



# Washington Supreme Court Allows Any Job Applicant to Sue under Pay Transparency Statute: 3 Steps You Should Take To Reduce Your Risk

Insights

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The Washington Supreme Court just made it easier for plaintiffs to bring costly lawsuits against employers for violations of the state's highly technical job posting requirements, making compliance more important than ever. The September 4 decision in *Branson v. Washington Fine Wine & Spirits* allows any "job applicant" to bring a claim for statutory damages against an employer that fails to disclose salary, wage, and benefits information in their job postings, regardless of whether they are a bona fide or good faith applicant. Yesterday's decision invites a spike in "serial plaintiffs" who merely apply for jobs in aid of bringing large-scale class action lawsuits against employers that commit technical violations of the strict law. This Insight will review what happened in *Branson*, the impact of recent amendments to the law, and the three steps you can take to ensure you don't end up as the next defendant in court.

## What Are the 2023 Job Posting Rules?

- As of January 1, 2023, Washington's Equal Pay and Opportunities Act (EPOA) requires employers with 15 or more employees to disclose the salary or wage range – plus benefits information – in all job postings for Washington jobs. [You can read about the law in more detail here.](#)
- The law allows both "job applicants" and employees to take action if they believe an employer has violated the EPOA, including the job posting rules. It left the term "applicant" undefined.
- Under the 2023 version of the law, "job applicants" or "employees" who believed they were aggrieved could file an administrative claim or a lawsuit for actual damages or statutory damages of at least \$5,000 per violation.

## What Happened in this Case?

- Lisa Branson submitted a job application for a sales associate position directly with the Tukwila Total Wines store, and Cherie Burke applied for a cashier position at the same store through a third-party hiring service.
- Neither job posting included the required wage scale or salary range.
- Branson and Burke filed a class action complaint seeking to recover at least \$5,000 each for themselves for each individual who applied for Washington jobs during the period of time the job

postings were not in compliance.

- Total Wines argued that the two plaintiffs – or any who seeks relief under the statute – should be required to prove they are “**bona fide**” or “**good faith**” applicants who actually wanted the job.
- The plaintiffs argued the opposite: **any person who applies to a job posting** should be able to bring a claim if posting is non-compliant, regardless of motive.
- The federal court handling the case asked the Washington Supreme Court to weigh in and determine what a plaintiff must prove to be deemed a “job applicant.”

### What Did the Court Say?

The Supreme Court sided with the plaintiffs in a 6-3 decision, holding that “a plaintiff must apply to a specific job posting but is not required to prove they are a “bona fide” or “good faith” applicant to obtain remedies under the statute.” The opinion’s key points included:

- The common definition of “job applicant” doesn’t include any sort of subjective determination about the person’s intent.
- To require plaintiffs to show they are “bona fide” applicants interested in a position in “good faith” would “shift the onus from employers to comply with the EPOA and put the burden on applicants,” the Court said.
- The Court was not worried that its decision would lead to a flood of lawsuits from serial plaintiffs, or from those unqualified for positions, or from those not truly interested in working for a given employer (or even incarcerated or those living abroad for that matter). This was despite contrary statistics presented in various amici (or “friends of the court”) briefs.
- The Court deliberately issued a narrow opinion, leaving open arguments for businesses to make at a later date – such as whether the EPOA violates constitutional due process by allowing for substantial damages awards (particularly in a large class case) untethered to any actual injury.

### What About the July 2025 Changes?

As we noted here, recent amendments provide employers some relief – but will not help with the “applicant” issue discussed in the *Branson* case.

One positive change is that amendment, effective July 27, 2025, expressly reduced the statutory damages from a minimum award of \$5,000 to a range of \$100 to \$5,000 based on a variety of factors to be weighed by the court. These include:

- whether the violation was willful or a repeat violation;
- the employer’s size; and
- what amount is “necessary to deter future noncompliance.”

But because the legislature's 2025 amendments failed to weigh in on any definition of "applicant," that means yesterday's Supreme Court's interpretation stands.

## What Should Employers Do?

**1. Develop a plan for compliance.** All postings for positions in Washington or could be performed by a Washington resident must include the **wage scale or salary range, general description of benefits, and all other compensation** as further explained by the state.

**2. Consider an internal audit of current employee pay** to make sure there are no significant discrepancies. At best, such anomalies could lead to discontent and employee attrition once you must start including salary information on job listings. At worst, they could lead to an equal pay lawsuit. You should also consider whether such an audit would be best conducted by working with your attorneys to preserve confidentiality when analyzing potential legal claims. An audit may also involve working with a compensation analyst.

**3. Build a rapid-response process.** The new version of the law requires a five-day notice and opportunity to correct before filing suit. Assign a dedicated person to receive compliance notifications and correct postings within the short notice window.

## Conclusion

If you have questions, please contact the authors of this Insight, your Fisher Phillips attorney, or any attorney in our Seattle office. We will continue to monitor developments in this area. Make sure you subscribe to Fisher Phillips' Insight System for the most up-to-date information sent directly in your inbox.

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