Washington State Pay Transparency Class Actions – A Wild Ride

---

By: Mary DePaolo Haddad and Nicole Demmon

Mary DePaolo Haddad is a shareholder in Klinedinst PC's Seattle office with over 20 years of experience defending employers and professionals against class actions, malpractice, discrimination, wrongful termination, and general liability claims. She defends corporations, small businesses, and individual professionals in matters ranging from routine defense work to complex, high-exposure litigation. She manages cases from initial claim assessment through dispute resolution and trial. Her track record includes securing dismissal of multi-million-dollar claims and consistently achieving favorable outcomes through strategic litigation, negotiation, and proactive risk management to minimize client exposure and legal risk. She delivers practical, cost-effective defense solutions tailored to each client's specific needs to protect their business interests, professional standing, and financial well-being.

Nicole Demmon's practice focuses on employment law where she represents employers in discrimination, harassment, retaliation, wrongful termination, and wage and hour matters. Ms. Demmon practices in both state and federal courts in Oregon and Washington. Ms. Demmon also provides advice and counsel on various employment issues from policy drafting and employment agreement writing to accommodation issues. Outside of work, Ms. Demmon volunteers at a King County Bar legal clinic; is a member of a local philanthropic group called Women's Philanthropic Collective; and is a new committee member of the Washington State Bar Association, Labor and Employment Law Section.

WASHINGTON State's pay transparency landscape is undergoing sweeping changes—driven by a convergence legislative reform, high-stakes litigation, and a recent state Supreme Court decision concerning the Equal Pay and Opportunities Act (EPOA).[1]

Washington's EPOA, which took effect for job postings on January 1, 2023, established strict pay transparency obligations for employers with fifteen or more employees. As codified at Revised Code of Washington 49.58.110, employers must include a wage scale or salary range and provide a general description of all benefits and other compensation offered for every job opening.[2] These requirements applied to both printed and electronic job postings, regardless of whether they are published directly by the employer or through third-party job boards, provided they target individuals seeking employment in Washington.

The EPOA aims to address wage disparities and promote fair pay by ensuring job seekers have transparent access to compensation information in advance. Failure to comply previously triggered statutory penalties of $5,000 per applicant (or actual damages if higher) for each deficient job posting. As a result, one job listing attracting dozens or hundreds of applicants could expose an employer to millions of dollars in liability. These severe penalties generated widespread attention among the state's business community and legal practitioners.

Notably, the pre-amendment EPOA did not define what constituted a "job applicant," which allowed plaintiffs—including those without genuine interest in the positions—to file claims, leveraging technical violations for substantial recoveries.

I. EPOA Suits Filed Before Amended Legislation

The combination of strict statutory penalties and ambiguous definitions led to an avalanche of litigation once EPOA's disclosure mandate began in 2023. More than 100 class action lawsuits were filed within the first year of enforcement. Much of the litigation concentrated in King County Superior Court and the Western District of Washington. About the same number of suits were filed in 2024 with most suits brought by the firm Emery Reddy. These complaints frequently involved claims by out-of-state or insincere job seekers—some lacking any real intent to work—driving employer exposure to catastrophic liabilities estimated at over $500 million statewide.

[1] HB 1905 (Wash. 2024), enacted at REVISED CODE OF WASHINGTON (RCW) 49.58.110.

[2] Available at https://app.leg.wa.gov/RCW/default.aspx?cite=49.58.110.

Federal courts often challenged plaintiffs' standing, insisting on proof of bona fide application and concrete injury.

The overwhelming volume and financial risk of these lawsuits became a central motivation for lawmakers to pass Substitute Senate Bill 5408 in 2025, which introduced a notice and cure period; revised damages; and clarified compliance pathways—providing much-needed relief for Washington employers.

II. Legislative Reform: The 2025 Amendments[3]

Faced with hundreds of class action lawsuits and catastrophic liability risks, Washington enacted Substitute Senate Bill 5408, which became effective July 27, 2025. SSB 5408 introduces critical changes:

- **Notice and Cure Period:** Employers who receive written notice of a deficient posting have five business days to cure the violation, escaping penalties if the problem is promptly addressed. This grace period remains in effect until July 27, 2027, and no formal process is required to issuing or receive notice.
- **Exemption for Scraped Postings:** Job postings replicated without employer permission are now exempt from pay transparency requirements, reducing risk for companies whose vacancies appear on large job aggregators.
- **Single Wage Amount Disclosure Option:** Employers may comply by listing a fixed wage amount instead of a salary range or pay scale, creating a simpler path for compliance.
- **Remedies and Damages Revamped:** Plaintiffs can now pursue administrative penalties up to $1,000 and statutory damages of $100-$5,000 per violation or file a private lawsuit seeking statutory damages and reasonable attorney's fees. Courts must consider whether violations were willful or repeated, employer size, and the deterrence need when awarding damages—moving away from the prior, draconian $5,000-per-applicant rule.

There are well over 200 pay transparency class actions filed, with a handful of plaintiffs and one law firm responsible for the bulk of suits. Potential liability for Washington employers remains high—reportedly exceeding $500 million. These amendments should significantly reduce the number of EPOA lawsuits, especially class actions. These amendments should effectively stop additional class actions from being filed because every class member would have to prove they asked for the violation to be cured.

[3] SSB 5408 (Wash. 2025), available at https://lawfilesext.leg.wa.gov/biennium/2025-26/Pdf/Bills/Senate%20Passed%20Legislature/5408-S.PL.pdf#page=1.

III. Summary and Analysis of the Decision in *Branson*

In *Branson v. Washington Fine Wines & Spirits*, the Washington Supreme Court addressed whether a "job applicant" under RCW 49.58.110—part of the EPOA—must demonstrate a bona fide intent to seek employment in order to claim remedies for noncompliant job postings.[4] The certified question arose in a class action after two individuals applied for jobs at a Washington retailer pursuant to a posting on Indeed.com where required wage and benefit disclosures were absent. One applicant even received and declined a job offer; both sued for statutory damages.

The court held that as long as the applicant is a "living human," they are considered an applicant.[5] The person's subjective intent or employment interest is irrelevant. The plain statutory language, the court reasoned, omits any requirement for proof of genuine interest or "bona fide" status. The court held that a person qualifies as a "job applicant" if they apply "to a specific job posting, regardless of their subjective intent" or whether they are a "bona fide" or "good faith" applicant.[6] The court expressly rejected policy arguments for limiting eligibility, noting that the legislature deliberately omitted such terms and that courts should not second-guess legislative choices. While the court clarified that the applicant's subjective intent is irrelevant, many open questions remain. The court expressly declined to address the argument that permitting anyone that submits a job application to statutory damages violates the Fourteenth Amendment to the United States Constitution, since it can result in severe penalties in the class action context disproportionate to the offense. Also, while including dicta on the topic, the court specifically declined to make a ruling on standing.

IV. Impact Going Forward – Litigation Risks and Defense Strategies Post-*Branson*

Washington employers continue to face extraordinary litigation risk for job postings issued between January 2023 and July 27, 2025. Branson's holding continues to expose businesses to $5,000 statutory damage claims per violation for over 250 pending class actions. Serial "tester" applicants

[4] No. 103394-0, 2025 WL 5493811 (Wash. Sept. 4, 2025).

[5] *Id*. at 7.

[6] *Id*.

can bring suit, amplifying exposure for technical missteps.[7]

As of September 2025, no controlling Washington authority has applied EPOA's amended remedies retroactively nor limited pre-amendment penalties, leaving pre-July 2025 postings exposed to cumulative statutory damages and broad class liability.[8]

Legal scholars and amicus counsel argue that courts may use constitutional principles or equitable doctrines—such as the Eighth Amendment's Excessive Fines Clause or the common law rule against absurd results—to curb disproportionate penalties.[9] Defense filings invoke these doctrines to challenge penalties as violative of due process or exceeding legitimate deterrence, emphasizing the legislative intent against opportunistic litigation.

Defendants are pursuing multiple defenses, including: arguing cumulative penalties far outstrip any actual harm and violate the Eighth Amendment and state analogues;[10] and seeking to use equitable principles to limit recoveries case-by-case, such as one penalty per plaintiff or per posting, rather than per posting times all applicants.[11]

Looking forward, courts may limit "absurd" or unconstitutional results. However, no wholesale liability reduction or retroactive legislative relief has materialized. Calls for reform persist, especially for damage caps and cure windows.[12]

V. Action Steps for Employers

Employers should:

- Continue monitoring for new regulations from the Washington Department of Labor & Industries.

---

[7] *Id.* at 15; RCW 49.58.110.

[8] *See Branson*, 2025 WL 5493811; Brief of Amici Curiae Retail Litigation Center, Inc., Nat'l Retail Federation, and Wash. Retail Federation in Support of Petitioners, Branson v. Washington Fine Wines & Spirits, No. 103394-0 at 28–29, available at https://www.courts.wa.gov/content/Briefs/A08/1033940%20Amicus%20-%20Retail%20Litigation%20Center%20Inc%20et%20al.pdf.

[9] *See* United States v. Bajakajian, 524 U.S. 321, 334–336 (1998); Brief of Amicus Curiae Chamber of Commerce of the United States of America in Support of Petitioners, Branson v. Washington Fine Wines & Spirits, No. 103394-0, at 11–14, available at https://www.courts.wa.gov/content/Briefs/A08/1033940%20Amicus%20-%20Chamber%20of%20Commerce%20of%20The%20United%20States%20of%20America.pdf.

[10] *See Bajakajian*, 524 U.S. at 334–336; *Amicus Br. for U.S. Chamber of Commerce*, *supra* note 9, at 12–14.

[11] *See Amici Br. For Nat'l Retail Federation*, *supra* note 8, at 30–32.

[12] *See* National Federation of Independent Business, "Class Action Lawsuit Abuse—Equal Pay Opportunity Act" (2025), available at https://www.nfib.com/wp-content/uploads/2025/01/EPOALAWSUITABUSE.2025.pdf.

- Update job postings immediately upon receiving notice of non-compliance.
- Ensure all postings—direct and third-party—clearly disclose wages, salary ranges (or fixed rates), and benefits unless exempted. Postings should also include a company contact to ensure applicants know who to contact should there be any issues with the postings.
- Seek legal counsel when facing EPOA lawsuits.