



Employment Law Note

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Coming Soon: New Washington Workplace Laws



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The Washington legislature closed out its 2017-2018 legislative session by passing several new employment-related bills that Governor Inslee signed into law. Several measures were in response to recent high profile sexual harassment cases and the #MeToo movement, while others target employer hiring practices. These new laws will require employers to audit their harassment and hiring practices moving forward.

SB 5996: Employees' Rights to Disclose Workplace Sexual Harassment and Sexual Assault – Effective June 7, 2018

Under Senate Bill 5996, an employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises. Any employment agreement containing such provisions is null and unenforceable. Settlement agreements containing confidentiality provisions, however, are still allowed.

SB 5996 does not apply to Human Resources staff and managers who are expected to maintain confidentiality as part of their jobs and it does not affect an employer's ability to request confidentiality as part of an ongoing sexual harassment investigation, though employers should remain wary of National Labor Relations Board case rulings that

allow employees the ability to discuss such investigations with co-workers and union representatives.

HB 2661: Domestic Violence/Sexual Assault/Stalking Discrimination Protection – Effective June 7, 2018

The legislature created a new protected class of employees who are actual or perceived victims of domestic violence, sexual assault or stalking. House Bill 2661 declares it a public policy that victims of sexual violence can seek and maintain employment free of discrimination and have the right to have reasonable safety accommodations in the workplace. As with the ADA and the Washington Law Against Discrimination, employers must show an undue hardship that prevents reasonable safety accommodations.

HB 1506: Gender Pay Equity – Effective June 7, 2018

House Bill 1506 updates the existing Washington Equal Pay Act to clarify the steps employers must take to achieve gender pay equity among "similarly employed" employees, and what employers must show to prove that any compensation differentials are based in good faith on bona fide job-related factors that are consistent with a business necessity and are not due to a gender-based differential. Such job-related factors must account for the entire differential. More than one factor may account for the differential.

Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires similar skill, effort, and responsibility, and

the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. The law also applies to disparities in opportunities for advancement.

HB 1506 prohibits employers from requiring nondisclosure agreements regarding wages or requiring employees to sign a waiver disallowing disclosure of wages. Employers cannot discharge an employee for discussing wages with others. The new state law in this regard is not, in fact, new to most employers. Federal labor law has long prohibited employer rules that prevent employees from discussing their wages.

HB 1298: “Ban the Box” – Effective June 7, 2018

House Bill 1298, also known as the Washington Fair Chance Act, prohibits employers from asking job applicants about arrest and/or conviction records prior to determining the candidate is qualified for the position. Employers are prohibited from inquiring into an applicant’s criminal background until the employee is determined to be otherwise qualified for the position.

The law tracks pronouncements by the Equal Employment Opportunity Commission in recent years, in which the EEOC has barred blanket hiring prohibitions based on criminal records, and hiring inquiries about arrests and convictions that are not job-related. Under the new Washington law, employers may not have any policies automatically or categorically excluding those with criminal records

from employment before determining if they are qualified for the position except for positions with unsupervised access to children under the age of 18, employers required by federal or state law to rely on that particular information, employment by a general or limited authority Washington law enforcement agency or criminal justice agency, or any entity required to comply with rules of a self-regulatory organization.

Enforcement is through the Washington Attorney General’s office. Aggrieved applicants do not have a private right to sue.

SB 6313: Employment Agreements, Mediation and Arbitration – Effective June 7, 2018

A new section is added to RCW 49.44 stating that a provision of an employment contract or agreement is against public policy and is void and unenforceable if it requires an employee to waive the employee’s right to publicly pursue a discrimination cause of action arising under chapter 49.60 RCW or federal laws or to publicly file a complaint with the appropriate state or federal agencies, or if it requires an employee to resolve discrimination claims in a dispute resolution process that is confidential. The new law essentially preserves an employee’s right to publicly file a complaint or cause of action for discrimination in employment contracts and agreements.

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