



Washington State Department of
Labor & Industries

Employment Standards Program
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Equal Pay and Opportunities Act Pay Transparency - ESSB 5761

Agenda

- What did ESSB 5761 change?
- Job postings
- Wage scales and salary ranges
- Benefits and other compensation
- Commonly asked questions and answers
- L&I's investigation process
- Administrative policy and legislative implementation
- Additional resources



Access to wage or salary range (RCW 49.58.110)

Access to wage or salary range Previous protections

- Upon request of an applicant or employee for employment after the employer has initially offered the position, the employer must provide the minimum wage or salary for the position for which the applicant is applying.

Access to wage or salary range Effective Jan. 1, 2023

- Upon request of an employee offered an internal transfer to a new position or promotion, the employer must provide the wage scale or salary range for the employee's new position.
- Access to wage or salary range, general description of benefits and other compensation on job postings.

These apply to employers with 15 or more employees.

Access to wage or salary range

Disclosure of wage or salary range by employer

- After an offer is made, upon request by an applicant or employee
- Internal transfers and promotions
 - Demotions
 - Reversions
 - Reallocations
 - Acting appointments
- Job postings (effective Jan. 1, 2023)



What did ESSB 5761 change?

- Takes effect Jan. 1, 2023
- Updates to RCW 49.58.110
- Employers with 15 or more employees must disclose in each posting for each job opening:
 - Wage scale or salary range
 - General description of all benefits
 - General description of other compensation



What is a posting?

- References a specific available position
- Includes recruitment done directly by an employer or indirectly through a third party
- Electronically, or with a printed hard copy
- Qualifications for desired applicants



Examples of a job posting

These examples are considered a job posting because they include qualifications and reference a specific position for a desired applicant.

- An electronic reader board outside of a business that reads, “Help Wanted- Server. Food Handler’s Certification Needed. Offering: \$24.00-\$26.00 per hour, medical benefits, 70 vacation hours per year, and \$500 sign-on bonus.”
- A social media post that reads, “Seeking applicants for a Billing Specialist position. Must have 2 years of medical bill processing experience. \$30.00-\$40.00 per hour, medical, vision, and dental benefits, 401k retirement plan, and stock options available. More information can be found via hyperlink here.”

Examples of a job posting

- An online job posting that reads, “We are looking for a qualified applicant who has experience with use of spreadsheets and database software for a Data Analyst role. Salary range is \$60,000 - \$80,000 per year. Medical, vision, dental benefits, tuition reimbursements, and stock options available for the hired applicant. More information can be found via hyperlink here.”

Examples of what's not a job posting

The following examples are not considered a job posting because they do not include qualifications or reference a specific position.

- A window sign that reads “Help Wanted.” This example does not include qualifications or reference a specific position for a desired applicant.
- A website banner that reads “Hiring Now-All Jobs. Food Handler’s permit required.” This example does not reference a specific position for a desired applicant.
- A social media post that reads “Manufacturing jobs available, apply now online. Weekend shifts required.” This example does not include qualifications or reference a specific position for a desired applicant.

What is a wage scale or salary range?

Most reasonable and genuinely expected range of compensation

- \$25-\$30 per hour
- \$65,000-\$80,000 per year
- Commission-based salesperson – 5-8% of net sale price per unit



General description of benefits

A “general description of all benefits” includes, but is not limited to:

- Health care benefits
- Retirement benefits
- Benefits permitting paid days off

Example:

“Employees (and their families) are covered by medical, dental, vision, and basic life insurance. Employees are able to enroll in our company’s 401k plan, as well as a deferred compensation plan. Employees will also receive eight hours of vacation leave every month and twelve paid holidays throughout the calendar year.”

General description of other compensation

“Other compensation” includes, but is not limited to:

- Any bonuses
- Stock options
- Tuition reimbursements
- Other forms of compensation, such as tips

Example:

“Hired applicant will be able to purchase company stock, receive annual bonuses, and can participate in profit-sharing.”

Commonly asked questions

Q: Which employers must disclose a wage scale or salary range and a general description of benefits and other compensation on a job posting?

A: All employers, with 15 or more employees, engaging in any business, industry, profession, or activity in Washington must disclose a wage scale or salary range and a general description of benefits and other compensation on job postings that recruit Washington based employees.

See [RCW 49.58.010\(5\)](#) and [RCW 49.58.110](#).

Commonly asked questions

Q: Does the 15 or more employees threshold include employees working out of state?

A: Yes. The “15 or more employees” threshold includes employees that do not have a physical presence in Washington, if the employer has one or more Washington-based employees.

See [ES.A.13, “Minimum Wage Act- Washington Based Employee”](#) for a description of the factors the department applies to determine whether an employer has Washington-based employee(s).

Commonly asked questions

Q: If an employer's number of employees fluctuates above and below the 15 employee threshold throughout the year, do they need to comply with these requirements all year?

A: Whether the employer would need to comply with the pay transparency law would depend on the number of employees they have when the job is posted. An employer may choose to assume the law applies, rather than changing their practices for each fluctuation, but the employer is not required to do so.

Commonly asked questions

Q: Do employers need to include wage or salary range information on nationwide postings?

A: Employers must disclose a wage scale or salary range and a general description of benefits and other compensation on postings if the posting is for a position that could be filled by a Washington based employee, including remote work that could be performed by a Washington-based employee.

An employer cannot avoid disclosing wage and salary information requirements by indicating within a posting that the employer will not accept Washington applicants.

Employers do not need to disclose wage and salary information for jobs to be performed entirely outside of Washington even if the job posting reaches applicants who would fill the position as a Washington-based employee. The out-of-state exception applies to jobs tied to worksites physically located entirely outside of Washington.

Commonly asked questions

Q: What if we only pay a flat rate for a position, such as minimum wage?

A: The law requires employers to provide a wage scale or salary range. L&I suggests that employers are as transparent as possible on their job postings. Employers should create the full range of compensation for a job before they post the job posting and consider possible pay changes based on factors such as:

- Performance
- Qualifications
- Seniority

Commonly asked question

Q: Who is considered an applicant under the Equal Pay and Opportunities Act?

A: All applicants, including existing employees, who apply to a posting recruiting Washington-based employees, with an employer as defined by [RCW 49.58.010](#), including employers who may not have a physical presence or employee in Washington State, are protected by the law.

See Section 1 of this policy for definition of “employer.” A person is only considered an “applicant” for the specific posting(s) they applied for, not for every available job of the employer.

Commonly asked question

Q: Do employers need to provide wage and salary information to employees undergoing internal movements between positions, such as promotions, voluntary/involuntary demotion, reversion, reallocations, in-training appointments, nonpermanent appointments?

A: Yes. Movement between positions, including these examples, would likely be considered internal transfers and thus be subject to the disclosure of the wage scale or salary range upon request of the employee.

Commonly asked questions

Q: What if I only intend to hire at a specific starting range?

A: If an employer intends to implement a “starting range” or “starting rate” for an initial timeframe of employment or probationary period, the starting range or rate may be listed on the posting but the entire scale or range must **also** be listed on the posting.

Commonly asked questions

Q: Can electronic postings link to benefits and other compensation information?

A: On electronic job postings, employers must include a general description of benefits and other compensation but may choose to utilize a link or hyperlink to lead the applicant to a more detailed description.

If the benefits and other compensation information is available on the original or subsequent web pages, then the information needs to only be listed once.

It is the employer's responsibility to assure continuous compliance with functionality of links, up-to-date information, and information that applies to the specific job posting, regardless of any use of third party administrators.

L&I investigations

If violations are not found, L&I will:

- Send a written Notice of Finding to the complainant and employer
- Close the investigation



L&I investigations

If violations are found, L&I is required to attempt to resolve the violation through “conference and conciliation.”

Goals

- Resolve complaints without L&I issuing a citation and notice of assessment
- Reach resolutions that are acceptable to the claimant and the employer

Possible resolutions

- Paying back wages owed
- Providing career advancement opportunities
- Changing company policies
- Job reinstatement
- Other proposed resolutions



L&I investigations

If violations are not resolved through conference and conciliation, L&I may issue a citation and notice of assessment and order the employer to pay:

- Actual damages
- Statutory damages equal to the actual damages or \$5,000 dollars (whichever is greater)
- Interest of 1% per month on compensation owed
- Investigation and enforcement costs
- A civil penalty of \$500 for a first-time violation or \$1,000 or 10% of damages (whichever is greater) for repeat violations



L&I investigations

Employers have the right to appeal a citation and notice of assessment if they do not agree with L&I's findings.



Civil actions

A complainant may bring a civil action against an employer within three years of the date of the alleged violation.

If complainant files a civil claim in court, L&I cannot investigate a complaint filed with the department.

Regardless of if L&I has made a determination, a complainant can still pursue civil action.



L&I's implementation plan

- Implementing Equal Pay and Opportunities Act [Administrative Policy ES.E.1](#)
- Updating publications
- Individual presentations to organizations
- Offering employer consultations



Request a consultation today!



EPOA consultation benefits

- No penalties or assessments will be issued if potential violations are identified
- Receive recommendations to comply with EPOA requirements
- Learn how to add clarity and transparency to your policies and practices regarding EPOA protections
- Reduce potential risks of having EPOA complaints filed against your organization

What L&I will provide during a consultation

- A review of your employee handbook, policies, job applications, offer letters, nondisclosure agreements, and other similar documents
- Identify potential risks
- Explain EPOA requirements and protections
- Recommend revisions to policies and practices

Additional resources

- **RCW 49.58:** www.Leg.wa.gov - search “RCW 49.58”
- **L&I website:** www.Lni.wa.gov/EqualPay
- **EPOA Employer Resources:** <https://lni.wa.gov/workers-rights/wages/equal-pay-opportunities-act/>
- **EPOA Employer’s Guide:** <https://lni.wa.gov/forms-publications/F700-216-000.pdf>
- **EPOA administrative policy:** <https://lni.us.engagementhq.com/equal-pay-and-opportunities-act-draft-administrative-policy?preview=true>

Language access services

- L&I focuses on ensuring our services are easily accessible to all customers, no matter the language they speak.
- Our Employment Standards Program provides the following language access services at no cost:
 - Phone and in-person interpretation
 - Translations for documents during audits, consultations and investigations
 - Interpretation during webinars, when requested in advance. You can contact our access coordinator to request these services.

More info: [Lni.wa.gov/LanguageServices](https://lmi.wa.gov/LanguageServices)

Access Coordinator: Luz Gonzalez-Virgen, 360-789-5287, Luz.Gonzalez-Virgen@Lni.wa.gov

Civil Rights Program

- The Civil Rights Program at L&I strives to ensure we comply with federal and state laws and regulations related to civil rights and discrimination against national origin, race, color, language, sex, gender, religion, age, disability, and other protected classes.
- If you have not received requested services in your preferred language, or if you feel L&I has discriminated against you, you can file a discrimination complaint:
 - Fill out a [Civil Rights Discrimination Complaint Form](#) and mail it to the address listed at the top of the form or email it to CivilRights@Lni.wa.gov.
 - Call the Civil Rights Program at 1-855-682-0778 or send an email to CivilRights@Lni.wa.gov
 - Visit your nearest [L&I office](#).

More info: lni.wa.gov/CivilRightsProgram

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Questions?



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