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Early Warning Signs of Class Actions

Proactive Strategies for Washington Employers

August 5, 2026

Meet the Speakers

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Agenda

1 | Recent litigation trends in Washington class action filings

2 | Common early warning signs

3 | Steps after receiving initial indicators

4 | Arbitration agreements

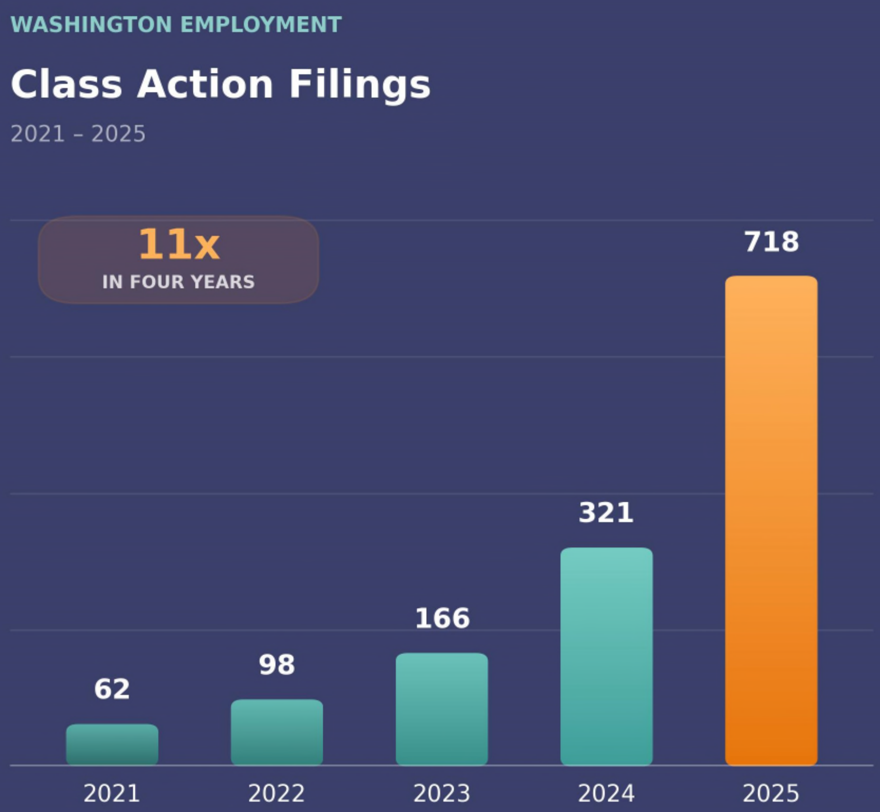
5 | Leveraging data analytics and audits

6 | Maintaining privilege during pre-suit compliance efforts

7 | Legislative efforts

8 | Strategies to strengthen compliance and reduce exposure

The Surge is Real



- Filings grew from 62 in 2021 to 718 in 2025 — an **elevenfold increase** in four years.
- Claims have targeted nonprofits, local retailers, Fortune 500 companies, and employers with only a few dozen employees.
- California-based plaintiff firms have entered Washington and are actively filing.
- No employer profile is insulated. The unpredictability of who gets sued is itself the risk.

2021-2025: What is Driving the Surge?

32%

Wage & Hour – Meal & Rest Breaks

40%

Equal Pay & Opportunities Act (EPOA)

10%

Noncompetition & Outside Employment Restrictions

2026: Growth Accelerates

653
Employment Class Actions Filed
Jan 1 – Aug 4, 2026

~1,100
Projected Year-End Filings
On pace for a record year

83%
Wage-and-Hour Claims
Share of all 2026 filings

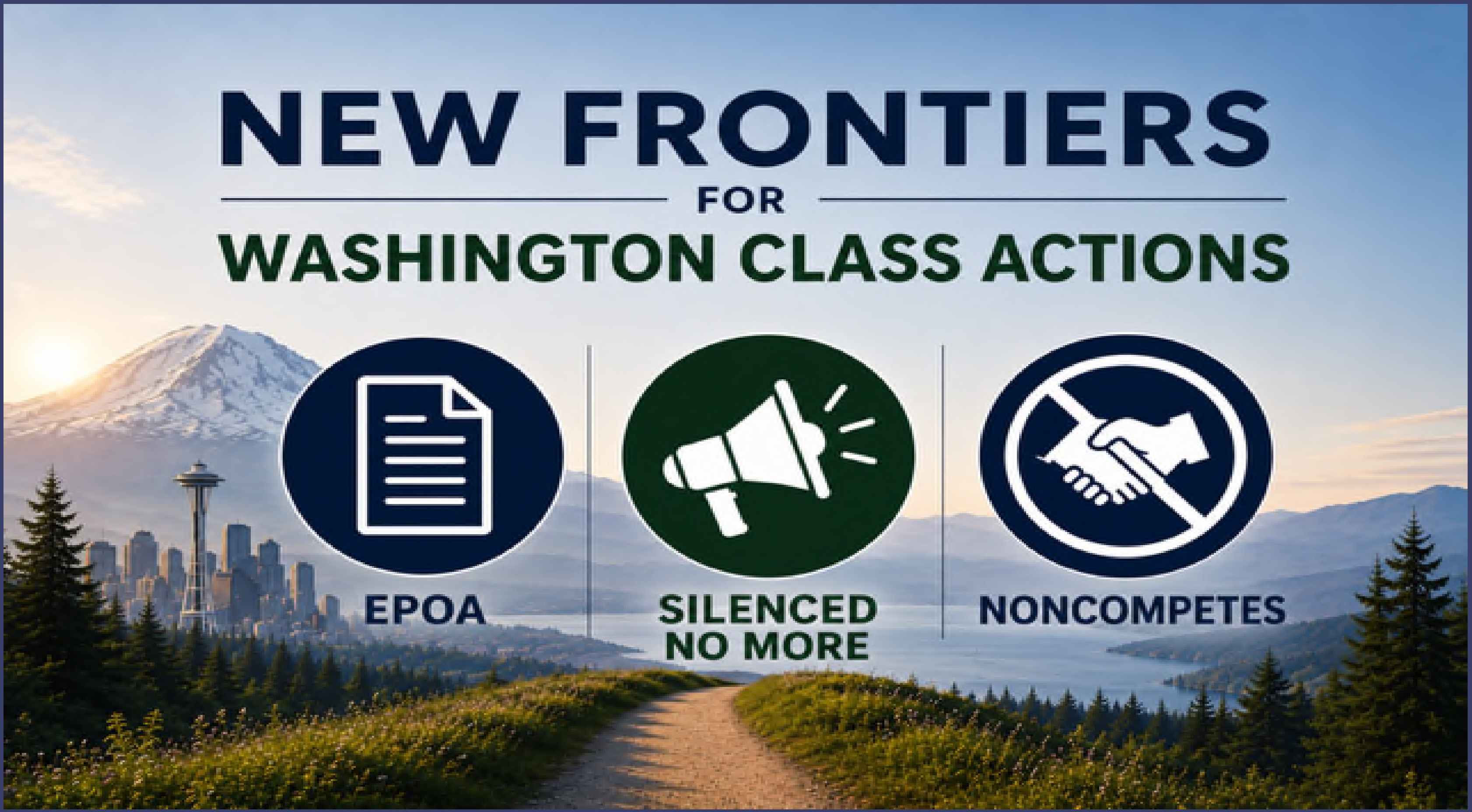
Filing Surge

Activity accelerated significantly in June and July — well above the stable January–May baseline.

Concentrated Filers

Six plaintiffs' firms account for approximately 75% of all filings in 2026.

New Frontiers for Washington Class Actions



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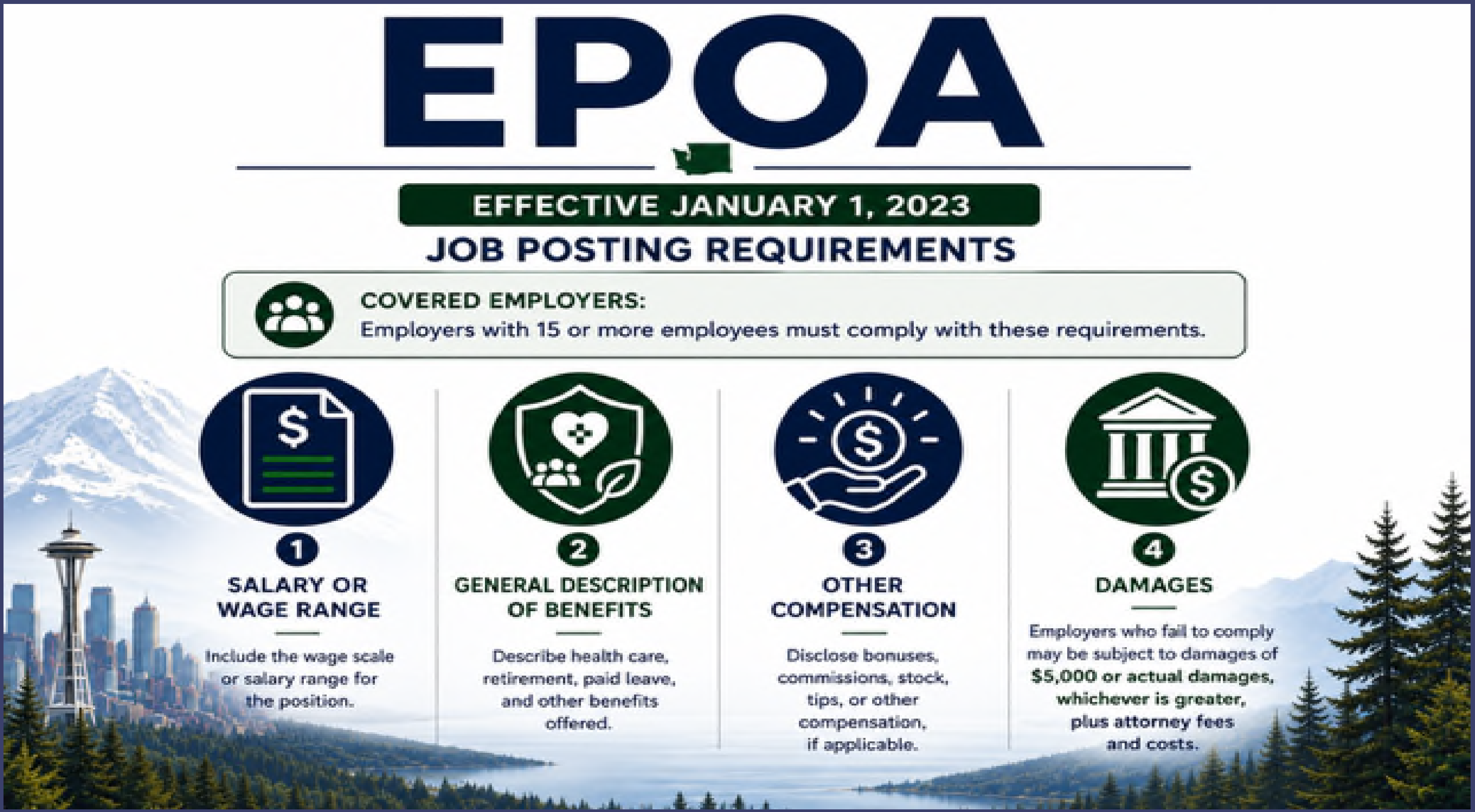

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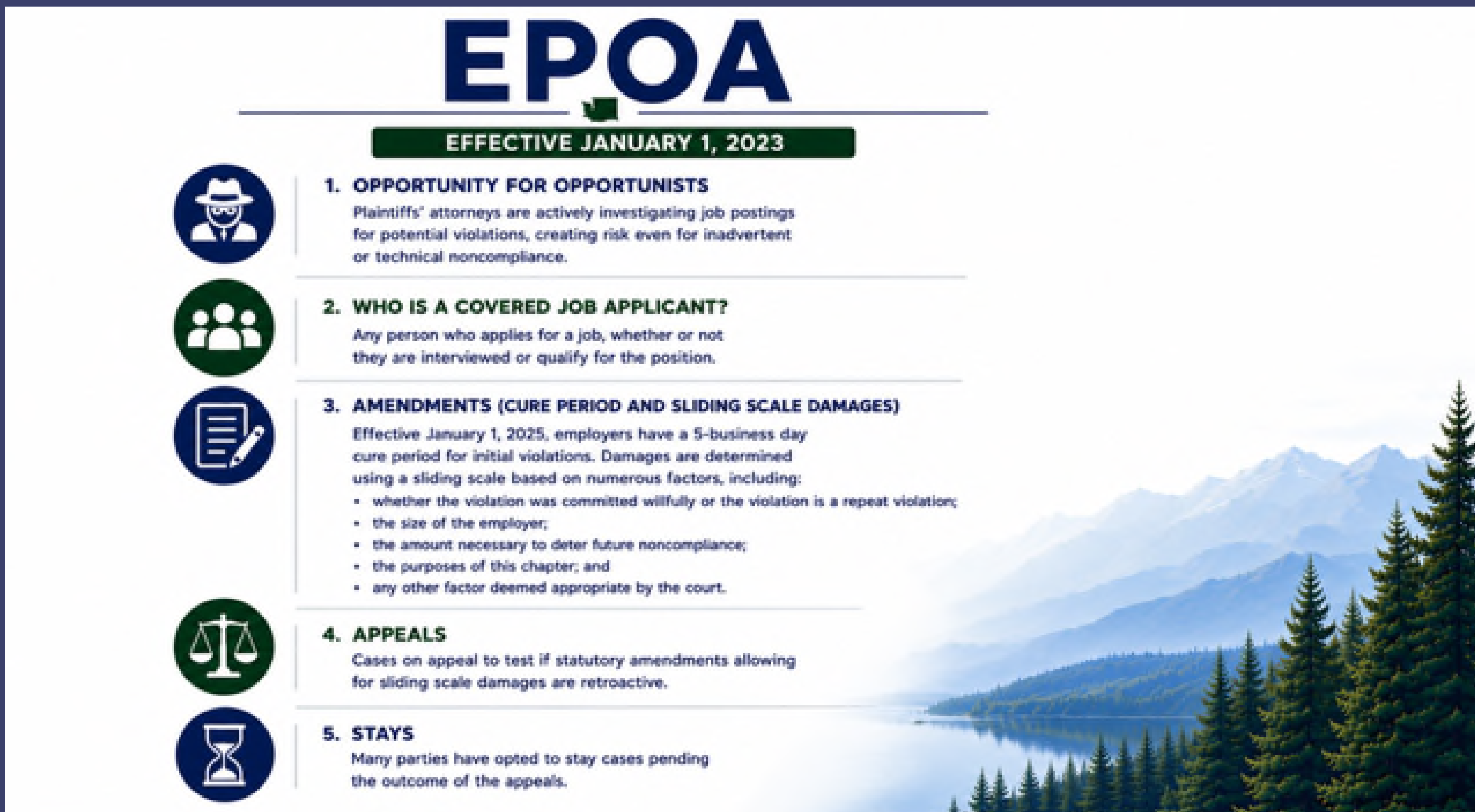

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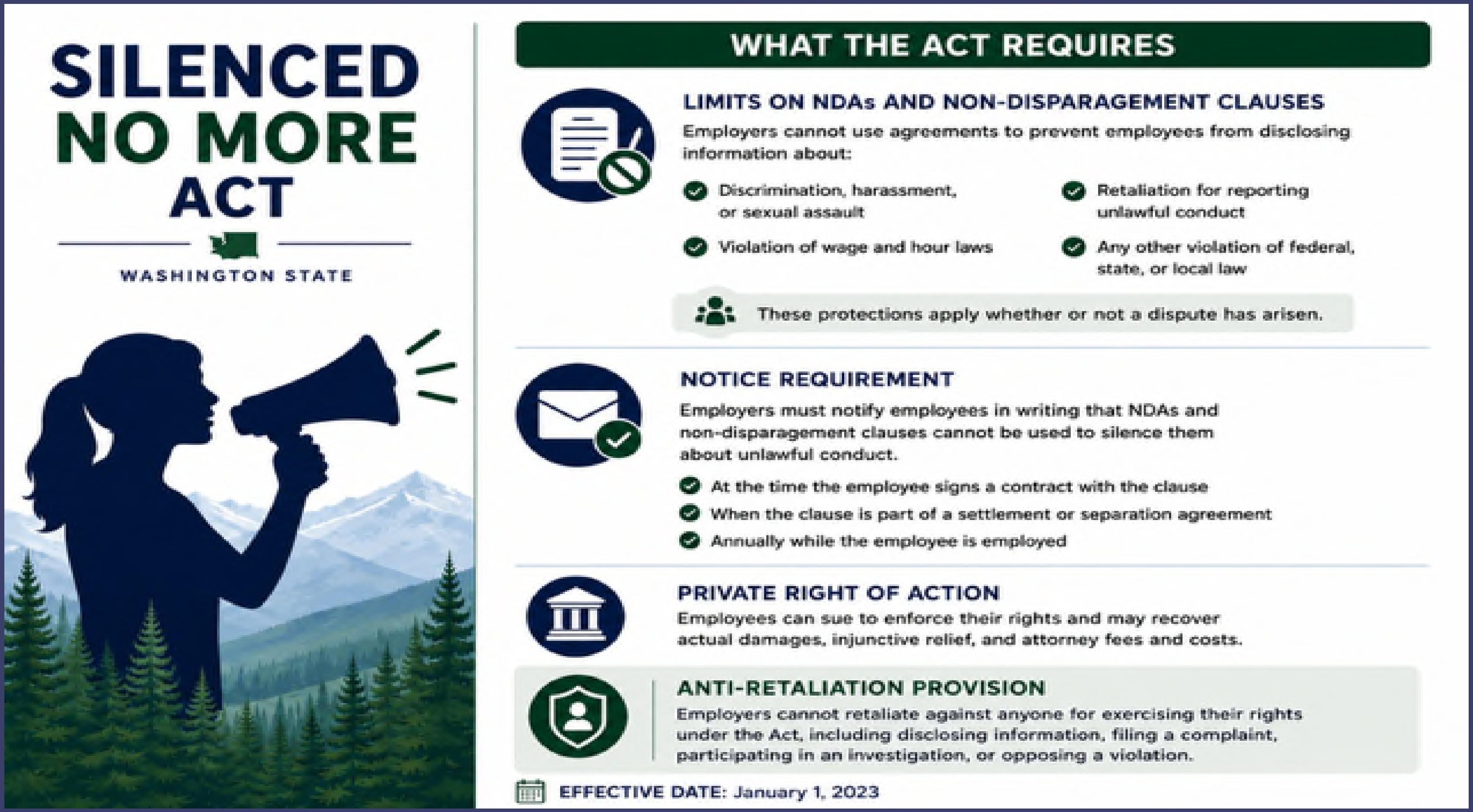

New Frontiers for Washington Class Actions

CURRENT VS. FUTURE WASHINGTON NONCOMPETE LAW

At a Glance: Key Differences

ISSUE	CURRENT LAW *(Until June 30, 2027)*	FUTURE LAW *(Starting June 30, 2027)*
General Rule	Noncompetes allowed in limited situations.	Nearly all noncompetes banned.
Employee Thresholds	Allowed only for employees who earn above statutory compensation thresholds.	Compensation thresholds eliminated because noncompetes are largely prohibited.
Independent Contractors	Permitted for independent contractors who earn above a higher threshold.	Generally prohibited for independent contractors.
Non-Solicits	Generally enforceable if reasonable in scope and duration.	Non-solicits permitted if the employer established or substantially developed a direct relationship with the customer.
Moonlighting	Employers are prohibited from imposing anti-moonlighting restrictions on employees earning less than twice the minimum wage.	Employers are prohibited from imposing anti-moonlighting restrictions on employees earning less than twice the minimum wage.

Meal & Rest Break Rules – The Mechanics Behind the Trend Claim

- **Rest Breaks:** A paid 10-minute rest break is required for every 4 hours worked. Cannot work more the 3 hours without a rest break.
- **Meal Periods:** A 30-minute meal period must begin between the second and fifth hour of the shift — a meal period starting at five hours and one minute is late.
- **The Androckitis Penalty:** Washington courts endorse paying a full 30 minutes of extra wages for each missed or late break, applied retroactively.
- **Why It Goes Class-Wide:** If breaks aren't heavily policed, employees will take their breaks late or less than 30 minutes, resulting in records that appear to show violations.

Where Breaks Go Wrong

Auto-Deductions
Systems that deduct a meal automatically whether or not it was taken

Short Breaks
Meal periods under 30 minutes or rest breaks under a full 10

Late Meal Periods
Breaks that begin after the fifth hour of the shift

On-Duty Meal Periods
Employees who stay on call or keep working through the period

Missed Breaks
No documentation of the breaks

No Records
No records to defend against allegations

Washington’s Litigation Landscape Makes Defense Harder

- Liberal class certification — *Chavez* case directed courts to liberally grant certification.
- Appellate wins emboldening plaintiffs — a series of Court of Appeals decisions favored employees on break penalties, off-the-clock work, and wage deductions.
- Seven-figure settlement demands — class representatives demand $20,000 and $25,000 class representation awards, making bringing a class lucrative.
- Vague statutes— Unclear statutes plus liberal construction mandates result in decisions against employers.
- Complicated meal/rest rules— Washington’s meal and rest break rules are complicated and impossible for employers to ensure 100% compliance.
- **Key Implication:** Proactive compliance is the only reliable risk management strategy — employers who act before a complaint is filed face a fundamentally different risk profile than those who wait.

LNI
NOT JUST NOISE.
A WARNING.
LNI IS THE SMOKE ALARM.
WHAT IS THAT?
DOES IT APPLY TO US?
IS IT SERIOUS?
WHAT DO WE DO NOW?
When L&I ramps up activity,
EMPLOYERS SHOULD PAY ATTENTION:
RULEMAKING
The Department is shaping how the law will be interpreted.
GUIDANCE / FAQS / POLICIES
Tomorrow's exhibit in a demand letter.
AUDITS & INVESTIGATIONS
A preview of where enforcement, and private lawsuits, may be headed.
BOTTOM LINE:
LISTEN EARLY.
PLAN SMART.
STAY AHEAD.


SEE IT COMING.
STOP IT EARLY.
Early warning signs help employers avoid class action storms.
1
AGENCY CHARGES
Class actions are often filed by employees who previously filed agency actions on their own, sought legal advice, and are talked into a class action rather than their underlying claim.
2
FILE-REQUEST SURGE
Class action firms often seek personnel files of potential class representatives.
3
TARGETED ADS
Class action firms recruit heavily through Meta and Google ads. The ads are searchable and third parties often monitor these systems. Don't be their next target.
4
EMPLOYEE CHATTER
Organized discussion on social media, reviews sites, or group chats about pay or policies can be the spark. We're monitoring.


SEE IT COMING.
STOP IT EARLY.
MONITOR THE DIGITAL LANDSCAPE.
Early warning signs help employers avoid class action storms.
WE WATCH SO YOU CAN FOCUS.
RECOMMENDED ACTIONS
TRACK ALL PERSONNEL FILE REQUESTS; FLAG CLUSTERS.
SET GOOGLE ALERTS FOR "[COMPANY NAME] LAWSUIT," "[COMPANY NAME] CLASS ACTION," AND "[COMPANY NAME] WAGES."
CHATGPT UPDATES
STAY INFORMED. STAY AHEAD.
CHECK META AND GOOGLE AD LIBRARIES REGULARLY, SEARCHING YOUR COMPANY NAME FOR ACTIVE RECRUITMENT ADS.
TRACK AGENCY CHARGE PATTERNS. SPOTTING TRENDS TODAY PREVENTS LAWSUITS TOMORROW.

Steps to Take Upon Receiving Warning Indicators

- Duty to Retain – Litigation Hold
- Arbitration Agreement and Class Action Waiver
- Wage and Hour Audit
- Evaluate Modification or Implementation of Policies/Procedures

Using Arbitration Agreements to Head Off Class Action Risk

- **Class action waivers work — at scale.** Arbitration agreements with class waivers can require individual arbitration, dramatically reducing litigation exposure.
- **Timing is everything.** Presenting agreements after warning signs appear — but before a complaint is filed — is permissible but must avoid procedural unconscionability.
- **Washington-specific drafting requirements** for maximum enforceability: explicit FAA choice-of-law provision; savings (severability) clause; meaningful time to review (avoid day-one take-it-or-leave-it).
- **Mutual clause = stronger protection.** A mutual arbitration clause — binding both employer and employee — is more likely to survive Washington's unconscionability analysis.
- **Make Plain Language and Clear.** Don't bury the agreement in a handbook or other documentation. Make the jury waiver clear and unambiguous. Use plain language.

1. **Early Warning Sign Detected**
2. **Evaluate Whether to Roll Out Arbitration Agreements**
3. **Draft / Update Arbitration Agreement**
4. **Present to Employees**
5. **Monitor for Compliance**

Using Data Analytics and Audits to Find Vulnerabilities First

- **Regular wage and hour audits** identify misclassifications, overtime miscalculations, timekeeping drift, and break failures before they become litigation evidence.
- **Data analytics** surfaces systematic patterns. Rounding issues, missed breaks, short breaks, late breaks, issues in specific business units, etc.
- **Audit job postings for EPOA pay transparency compliance** and review noncompetition and outside-employment policies against the current wage threshold.

Audit Focus Areas

Classifications

Exempt vs. non-exempt status; independent contractor determinations

Overtime Calculations

Regular rate accuracy including non-discretionary bonuses

Break Practices

Meal and rest break timing, premium pay, auto-deduction patterns

Off-the-Clock Work

Pre/post-shift activity, remote work periods, rounding patterns

Pay Transparency

EPOA-compliant job postings: salary ranges and benefit descriptions

Noncompete Policies

Wage threshold compliance under RCW 49.62; outside-employment restrictions

Operational Break Compliance — Build the Systems That Protect You Daily

Daily Attestations

Require end-of-shift attestations confirming all meal periods and rest breaks were received.

Clock-Out Enforcement

Require employees to physically clock out and back in for all meal periods. Do not rely on auto-deductions — enforce manual timekeeping for accurate, auditable records.

Block Early Clock-In

Configure your timekeeping system to prevent employees from clocking back in before the minimum meal period has elapsed, eliminating inadvertent short lunches.

4-Hour Break Target

Schedule and monitor meal periods before the 5-hour threshold — a lunch at 4:30 into the shift protects against late lunches.

Standing Meal Period Waivers

Implement meal period waivers that cover (1) missed, (2) late/untimely, and (3) short/interrupted meal periods—in consultation with counsel.

Quarterly Timekeeping Audits

Audit timekeeping data every quarter. Look for patterns: breaks at or after the 5-hour mark, breaks shorter than 30 minutes, or missing records by job class or manager.

Manager Accountability

Train managers on break obligations and include break compliance as a graded component of performance reviews. Hold managers accountable for patterns of violations on their teams.

Maintaining Privilege During Pre-Suit Compliance Efforts

- **Direct work through counsel.** Pre-suit compliance conducted at counsel's direction — not by HR or payroll independently — is more likely to be protected under attorney-client privilege and work product doctrine.
- **Control the communication channel.** Discussions about identified vulnerabilities, remediation options, and legal risk assessments should flow through counsel. Avoid unprotected internal email chains.
- **Privilege covers legal analysis, not business decisions.** Operational data and business outcomes are not privileged. Employers must be disciplined about which channel serves which purpose.

Emerging Legislative Trends

The regulatory environment is actively shifting — pending legislative changes and increased agency enforcement add urgency to Washington employers' compliance timelines.

Today

Ongoing: Active Legislative Monitoring Required
WA courts are willing to apply wage & hour damages retroactively. Employers must monitor L&I rulemaking in real time to ensure compliance.

2025-2026: Surge in Filings + Increased L&I Enforcement
~718 employment class actions filed in 2025. L&I escalates enforcement activity in response. Legislati
efforts to amend the EPOA, Minimum Wage Act, and noncompetition statute.

July 27, 2025: SHB 1308+
Employees gain right to demand complete personnel files within 21 days. Mini-WARN Act now covers employers with 50+ employees, creating a private right of action with a 3-year statute of limitations — a new class action vehicle.

2024: *Androckitis* Decision
Washington Court of Appeals endorses a 30-minute penalty for meal period violations in *Androckitis v. Virginia Mason Medical Center* , applied retroactively — catching many employers off guard.

2023: EPOA Takes Effect
Washington's Equal Pay and Opportunities Act pay transparency requirements become effective, triggering a new wave of class action exposure for noncompliant job postings.

Legislative Amendments

- HB 1155: Noncompetition Agreements
  - Effective June 30, 2027 – most noncompetes are void and unenforceable in WA (retroactive)
  - Notification provision for existing noncompetes
  - $5,000 penalty still applies
- ESHB 2303 – Anti-Microchipping
  - Effective June 11, 2026
  - Prohibits employers from requesting, requiring, or coercing employee to have microchip implanted under their skin
- HB 2479 & SB 6058: Increased L&I Enforcement for Unpaid Wages
  - Effective June 11, 2026 – Expands L&I’s enforcement powers, un-caps penalties, and creates fund for high-risk employees

thank you

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