



Labor & Employment

# Legislative Update

Recent Developments Impacting  
Washington State Employers

May 15, 2025

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**Seyfarth Shaw LLP**

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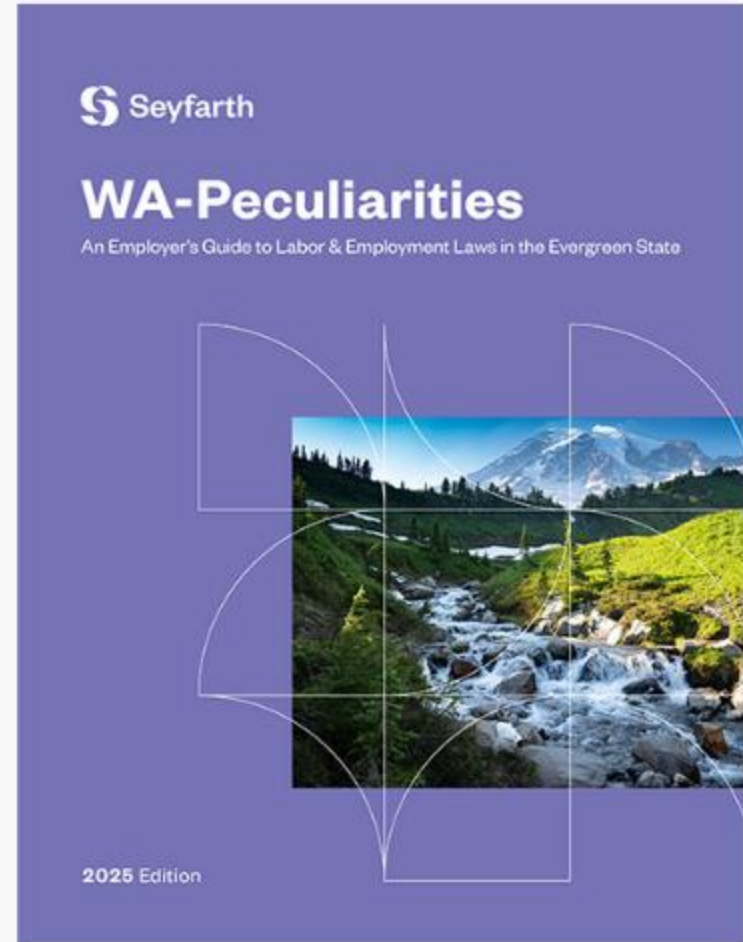
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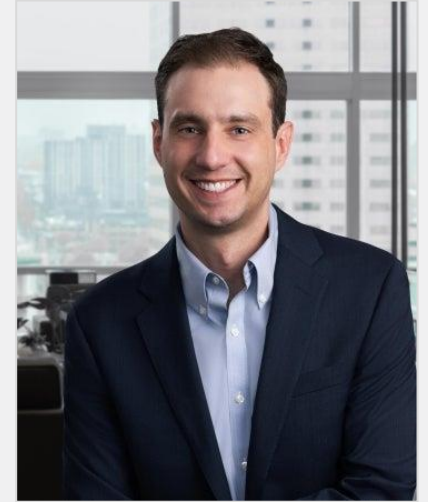
# Speakers



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## 69<sup>th</sup> Legislature – 2025 Regular Session

- Focusing on 12 bills relating to employment and labor law
- Materials include information about bills that we will not have time to discuss

# Senate Bill 5408



## EPOA Amendments

- Passed and delivered to the Governor on April 27, 2025; becomes law May 20, 2025 without Governor action
- Effective Date: July 27, 2025
- Background:
  - 2023 job posting law was intended to increase wage transparency
  - Requires job postings to have a salary range and benefits description
  - Poorly drafted law + opportunistic plaintiffs' firms + difficulty complying 100% of the time
  - 200+ class action cases
  - Damages can be substantial, up to \$5,000 per applicant to a deficient posting

## Senate Bill 5408



### EPOA Amendments – Major Changes

- Cure Period
  - An applicant cannot bring a lawsuit unless they have provided notice to the employer and **five business days** to cure
  - The amendments do not limit or define who is authorized to receive the notice
  - If cured, no damages may be assessed
  - Cure period is only in effect until July 27, 2027
- Sliding Scale Damages
  - Makes statutory damages a sliding scale between \$100 and \$5,000, based on several factors: "[w]hether the violation was committed willfully or the violation is a repeat violation; the size of the employer; the amount necessary to deter future noncompliance; the purposes of this chapter; and any other factor deemed appropriate by the court"
  - There will be legal challenges whether the sliding damages apply retroactively to pending litigation

# Senate Bill 5408



## EPOA Amendments

- Other Changes
  - Clarifies that employers can provide a fixed amount of pay, not just a range
  - Clarifies that third party postings that are "digitally replicated and published without an employer's consent" do not result in liability
- Effective Date
  - Governor Ferguson has not signed yet
  - Unless vetoed, it will go into effect on July 27, 2025
  - The cure period provision sunsets on July 27, 2027



## Senate Bill 5501



### Driver License Amendments to EPOA

- Signed into Law: April 27, 2025
- Effective Date: July 27, 2025
- Amends the EPOA to:
  - require a valid driver's license as a condition of employment; or
  - Prohibit statements in job postings that an applicant must have a valid driver's license.
- Exceptions: driving is an essential job function or is related to a legitimate business purpose
  - “Legitimate business purpose” is not defined, by L&I is authorized to adopt rules for the chapter
- Enforcement is through L&I
- Can award actual damages or statutory damages up to \$5,000

## Senate Bill 5104



### Using Immigration Status to Deter Protected Activities

- Signed into law on May 12, 2025
- Effective Date: July 1, 2025
- Prohibits an employer from making threats about an employee's immigration status or his or her family member's immigration status in order to deter the employee from engaging in protected activities or making wage complaints.
- Enforcement is through L&I
- Can award actual damages or civil fines (\$1,000 for 1st violation, \$5,000 for 2nd, \$10,000 for 3rd)

# House Bill 1747



## Amendments to Washington Fair Chance Act

- Prior Version of Fair Chance Act:
  - May only obtain information about applicant's criminal history after determining they are qualified for the position
  - Cannot categorically exclude applicants with criminal history
  - Some exceptions for jobs with access to vulnerable people, federal contractors, law enforcement
- New Version of Fair Chance Act:
  - May only obtain information about applicant's criminal history after a conditional offer is made
  - May not make a tangible adverse employment action based on criminal history unless employer has a legitimate business reason.

## House Bill 1747



### Amendments to Washington Fair Chance Act

- Legitimate business reason means a good faith belief:
  - Conviction will have a negative impact on applicant's fitness or ability to perform the position;
  - Conviction will harm or cause injury to people, property, business reputation, or business assets
    - Factors include seriousness of the conduct, number of convictions, time, specific duties, place job is performed, rehabilitation and work/education/training since
- Before taking tangible adverse employment action, must give employee two business days to correct or explain the record or provide evidence of the factors a business should consider
- Employer then provides a written decision including its reasoning and assessment of the relevant factors

## House Bill 1747



### Amendments to Washington Fair Chance Act

- Federal contractors are exempt
- Enforced by the Attorney General's Office as an administrative action or lawsuit
- Can seek civil fines (\$1,500 for 1st violation, \$3,000 for 2nd, \$15,000 for 3rd)
- Attorney General's Office can also pursue "unpaid wages" and their attorneys fees
- Signed by Governor Ferguson
- Effective:
  - July 1, 2026 for employers with >15 employees
  - On January 1, 2027, it applies to all employers

## House Bill 1879



### Meal and Rest Break for Hospital Workers

- Effective: January 1, 2026
- Modifies Existing RCW 49.12.480 (some of law is in effect, some goes into effect January 1, 2026)
- Under RCW 49.12.480, employers must:
  - Provide employees with scheduled rest periods
  - Provide employees with uninterrupted meal and rest breaks, except in unforeseeable emergent and clinical circumstances
  - Keep records of, and report, missed breaks
- Allows hospital workers to combine a meal period with a rest period

## House Bill 1879



### Meal and Rest Break for Hospital Workers

- New revisions focus on waivers
- Under new amendments, waivers can waive:
  - the first meal period (shift less than 8 hours)
  - the second or third meal period if the shift is greater than 8 hours and the employee takes at least one meal period
  - waive timing requirements of meal and rest periods, except the meal period must
    - start after 3rd hour worked
    - start before second to last hour scheduled
  - For shifts with 1+ meal and 2+ rest periods, combine one or more meal/rest period with one or more meal/rest period

## House Bill 1879



### Meal and Rest Break for Hospital Workers

- Waiver must:
  - Be in writing or electronic (no oral waiver)
  - Be retrievable upon request
  - Be prospective (not retroactive)
  - Be submitted “on a form agreed to between the employer and the” union, if applicable
  - Include a summary of department rule governing meal and rest periods
  - Advise employee that they may have other rights under their CBA
  - Expressly advise the employee that the waiver is voluntary
- Must now report number of waived breaks to L&I



## House Bill 1879



### Meal and Rest Break for Hospital Workers – Penalties

- Amendment to 49.12.480 implicate the Department's enforcement duties under 49.12.483
- Beginning on July 1, 2026, the Department must fine hospitals that fail to submit a proper report under Section 480
  - Certain hospitals are not covered until July 1, 2028
- If the Department finds that a hospital is not “80 percent compliant” with the meal and rest break requirements **and** “more than 20 percent of the required meals [sic] and rest periods were missed, or if an employer fails to properly submit a report”...
  - critical access hospitals under 42 U.S.C. Sec. 1395i-4, or with up to 25 licensed beds: \$5,000;
  - 26 to 99 licensed beds: \$10,000;
  - 100 to 299 beds: \$15,000; and
  - 300 or more beds: \$20,000.

# House Bill 1213



## **Paid Family and Medical Leave Expansion**

- Status: Passed and delivered to the Governor on April 23, 2025, becomes law May 16, 2025 without Governor action
- Effective Date: Will go into effect on January 1, 2026
- Expands employment protection obligations:
  - Employees eligible for employment protection after 180 days of employment
  - Employers with fewer than 50 employees will also have employment protection obligations
- Reduces minimum leave duration to four (4) hours
- Expands grant program for small businesses
- Expands notice requirements

## Senate Bill 5217



### Expanding Pregnancy-Related Accommodations

- Status: Passed and delivered to the Governor on April 23, 2025; becomes law May 16, 2025 without Governor action
- Effective Date: Will go into effect on January 1, 2027
- Expands pregnancy and postpartum workplace accommodations to all employers, regardless of size
- Guarantees paid breaks for expression of breast milk
- Like its predecessor, itemizes list of reasonable accommodations (though list is not exhaustive):
  - More frequent, longer, flexible restroom breaks
  - Modifying no food or drink policy
  - Job restricting/re-assignment
  - Providing seating
  - Scheduling flexibility for appointments
- Like its predecessor, limits employer's ability to require medical documentation or claim undue hardship regarding certain itemized accommodations

## House Bill 1875



### **Paid Sick Leave for Immigration Proceedings**

- Status: Signed into law
- Effective Date: July 27, 2025
- Allows employees to use accrued statutory paid sick and safe leave to “prepare for, or participate in, any judicial or administrative immigration proceeding involving the employee or employee’s family member.”
- For absences exceeding three days, an employee’s written statement that they are using paid sick and safe leave for this purpose is sufficient documentation.

## Senate Bill 5101



### Expanding Access to Leave and Safety Accommodations for Hate Crime Victims

- Status: Passed and delivered to the Governor on April 22, 2025; becomes law May 15, 2025 without Governor action
- Effective Date: Will go into effect on January 1, 2026
- Expands leave and safety accommodations in Domestic Violence Leave Act (Chapter 49.76, RCW) to victims of hate crimes
- “Hate crime” is defined by RCW 9A.36.080 but generally means the commission or alleged/attempted commission of an act or threat of violence or property damage based on a protected characteristic
- Inference of hate crime for certain acts:
  - Burning of cross on property of a person the actor believes to be of African American heritage
  - Defacing property of a person the actor perceives to be of Jewish heritage with a Nazi emblem, symbol, or Hakenkreuz
  - Placing a noose on the property of a person the actor perceives to be of a racial or ethnic minority group.

## Senate Bill 5525



### Securing Timely Notification and Benefits for Laid-Off Employees Act – Mass Layoffs

- Status: Signed May 13, 2025
- Adds a new section to chapter 49 RCW
- Mini-WARN Act
- Requires advance notice to workers and government agencies before mass layoffs or closures.
- Employers with 50+ employees failing to comply face severance obligations and enforcement actions.

## Senate Bill 5525



# Securing Timely Notification and Benefits for Laid-Off Employees Act – Mass Layoffs

- Section 2: Requires 60 days' notice
- Notice given to the Employment Security Department
  - Location
  - permanent or temporary closure
  - expected date of first employment loss
  - job titles of affected employees
  - whether the closure will result in relocation or contracting out the employer's operations/employees positions
- Section 6: Exclusions
  - Employer cannot include employee on paid family or medical leave in layoff
- Section 3: Exceptions
  - Business seeking capital at time of layoff
  - Closure caused by unforeseeable circumstances
  - Natural disaster
  - Construction projects that are ending

## Senate Bill 5525



### Securing Timely Notification and Benefits for Laid-Off Employees Act – Mass Layoffs

*“An employer that orders a business closing or mass layoff without providing a notice required by section 2 of this act **is** liable to **each aggrieved employee** who suffers an employment loss because of the closing or layoff for...”*

- Penalties
  - Back pay
  - Lost benefits
- Maximum penalties capped at 60 days
- Creates a private right of action with 3 yr statute of limitations
- Civil penalties: maximum \$500/day
- **Fee-shifting provision**



## Senate Bill 5041



### Unemployment Insurance for Striking Workers

- Status: Passed and delivered to the Governor on April 22, 2025; becomes law May 15, 2025 without Governor action
- Effective Date: January 1, 2026
- Washington joining New York and New Jersey
- Most (32) states grant UI to locked out workers
- Would allow eligible workers on strike to collect UI benefits for up to six weeks of a labor stoppage.
- A two-week waiting period applies.
- Strikes must be tracked carefully to manage UI exposure.

# House Bill 1308



## Personnel Records

- Status: Signed into law on May 13, 2025
- Effective Date: July 27, 2025
- Amends RCW 49.12.240 and 49.12.250
- Adds a new section to chapter 49.12 RCW
- Adds penalties and a private cause of action
- “Personnel file” includes:
  - All job application records;
  - All performance evaluations;
  - All nonactive or closed disciplinary records;
  - All leave and reasonable accommodation records;
  - All payroll records; and
  - All employee agreements

# House Bill 1308



## Personnel Records

- Amends RCW 49.12.250 to require employers to produce employees' personnel files within 21 calendar days of an employee's or former employee's request.
- Amends RCW 49.12.250 to require employers, upon written request, to furnish former employees with a written statement stating the date of the former employee's discharge; whether the employer had a reason for the discharge; and if so, the reason for the discharge
- Creates a private right of action:
  - must give the employer 5 days' notice
  - nominal statutory damages
    - \$250 if the personnel file or discharge statement is not provided within 21 calendar days of the request;
    - \$500 if not provided within 28 days of the request; and
    - \$1,000 if provided after 35 calendar days of the request.
- \$500 penalty for any other violation of RCW 49.12.250(1)

# Honorable Mentions

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## Additional bills passed by the Washington Legislature in the 2025 session

HB 1141	Collective bargaining for agricultural cannabis workers
HB 1524	Workplace protections for “isolated employees,” like night security guards; mandatory panic buttons
HB 1332	Protections and recordkeeping requirements for drivers of transportation network companies
HB 1173	Requires paying prevailing wages to certain journeyman workers
SB 5122	Mandatory premerger review for certain business combinations
HB 1821	Broadened definition of “interested party” in prevailing wage disputes
HB 1121	Expanded work hour flexibility for 16 and 17-year olds
HB 1644	Increases fines for child labor violations; establishes more stringent rules governing hours and breaks



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