

WA's law requiring pay rates on job ads is changing. No one is happy

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The legislative building at the state Capitol in Olympia on April 9. Roughly 2 1/2 years after Washington's pay transparency law took effect, lawmakers, state courts, employers and job seekers are still trying to make sense of it. (Karen Ducey / The Seattle Times)



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By [Lauren Rosenblatt](#)

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Roughly 2 1/2 years after Washington's pay transparency law took effect, lawmakers, state courts, employers and job seekers are still trying to make sense of it.

In an effort to address the [disparity between men's and women's pay](#), the bill requires most employers to include salary ranges in job postings, rather than waiting to disclose the wage after the company makes an offer.

Since the law took effect in January 2023, trade groups and workers' advocates have clashed on its details, particularly around how to enforce such a broad directive.

In July this year, a business-friendly, Legislature-approved change to the law gave employers a five-day grace period to correct job postings before they could face costly litigation.

Earlier this month, the Washington Supreme Court delivered a victory to workers' rights groups, determining the law did not limit who qualifies as an applicant. That ruling clears the way for job seekers to continue suing employers for noncompliance without proving they are "bona fide" applicants.

The two developments have left the field divided.

"The Washington state Supreme Court chose workers' rights over powerful corporate interests," said Timothy Emery, an attorney who has sued dozens of employers for allegedly violating the pay transparency law.

The Legislature chose the opposite side, Emery said. "Its decision to gut the pay transparency law is a crushing blow to every worker in Washington."

Adam Pankratz, a Seattle-based attorney with Ogletree Deakins, disagrees. He sees the amendment as an "advantage to both the employer and the potential job applicant." It allows companies to correct a "mistake" and will still get applicants the wage information.

The state Supreme Court's ruling, on the other hand, "ignored what's happening on the ground," Pankratz said. The court "came to a definition that is certainly literal but does not accomplish the purpose of the law."

A 'cottage industry' of claims

Washington is one of a handful of states that require companies to include a salary range and description of benefits in each job posting. The legislation is meant to help close the gender pay gap and ensure companies are offering fair compensation.

In the United States, women working full-time are paid 83% of what men earn, according to a 2023 [analysis](#) from the nonprofit American Association of University Women. Washington falls below the national average: Women make 79% of what men do.

It may be too soon to know if Washington's pay transparency legislation, which applies to companies with 15 or more employees, has meaningfully decreased that gap.

David Tan, a business professor at the University of Washington, [told The Seattle Times when the legislation was signed into law in April 2022](#) that it could take years to see an impact. That's because inequitable pay gaps take shape slowly, starting from a person's first paycheck and growing as they negotiate raises or switch jobs.

A 2024 [analysis](#) from Syndio, a software company based in Seattle that helps companies use artificial intelligence to make decisions about pay, found Washington's earlier laws promoting pay equity, like prohibiting employers from asking job candidates about their salary history, were making an impact. It found Washington's pay gap was closing two times faster than the national average.

Washington's law requiring salaries in job postings narrowly passed both chambers in 2022. But most critics agreed with the intent of the bill, even if they did not think it was necessary.

At the time, business trade groups said [employers had questions about the details of the law](#), like whether the description of benefits had to include information about dental coverage, and wondered how it would be enforced.

Under the legislation, the Department of Labor and Industries may investigate complaints of noncompliant job postings and job seekers are able to sue employers if they apply for jobs that do not include salary ranges.

If the court rules for a job applicant, they can collect \$5,000 in damages as well as attorney's fees.

After dozens of class-action lawsuits, including some filed by the same law firm and same job seekers, critics of the bill accused attorneys and workers of taking advantage of the new law. In legislative hearings this spring, trade groups said law firms were [creating a "cottage industry"](#) where people applied for jobs not to secure employment, but to sue the employer.

Emery, whose law firm Emery Reddy was at the center of those allegations, vehemently denies the claims. He says the lawsuits are holding employers accountable.

Notification before litigation

The recent amendment to the pay transparency law and state Supreme Court ruling are both in response to the slew of class-action lawsuits filed against employers – but the two decisions have vastly different implications for businesses and job seekers.

The amended law – passed in April, with some provisions taking effect in July – gives businesses some relief.

Going forward, employers cannot be held accountable for noncompliant postings on job listing sites if the employer did not consent to share their job opening there. Some third-party sites scrape the internet for open jobs and reshare postings without all the original information, Pankratz from Ogletree said.

The amendment also changed the amount of money a job seeker could receive for suing over a noncompliant job posting.

Rather than a \$5,000 award, which was borrowed from another section of the state's employment law, the amended bill says job seekers can receive damages from \$100 to \$5,000.

The recent amendment also gives businesses five days to update a job posting after being notified it is not in compliance with the pay transparency regulation.

Business trade groups celebrated the change as a "compassionate fix for a great policy idea," as Gabriel Neuman, from Washington's LGBTQ+ chamber of commerce, put it at a January Senate hearing.

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But Emery and other pay transparency advocates worry the five-day window will weaken enforcement. Because L&I has limited resources to investigate and take action against employers, Emery said the lawsuits from job candidates are the best way to hold companies accountable.

He expects a notification won't change the company's hiring practices and could end up blacklisting the potential employee from securing a job offer.

"Without an enforcement mechanism, our state is now moving backward toward wage opacity," Emery said.

The "reality" for job seekers

The state Supreme Court took a more worker-friendly approach.

This spring, one of the numerous class-action lawsuits made its way to the state's highest court to answer the question of how to define a job applicant.

Two King County residents accused Washington Fine Wine and Spirits of failing to include wage information on job postings in 2023 and 2024. The company, which denies that its job postings were noncompliant, argued the women did not apply in good faith and did not intend to take the job.

In its Sept. 4 ruling, the high court determined intent didn't matter.

The court's majority opinion hinged on the dictionary definition of "applicant" – Justice Barbara Madsen cited three definitions that "do not rely on the subjective intent of an individual" – and what the court interpreted as the legislature's intent when writing the law.

It cited other portions of Washington's Equal Pay and Opportunities Act that did define a job applicant as a "bona fide" candidate. If the legislature intended to use the same qualifications for job candidates in this case, it would have included similar language, Madsen wrote.

It's also not clear how companies or the court would determine who is a good-faith applicant, Madsen continued: "Does it require that a person have all of the qualifications and preferences listed in the job posting? Must the applicant prove they would have accepted the job if given an offer from the employer?"

"The reality is that many individuals apply for multiple job postings when they are seeking employment and may not have all the qualifications listed," Madsen wrote in the majority opinion signed by five other justices.

Placing additional parameters around the definition would "discourage applicants" from filing lawsuits and complaints against employers "for fear of costly litigation and intrusion into their personal lives to prove that they are 'bona fide' applicants," Madsen continued.

"The legislature did not intend to make it more difficult for job applications to recover for violations ... It intended to hold employers accountable," she wrote.

In a dissenting opinion signed by two other justices, Justice Sheryl Gordon McCloud argues the majority ruling goes "too far" in its interpretation of the definition.

She argues the remedy for nonconforming job posts should only be available to those who intend to gain an offer of employment – even if they don't know in advance they will accept the offer.

Individuals must be "seeking an offer, not a bounty," Gordon McCloud wrote.

The legislation is meant to "protect Washington workers and to fight employer discrimination," she continued. It is not "to give bounty seekers an incentive to trawl the Internet for noncompliant job postings."

The case against Washington Fine Wine and Spirits will now return to U.S. District Court in Seattle, where a judge will determine if the job postings violated the pay transparency law.

The question of who qualifies as a job applicant has reached the end of its court cycle, Pankratz said, meaning it cannot be appealed to a higher court.

But, because so many questions about the pay transparency law remain, he expects it won't be the last time the state Supreme Court considers the implications of this legislation.

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