



Washington State Department of
Labor & Industries

Employment Standards Program
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Equal Pay and Opportunities Act Job Applicant Protections

Employee and Job Applicants Rights Current Protections

Equal pay, not based on gender

Equal career advancement opportunity, not based on gender

Ability to discuss wages with others

Employees are protected from retaliation

Privacy of wage or salary history when applying for a job

No requirement for wage or salary history to meet certain criteria

Access to wage or salary range of an internal transfer to a new position or promotion offered by the employer upon request of the employee or applicant. *Applies to employers with 15 or more employees.

Wage and salary history privacy (RCW 49.58.100)

- **Wage and salary history privacy**
 - Employers cannot seek the wage or salary history of an applicant
 - Employees can voluntarily disclose their wage or salary history
- **Protection from wage and salary history requirements**
 - Employers cannot require prior wage or salary history to meet certain criteria
- **Confirmation of wage or salary history**
 - If applicant voluntarily discloses wage or salary history
 - After negotiation, an offer of employment with compensation is made and accepted by the applicant

Identified potential violations

- Appointment letters included in personnel files
- Pay information shared with hiring managers or supervisors before a formal offer including compensation is made to the applicant

Recommendations

- Discuss pay in terms of percentages during negotiation
- Review and revise your recruitment processes

Access to wage or salary range (RCW 49.58.110)

Disclosure of wage or salary range by employer

- After an offer is made, upon request by an applicant or employee
- Internal transfers and promotions
 - Demotions
 - Reversions
 - Reallocations
 - Acting appointments
- Job postings (effective Jan. 1, 2023)



What did ESSB 5761 change?

- Jan. 1, 2023
- Updates to RCW 49.58.110
- Employers with 15 or more employees must disclose in each posting for each job opening:
 - Wage scale or salary range
 - General description of all benefits
 - General description of other compensation



What is a posting?

- Specific available position
- Includes recruitment done directly by an employer or indirectly through a third party
- Electronically, or with a printed hard copy
- Qualifications for desired applicants



What is a wage scale or salary range?

Most reasonable and genuinely expected range of compensation

- \$25.00-\$30.00 per hour
- \$65,000-\$80,000 per year
- Commission-based salesperson – 5-8% of net sale price per unit



General description of benefits and other compensation

A “general description of all benefits” includes, but is not limited to:

- Health care benefits
- Retirement benefits
- Benefits permitting paid days off

“Other compensation” includes, but is not limited to:

- Any bonuses
- Stock options
- Tuition reimbursements
- Other forms of compensation

L&I investigations

If violations are not found, L&I will:

- Send a written Notice of Finding to the complainant and employer
- Close the investigation



L&I investigations

If violations are found, L&I is required to attempt to resolve the violation through “conference and conciliation.”

Goals

- Resolve complaints without L&I issuing a citation and notice of assessment
- Reach resolutions that are acceptable to the claimant and the employer

Possible resolutions

- Paying back wages owed
- Providing career advancement opportunities
- Changing company policies
- Job reinstatement
- Other proposed resolutions



L&I investigations

If violations are not resolved through conference and conciliation, L&I may issue a citation and notice of assessment and order the employer to pay:

- Actual damages
- Statutory damages equal to the actual damages or \$5,000 dollars (whichever is greater)
- Interest of 1% per month on compensation owed
- Investigation and enforcement costs
- A civil penalty of \$500 for a first-time violation or \$1,000 or 10% of damages (whichever is greater) for repeat violations



L&I investigations

Employers have the right to appeal a citation and notice of assessment if they do not agree with L&I's findings.



Civil actions

A complainant may bring a civil action against an employer within three years of the date of the alleged violation.

If complainant files a civil claim in court, L&I cannot investigate a complaint filed with the department.

Regardless of if L&I has made a determination, a complainant can still pursue civil action.



EPOA employer resources

- **RCW 49.58:** www.Leg.wa.gov -search “RCW 49.58”
- **L&I website:** www.Lni.wa.gov/EqualPay
- **EPOA Employer Resources:** <https://lni.wa.gov/workers-rights/wages/equal-pay-opportunities-act/>
- **EPOA Employer’s Guide:** <https://lni.wa.gov/forms-publications/F700-216-000.pdf>
- **EPOA draft administrative policy ES.E.1:** <https://www.lni.wa.gov/workers-rights/docs/ese1.pdf>

Request a consultation today!

EPOA consultation benefits

- No penalties or assessments will be issued if potential violations are identified
- Receive recommendations to comply with EPOA requirements
- Learn how to add clarity and transparency to your policies and practices regarding EPOA protections
- Reduce potential risks of having EPOA complaints filed against your organization

What L&I will provide during a consultation

- A review of your employee handbook, policies, job applications, offer letters, nondisclosure agreements, and other similar documents
- Identify potential risks
- Explain EPOA requirements and protections
- Recommend revisions to policies and practices

Questions?



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