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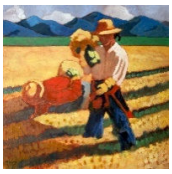

Employment Law Note

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Legal Update on Washington's Pay Transparency Law

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Washington's Supreme Court recently issued its ruling on the scope of the pay transparency provision of the Washington Equal Pay and Opportunities Act ("EPOA"), Ch. 49.58 RCW. The law requires employers disclose wage scales, salary ranges, and benefits information in all job listings. Should an aggrieved job applicant feel a job listing violates the statute, they may file suit, and may be entitled to statutory damages.

Practitioners had identified a critical ambiguity in the law, namely, the definition of a "job applicant." For instance, does the EPOA provide remedy to an unqualified 18-year-old who applies for a neurosurgery position? A 10-year-old? Is a person who applies for hundreds of jobs a month without intending to work for those employers a "job applicant" protected by the law? In other words, does the EPOA require a plaintiff establish they were a real, bona-fide job applicant to bring a claim? In *Branson v. Washington Fine Wine & Spirits, LLC*, our Supreme Court answered "no" to that threshold question.

The Underlying Lawsuit

In 2024, two plaintiffs filed a class action lawsuit against Washington Fine Wine & Spirits, LLC (WFW&S) in federal court. They alleged at least two of WFW&S's job postings failed to properly disclose wage-related information. Discovery followed.

According to WFW&S, discovery revealed that neither plaintiff had any genuine interest in working for WFW&S. In its motion to bifurcate discovery, WFW&S wrote that "it appear[ed] … Branson … 'applied' for several positions at WFW&S at the behest of her counsel, who days earlier had been forced to dismiss a pending case against WFW&S based on false allegations."[1] In WFW&S's view, such applicants are excluded from the purview of the EPOA, which was not intended to be "a strict liability statute that requires defendants to print $5,000 checks to anyone in the world who 'applies' to a job with a few clicks of a computer mouse."

The plaintiffs countered that Washington's legislature has consistently *expanded* worker rights – not contracted them. The fact that the EPOA could apply to "anyone in the world" is thus of little importance. Additionally, the plaintiffs argued the legislature had previously considered – and rejected – an amendment to narrow the scope of the EPOA to "bona-fide" applicants. According to the plaintiffs, a faithful reading of a statute requires honoring the legislature's intent.

The federal district court, in considering the motion, found that the law was "hardly settled" on the EPOA's scope. The court thus certified the issue to Washington's Supreme Court; procedurally, a "certified question" allows a federal court to seek clarification on a question of unsettled state law if the question is central to the federal case.

[1] 2:24-cv-00589-JHC, Dkt. # 32, p. 2.

Washington's Supreme Court Accepts Review

In February 2025, the Supreme Court held oral arguments, during which the plaintiffs argued a "job applicant" could well include a 10-year-old under the EPOA. WFW&S responded that the legislature clearly did not intend for the statute to be construed in a way that enables bad-faith claimants to misuse the law for easy statutory damages.

The Supreme Court issued its opinion on September 4, and held the EPOA does *not* require applicants apply in good faith to bring suit.

The opinion first noted that the dictionary definition of "apply" is "to make an appeal or request." To the Court, the definition does "not rely on the subjective intent" of the applicant, and merely requires an individual undertake the *act* of applying.

The opinion then found that Washington's legislature has been resolutely increasing worker protections. Therefore, a broader reading of "job applicant" is more consistent with the legislature's intent. What is more, the legislature uses the term "bona fide" in other sections of the EPOA. Therefore, if the legislature had wanted such language in its pay transparency provisions, it would have included it. In fact, the legislative history reveals lawmakers *had* considered potential constraints on the scope of "job applicants," prompting certain revisions to the draft bill. The term "bona fide" was not among those revisions.

Thus, the Court held that, to best effectuate the EPOA's intended purpose of "eradicating pay-based discrimination," the term "job applicant" must be broadly defined. To require a job applicant be "bona-fide" would unfairly "shift the onus of employers to comply" with the EPOA and instead place the burden on applicants "to show they applied in good faith."

The phrasing of the Court's holding is noteworthy, given that in nearly all other areas of civil law the plaintiff carries the onus to show they have legal standing, *i.e.*, a right to bring a claim before a court of law. To establish legal standing, plaintiffs must show they have suffered an actual concrete injury – the so-called "keys to the courthouse." The concept is so paramount to the legal system that it is enshrined in Article III of the U.S. Constitution and is why every jurisdiction in the United States has a civil rule to weed out such insincere cases (in Washington, Rule 12). The Court's stated intent to alleviate EPOA plaintiffs from the burden of establishing a good-faith claim is a marked departure from precedent. Indeed, Justice McCloud's dissenting opinion expressed worry the Court's expansive reading of the EPOA could render the act unconstitutional.

Implications for Employers

In May 2025, the legislature amended the EPOA to allow employers to correct violations of the EPOA within five business days of written notice. The amendment has no retroactive effect, however.

Employers should ensure all current and future job postings comply with the EPOA's pay-transparency strictures. Employers with questions about compliance, the EPOA, or other wage-related concerns are encouraged to contact Sebris Busto James.

For more information about this month's Employment Law Note
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