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The Compliance News Hour

Live Updates in Federal, State & Local Law

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This is a fictional scenario that is entirely imagined and intended only to provide a context for discussions of current legal issues and potential workplace interactions. Any resemblance to actual persons, names, events or circumstances is entirely coincidental and not intentional. In addition, the information and related discussion is not intended as legal advice, and is for general informational and educational purposes only. While we hope it is informative, it also does not fully address the complexity of the issues or steps employers must take under applicable laws—which are also subject to change, even frequently, with or without prior notice. You should not act upon any information provided without seeking professional legal counsel tailored to your specific situation. For legal advice on these or related issues, please consult qualified legal counsel directly.

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Washington Update

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Washington Legislation

New Laws Affecting WA Employers

Expansion of EPOA Protections (July 1, 2025)

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- Last year's House Bill 1905 changes went into effect on July 1, 2025, expanding the protections of the Washington Equal Pay and Opportunities Act (EPOA) beyond gender, to now also include:
  - *age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, as those terms are defined in RCW 49.60.040.*

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Coercion of Employees Based on Immigration Status (July 1, 2025)

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- Washington law now prohibits employers from using immigration status as a means to coerce or threaten an employee.
- “Threat” in this context means any implicit or explicit communication specifically pertaining to an employee’s or an employee’s family member’s immigration status that is made by the employer to deter an employee from engaging in protected activities or exercising a right under the Washington Minimum Wage Act, the Industrial Welfare Act, the Agricultural Labor statutes, or the Washington Wage Payment Act (WAWPA), or any rules issued by the L&I related to those laws.
- Penalties for each instance of coercion against each affected employee:
  - A maximum of $1,000 for the first violation;
  - A maximum of $5,000 for the second violation; and
  - A maximum of $10,000 for any subsequent violation.

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EPOA Changes (Effective July 25, 2025)

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Effective July 27, 2025, SSB 5408 now amends EPOA to:

- *Allow for Posting a Fixed Wage Rate*. If the job is only offered at a fixed wage rate, then the employer can just list that rate rather than a “wage scale or salary range” in external job postings or for internal transfers/promotions.
- *Adopt a Temporary Window of Correction*. For two years (that is, from July 27, 2025, through July 27, 2027), claimants must give notice to the employer and give the employer **five business days** to correct the posting before they can pursue other remedies.
- *Provide an Administrative Complaint Process.* Department of Labor & Industries (L&I) for violations of the job posting requirements.
- *Changes and Clarifications to Remedies.* For failure to provide required information in external job positions, the Act will now set a range of damages from $100 to $5,000 per violation, rather than specifying $5,000 for each violation, and prescribes certain factors for L&I or the court to consider.

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Driver's License (July 27, 2025)

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- Senate Bill 5501 amends RCW 49.58.090 to make it unlawful for an employer to either require a valid driver's license as a condition of employment **or** include a statement in a posting for a job opening for the position that an applicant must have a valid driver's license.
- The only exceptions are where driving is one of the **essential job functions** or is related to a **legitimate business purpose** for a position.
- L&I will enforce, and if it finds that a violation occurred, it may issue a citation and notice of assessment and order the employer to pay to the complainant:
  - actual damages or statutory damages of $5,000, whichever is greater;
  - 1 percent interest per month on all compensation owed;
  - payment of L&I's costs for investigation; and
  - any other appropriate relief.
- Civil penalties may also be assessed: (i) up to $500 for the first violation. (ii) up to $1,000 or 10 percent of the damages, whichever is greater, for repeat violations.

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Personnel Records (Effective July 27, 2025)

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- *There is now a clear definition of personnel file.* A "personnel file" now expressly includes job applications, performance evaluations, non-active or closed disciplinary records, leave or accommodation paperwork, payroll records, and employment agreements, if those documents otherwise exist.
- *There is also now a* **21-calendar-day** *deadline.* Employers are also not permitted to charge a fee to employees for providing a copy.
- *The same 21-day deadline applies to requested termination statements.*
- *There is now a private cause of action and escalating statutory damages:*
  - $250 if the records are provided after the 21st but before the 28th calendar day;
  - $500 if the records are provided after the 28th calendar day but before the 35th;
  - $1,000 if the records are provided later than 35 calendar days of the request; and
  - $500 for any other violations.

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PSL for Immigration Proceedings (July 27, 2025)

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- House Bill 1875 expands the qualifying reasons for which an employee may use their accrued and available state-mandated paid sick leave to include time off for an employee to prepare for or participate in any judicial or administrative immigration proceeding involving either the employee or their family member.
- Employers may request verification of an employee's need for leave relating to an immigration proceeding.
  - The employee may submit (and the employer must accept) documentation that confirms eligibility from an advocate for immigrants or refugees, an attorney, a member of the clergy, or another professional; OR
  - Alternatively, the employee may submit (and the employer must accept) a written statement from the employee that they (or their family member) are involved in a qualifying immigration proceeding and the leave was taken for a qualifying purpose.
- Note, however, that the supporting documentation submitted to the employer must not disclose any personally identifiable information about a person's immigrant status or underlying immigration protection.

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Criminal Background Checks (2026 & 2027)

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- House Bill 1747 amends Washington's Fair Chance Act to prohibit employers from making criminal history inquiries and background checks until **after a conditional offer of employment** has been made.
  - This applies not just to written applications, but also to interviews, recruiter discussions, and any form of screening conducted before the conditional offer stage.
- Employers are also prohibited from taking adverse action based on arrests that did not lead to conviction and from considering juvenile convictions at all.
- These changes go into effect on January 1, 2026, for employers with 15 or more employees, and on January 1, 2027, for employers with less than 15 employees.

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Criminal Background Checks (2026 & 2027)

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- House Bill 1747 also introduces a mandatory **two-business-day waiting period** after the applicant is notified of the potentially disqualifying conviction.
- During this time, the applicant must be given an opportunity to respond with additional information, including evidence of rehabilitation or explanation of the circumstances.
- If the employer decides to proceed with withdrawing the offer or taking other adverse action, it must provide a written explanation outlining the legitimate business reason and how the relevant factors were considered.

Criminal Background Checks (2026 & 2027)

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- If an employer intends to take adverse action based on an adult conviction, they must now be able to demonstrate a “legitimate business reason,” supported by an individualized assessment of six statutory factors:
  1. The seriousness of the offense;
  2. The number and types of convictions;
  3. The time elapsed since the conviction;
  4. Evidence of rehabilitation or subsequent good conduct;
  5. The nature and duties of the job sought and applicant’s ability to perform; and
  6. The work environment and the place and manner in which the job would be performed.
- Penalties for violations have also been increased:
  - Up to $1,500 for a first violation,
  - $3,000 for a second, and
  - $15,000 for each subsequent violation.
- Damages are payable directly to the affected applicant or employee.

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Paid Family and Medical Leave Expansion (2026)

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- Effective January 1, 2026, House Bill 1213 expands PFML's eligibility for job protections to lower the threshold to 180 days (6 months) of employment with the employer, AND includes smaller employers incrementally
  - Beginning January 1, 2026, employees who have worked for an employer with 25 or more employees will be entitled to job protections;
  - Beginning January 1, 2027, employees who have worked for an employer with 15 or more employees will be entitled to job protections; and
  - Beginning January 1, 2028, employees who have worked for an employer with 8 or more employees will be entitled to job protections.

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Paid Family and Medical Leave Expansion

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- As adopted, PFML already provided that, unless expressly authorized by the employer, PFML is to be taken concurrently with FMLA. However, it lacked a mechanism that would allow employers to require that PFML be used – it has been the employee's sole choice.
- As of next year, the law will now provide a mechanism for an employer to limit an employee's ability to "stack" their protected FMLA and PFML leave entitlements, by providing a required notice to the employee.
- Lowers minimum required increment from 8 hours to 4 hours at a time.

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Paid Family and Medical Leave Expansion

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- The amendments clarify that employees are entitled to job restoration under PFML immediately after they:
  - Take leave under PFML, regardless of whether the employee has applied for or taken FMLA concurrently; or
  - Take unpaid leave under the FMLA, if the employee is also eligible for leave under PFML during the same period and even if they didn't apply, excluding unpaid sick leave or temporary disability as an accommodation for pregnancy or childbirth (which is already protected by other laws).
- Employees must exercise their right to reinstatement on the first scheduled workday after their continuous or combined intermittent leave.
- For any period of leave that exceeds either two workweeks of continuous leave or 14 workdays of combined intermittent leave, employers will be required to provide the employee with at least 5 days' written notice of their first scheduled workday, as well as the estimated expiration of the employee's restoration rights.

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Paid Family and Medical Leave Expansion

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- To run leave under PFML and FMLA concurrently, the employer must provide **written notice** to the employee that states:
  - The employer is running the two leaves concurrently, specifying the amount the employee has used and has remaining, as well as the amount of FMLA leave counting against the employee's PFML leave balance;
  - The leave year start and end dates being applied; and
  - That the employee's eligibility for leave under PFML is not impacted by the employer's decision to run the leave concurrently.
- The employer must provide this notice within 5 business days of the employee's initial request for leave **and** on a monthly basis for the remainder of the leave year.

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Paid Family and Medical Leave Expansion

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- Currently PFML requires that employers maintain an employee's health insurance coverage during PFML only if there is at least one day of overlap with FMLA leave.
- Effective January 1, 2026, coverage must also be maintained during PFML leave but there will be three possible exceptions:
  1. The employee is no longer employed when they file for PFML.
  2. They are not entitled to job protection (i.e. they don't meet the 6-month eligibility threshold).
  3. They did not timely exercise their right to PFML.

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Expansion of Domestic Violence Leave Act (2026)

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- Effective January 1, 2026, Senate Bill 5101 amends Washington's Domestic Violence Leave Act (DVLA) to include job protections for employees who seek certain types of assistance relating to a hate crime.
- This includes job-protected leave as needed by an employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or their *family member including but not limited to preparing for or participating in any civil or criminal legal proceeding related to or derived from a hate crime.

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Changes re Minor Workers (2026)

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- *Work Hours*. As of July 1, 2026, approved employers in career and technical education programs may allow their minor employees to work the same maximum hours during the school year as they can during non-school weeks (holidays, vacation, etc.):

Daily Maximum	Weekly Maximum	Maximum Days Per Week	Start to End Times
8 hours	48 hours	6 days	5 a.m. - midnight

- *Safety and Working Conditions*. There will also be new restrictions on employing minors and bidding on public works projects, and new penalties including possible permit revocations for violations.

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New Pregnancy Accommodations (2027)

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- Effective January 1, 2027, all employers must provide the pregnancy accommodations currently in effect (not just those with 15 or more employees) AND they are expanded to include:
  - Pay for lactation breaks and for travel time to access lactation stations/locations.
  - Lactation breaks are now IN ADDITION to the employee's regular meal and rest breaks, and an employer cannot require that an employee use those breaks for lactation.
  - Accommodation for post-natal appointments (in addition to prenatal appointments, which were already covered).

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Washington's Mini-WARN Act (July 27, 2025)

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Federal WARN Act	Washington Mini-WARN Act
Applies to private sector companies with either 100 full-time employees OR 100 employees with 4,000 total hours per week.	Applies to private employers with 50 full-time Washington employees.
Mass layoff = 500+ full-time employees lose their jobs, or 50-499 full time employees lose their jobs and are at least 1/3 of the full-time work force.	Mass layoff = 50 or more full-time employees lose jobs in a 30-day period regardless of workforce percentage.
For both, a plant/business closure is 50+ full-time employees at a single site or operating unit are laid off.	
There is no coverage for short-term layoffs (less than 6 months).	If a layoff of 3 months or less is extended, notice of the extension must be given when it is reasonably foreseeable (including before the layoff).
Both statutes require 60-day's notice of a mass layoff, but there are some differences in the Mini-WARN Act and notices should comply with both.	
	Employees currently on Washington PFML cannot be in a mass layoff.

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Washington Cases

Court Decisions Affecting WA Employers

David v. Freedom Vans, LLC (2025)

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- *At Issue:* RCW 49.62.070 (aka the "Anti-Moonlighting" law) – no noncompete clauses for employees making less than double minimum wage. There are exceptions, including interference with the duty of loyalty. The question in this case is whether that exception is to be broadly or more narrowly interpreted by the courts?
- *Holding:* The Washington Supreme Court held it should be **narrowly tailored** to what is reasonable in the particular circumstances which requires a fact-specific analysis. It also adopted the following criteria for future courts dealing with that question:
  1. Is there a need to protect the employer's business or goodwill?
  2. Is restraint on the employee reasonably necessary?
  3. Would enforcing the noncompete agreement violate public policy?

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Branson v. Wash. Fine Wine & Spirits, LLC (2025)

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- *At Issue:* The Washington Pay Transparency Law (WPTL) changed the requirements for job postings and job recruitment, and allows applicants to recover penalty damages for noncompliant postings. It was not clear from the statute what was required to be considered an "applicant" – was it just that they applied, or did they also have to show they were qualified and genuinely interested in the job?
- *Holding:* The only requirement to bring a WPTL claim is proof of application. Applicants do not need to prove they are a bona fide applicant or that they applied for the position in good faith.

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Dep't of Lab. & Indus. v. Cannabis Green, LLC, (2025)

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- *At Issue:* L&I investigated Cannabis Green (CG) and found overtime violations. CG disagreed with the investigation and withheld some documents. L&I sent CG a settlement agreement including (1) wage law violations, (2) time of the violations, and (3) a threat litigation in lieu of settlement. CG declined. L&I then sued CG without issuing a formal order of payment or a specific amount for CG to pay. CG argued the lawsuit was premature because L&I had not made any determination of amounts owed.
- *Holding:* L&I does not need to issue a formal order or an exact sum before filing suit, especially when an employer withholds documents, making it difficult for L&I to calculate the needed payment.

Androckitis v. Va. Mason Med. Ctr., Court of Appeals, (2024)

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- *At Issue:* Virginia Mason's timekeeping system automatically deducted 30 minutes for a meal break, the employee could cancel the deduction for a missed break, but there was no later meal break option nor additional when breaks were not taken. Employees initiated a class action arguing that they were entitled to more than just the additional 30 minutes for the missed meal break.
- *Holding:* The Court of Appeals Division I (King, Snohomish, Skagit, Island, San Juan, and Whatcom Counties), agreed with the trial court, which held that employees were entitled to (1) pay for all missed periods, (2) 30 minutes of penalty pay per period, (3) prejudgment interest, and (4) double damages because the employer's failure to timely pay the missing periods was *willful*.
- The Supreme Court declined to hear further appeal, so this holding remains the current law in at least Division I.

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