meeting, speech, or communication that has a "primary purpose" of communicating "the employer's opinion concerning religious or political matters."⁹¹⁴ Washington prohibits employers from disciplining or discharging (or taking any adverse action against) an employee who refuses to attend or participate in or listening to any such meeting or speech.⁹¹⁵

13.3. Mini Norris-LaGuardia Act

The federal Norris-LaGuardia Act prohibits employers from enjoining labor disputes under certain circumstances. Washington has a similar law, although it has various differences. To start, Washington protects employees' right to organize "for the purpose of lessening the hours of labor or increasing wages or bettering the conditions of the members of such organizations."⁹¹⁶

Washington courts are barred from granting restraining orders or injunctions in labor disputes unless doing so is "necessary to prevent irreparable damage to property or to a personal right" and there is no adequate remedy at law.⁹¹⁷ To enjoin a labor dispute (including a strike), a Washington employer must, at the very least, demonstrate destruction of property, blocking of ingress or egress, trespassing, or serious personal violations.

13.4. Privilege Applies to Union Communications

Privilege applies to Washington labor unions' communications.⁹¹⁸ This is akin to attorney-client communication privileges.

⁹¹³ RCW 49.44.250.

⁹¹⁴ RCW 49.44.250(1)(a)(i), (ii).

⁹¹⁵ *Id.*

⁹¹⁶ RCW 49.36.010.

⁹¹⁷ RCW 49.36.015.

⁹¹⁸ RCW 49.36.040; RCW 5.60.060.

13.5. Grocery Retailer Retention Requirements

Washington requires certain grocers to adhere to strict retention requirements for successor employers. The requirements are detailed at [RCW Chapter 49.85](#).

13.6. Blacklisting

Washington employers are prohibited from blacklisting employees for the purpose of preventing employees from future employment.⁹¹⁹

13.7. Unemployment Compensation for Strikers

At the time this Book was being finalized for publication, Washington did not allow striking employees to receive unemployment compensation benefits. However, on April 25, 2025, the Washington Legislature passed a state law enabling certain striking employees to receive unemployment compensation benefits. The passed bill is available [here](#). Governor Ferguson had not yet signed the bill at the time this Book was being finalized for publication. If the bill becomes law, it will be effective January 1, 2026.

Washington allows certain locked out employees to receive unemployment compensation benefits.

13.8. Strikebreakers

It is unlawful for a Washington employer to bring into Washington strike replacements for employees involved in a labor strike or lockout or to have such person act as picketers.⁹²⁰

13.9. Apprenticeship and Student Learning Programs

Washington maintains laws associated with apprenticeship programs and student learning opportunities ([RCW 49.04](#)).

13.10. Agricultural Cannabis Workers

Washington recently enacted a detailed labor law applicable to agricultural cannabis workers. The law is effective beginning July 27, 2025. The session law is available [here](#).

13.11. Symphony Musicians

Washington maintains a detailed labor law applicable to symphony musicians at [RCW Chapter 49.39](#).

⁹¹⁹ RCW 49.44.010.

⁹²⁰ RCW 49.44.100.

14. Washington Miscellaneous Employment Laws

Washington has a number of employment laws that do not fit neatly into the topics of this Book's Chapters. We provide information of these laws here.

14.1. Personnel Files

Under Washington's Industrial Welfare Act (IWA), employees have a right to inspect their personnel files. Employers must afford employees the ability to review their personnel files at least annually, upon request by the employee.⁹²¹ The files must be available locally (or through other convenient means for the employee) within a "reasonable period of time" after the employee makes a request.⁹²² L&I has defined this time as 10 business days.

If an employee disputes information in their files and claims that any of it is irrelevant or erroneous, the employer must review the file and make a determination. If the employer concludes the information is irrelevant or erroneous, then the employer must remove that information.⁹²³ The employee maintains a right to rebut the employer's determination and have it corrected for two years.⁹²⁴

According to L&I [guidance](#), personnel records covered by the IWA "detail an employee's performance, knowledge, skills, abilities, and behavior as it relates to their job." These can include records relating to "worker qualifications (hiring records, past experience, academic information, etc.), verification of training completed, job descriptions, supervisor's files, performance evaluations (including disciplinary actions, corrective action plans, etc.), and records subject to reference for information given to persons outside of the business."

There are limitations to these rights: employees do not have a right to inspect records relating to an employer's investigation of a potential criminal offense or an impending lawsuit (to the extent those records would not otherwise be available through discovery).⁹²⁵

As this edition of the Book was being finalized, on April 17, 2025, the Washington Legislature passed significant amendments to the IWA with respect to personnel files, adding detailed requirements for employers and an extensive penalty scheme. The passed bill is available [here](#). As of the time this edition of the Book was being finalized, Governor Ferguson had not yet signed the bill. If it is signed and becomes law, we will detail these amendments in future editions of this Book. In the meantime, employers should be aware that this bill may become effective and research whether different and additional requirements than those set forth above are in place.

14.2. Protection of Employee Records

Washington employers must protect employees' personally identifying, sensitive, or health-related information (PII). Employers must also report PII data breaches or suspected breaches to the [Office of](#)

⁹²¹ RCW 49.12.240; see also Wash. Lab. & Indus. Admin. Pol'y: [ES.C.7](#).

⁹²² RCW 49.12.250(1).

⁹²³ RCW 49.12.250(2).

⁹²⁴ RCW 49.12.250(3).

⁹²⁵ RCW 49.12.260.

[the Attorney General](#) if it affects more than 500 employees and notify any affected employees (regardless of the number of employees affected).⁹²⁶

14.3. Gender Affirming Care

Under Washington's insurance statute, employers cannot exclude coverage on the basis of sex or gender identity. To the extent a procedure is covered generally, it cannot be rejected on the basis of a participant or beneficiary's gender identity.⁹²⁷

14.4. Social Media Accounts

Washington employers cannot "request, require, or otherwise coerce" an applicant or employee to provide their login information for their personal social networking accounts or to access their accounts in the presence of the employer in a manner that enables the employer to review the accounts. Employers also cannot compel an employee to add the employer, or any person, to the employee's list of contacts associated with their accounts or to allow a third-party to view the contents of an employee's account. These prohibitions do not apply to employer-run social media accounts or employer's social media accounts.

Employers may, however, require employees to share their social media activity to make a factual determination during an investigation if the investigation is to ensure compliance with laws, regulations, or work-related policies that are meant to prevent misconduct (including noncompete- and trade-secret-related requirements). In such an investigation, the employer still may not require the employee to provide login information.⁹²⁸

14.5. Searches of Employee Vehicles

Washington employers may not search employees' personal vehicles on their property or access roads. Employer searches are prohibited even if the employer wants to know the contents of employee's personal property inside the vehicle (*e.g.*, guns, cannabis, *etc.*) unless possession of such property would otherwise be prohibited by law or when the search is necessary to prevent an immediate threat to life or safety.

Washington employers may search vehicles owned by the employer or when the employer authorizes the employee to use their personal vehicle for work and the employer needs to inspect the suitability of the employee's vehicle for that work.⁹²⁹

14.6. Driver's Licenses

Effective July 27, 2025, Washington prohibits employers from requiring employees to have a valid driver's license as a condition of employment, unless driving is one of the essential job functions or is related to a legitimate business purpose for the position. Additional details about this newly enacted law, available [here](#), will be provided in future editions of this Book.

14.7. Seasonal Labor

Washington employer must adhere to specific contractual requirements and dispute resolution processes for seasonal employees. Employers engaging seasonal labor should review [RCW Chapter 49.40](#).

⁹²⁶ RCW 19.255; RCW 42.56.590.

⁹²⁷ RCW 48.30.300.

⁹²⁸ RCW 49.44.200.

⁹²⁹ RCW 49.44.230.

14.8. Blacklisting

Washington employers are prohibited from blacklisting employees for the purpose of preventing employees from future employment.⁹³⁰

14.9. Lie Detector Tests

It is unlawful for a Washington employer to require an employee to take a lie detector or similar tests as a condition of employment or continued employment.⁹³¹

14.10. Washington Cares

The Washington Long-Term Care Act (WA LTCA, [RCW Chapter 51B](#)) created the Washington Cares Fund, which is a public long-term care insurance program. It provides Washington employees with long-term care benefits through payroll deductions. Washington employers are required to collect premiums for the Washington Cares Fund. Future editions of this Book will provide detail about the WA LTCA, but in the meantime, employer requirements are detailed on the [Washington Cares Fund website for employers](#).

14.11. Washington Saves

Beginning in 2027, Washington employers will have a role in participating in Washington Saves, a [state law passed in 2024](#) that will provide employees with options for retirement savings. As details about the new law roll out, we will provide updates in future editions of this Book. In the meantime, L&I has provided some initial guidance on its [Washington Saves Retirement Program website](#).

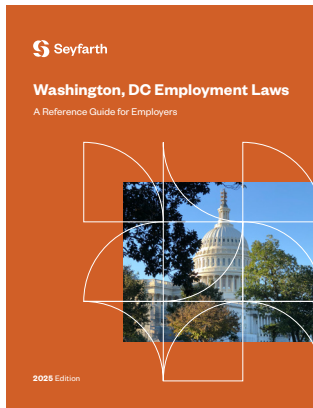
14.12. Seattle Ordinances

Seattle also imposes several ordinances on employers. Some of these ordinances are detailed in this Book under the Chapter for the appropriate topic for the ordinance. We do not detail Seattle's app-based worker ordinances, cannabis employee job retention ordinance, commuter benefit ordinance, domestic worker ordinance, hotel employee protections ordinances, or transportation network company ordinances in this Book. These ordinances are referenced in Chapter 1, Section 2.2 under the Seattle OLS Section, which includes links to OLS guidance about the same.

⁹³⁰ RCW 49.44.010.

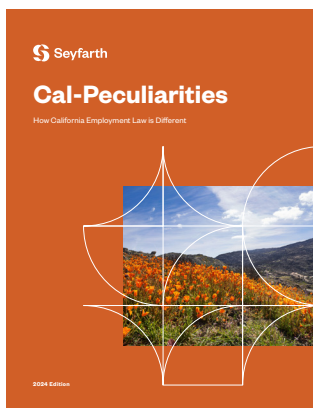
⁹³¹ RCW 49.44.120.

We also invite you to explore other region-specific resources offered by Seyfarth's Labor & Employment department.



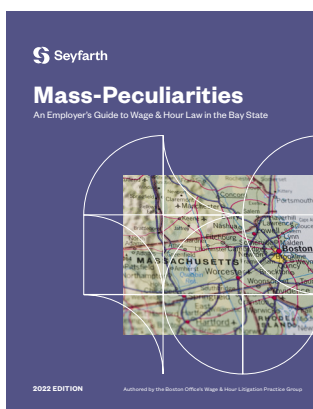
2025 Washington, DC Employment Laws: A Reference Guide for Employers

Authored by Labor and Employment attorneys in the firm's Washington, DC office, this publication provides a comprehensive overview of important laws impacting employers across the District. It also includes access to several additional resources for DC-area employers to utilize in order to mitigate risk and maintain a fully compliant workplace. To request the 2025 Washington, DC Reference Guide, please click [here](#).



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Cal-Peculiarities is a publication that reflects the breadth and depth of our California employment practice and focuses entirely on the most vexing aspects of California employment law. To request the 2024 Cal-Peculiarities eBook, please click [here](#).



2022 Mass-Peculiarities: An Employer's Guide to Wage & Hour Law in the Bay State

Authored by attorneys in the firm's Wage & Hour Litigation practice group in Boston, this publication explains and analyzes the ways in which Massachusetts wage and hour law differs from federal law and incorporates unique requirements that are not part of the laws of most other states. To request the 2022 Mass-Peculiarities eBook, please click [here](#).



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