

PANORAMIC

EMPLOYMENT: NORTH AMERICA

USA - Washington



LEXOLOGY

Employment: North America

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Contributors

USA - Washington

Morgan, Lewis & Bockius LLP

Morgan Lewis

Molly A. Terwilliger

molly.terwilliger@morganlewis.com

Damon Elder

damon.elder@morganlewis.com

Claire M Lesikar

claire.lesikar@morganlewis.com

Anne Philpot

anne.philpot@morganlewis.com

STATE SNAPSHOT

Key considerations

Which issues would you most highlight to someone new to your state?

Washington has a number of stringent requirements for employers, including meal and rest break rules, paid family and medical leave, paid sick leave, and pay transparency. In addition, employers in Seattle and other municipalities should note local laws that exceed the state requirements.

Law stated - 15 July 2024

Key considerations

What do you consider unique to those doing business in your state?

- Washington's Equal Pay Opportunities Act (EPOA) has detailed requirements for job postings, which differs from other jurisdictions.
- Seattle has several unique ordinances that provide certain rights to gig workers and independent contractors, such as the App-Based Worker Minimum Payment Ordinance and the Independent Contractor Protection Ordinance.
- Washington requires paid sick leave for both employees and rideshare gig workers.
- Washington has very generous meal and rest break rules.
- Washington requires that employers provide a reason for termination upon an employee's request.
- Washington's paid family and medical leave program, which provides leave based on the employee's service in the state not just at the employer.

Law stated - 15 July 2024

Key considerations

Is there any general advice you would give in the labor/employment area?

It is important for employers to review standard agreements and policies when hiring an employee in Washington. Additionally, employers should be careful to watch for developments in the law and pay close attention to local jurisdictional requirements.

Law stated - 15 July 2024

Emerging issues

What are the emerging trends in employment law in your state, including the interplay with other areas of law, such as firearms legislation, legalization of marijuana and privacy?

There has been a proliferation of pay transparency legislation and litigation in Washington. On both the state and local level, a number of laws have been passed providing leave entitlements and other rights to independent contractors and gig workers. Additionally, Washington is following national trends on restricting non-competition rules.

Law stated - 15 July 2024

Proposals for reform

Are there any noteworthy proposals for reform in your state?

Not currently.

Law stated - 15 July 2024

EMPLOYMENT RELATIONSHIP

State-specific laws

What state-specific laws govern the employment relationship?

Generally, in Washington, the employment relationship is governed by Title 49 of the Revised Code of Washington.

Washington-specific laws governing the employment relationship include the:

- Washington Law Against Discrimination (RCW 49.60.010);
- Washington Industrial Welfare Act (RCW 49.12);
- Washington Paid Family and Medical Leave Act (RCW 50A);
- Washington Family Care Act (RCW 49.12; WAC 296-130);
- Washington Paid Sick Leave Act (RCW 49.46; WAC 296-128);
- Washington Genetic Testing Protection Law (RCW 49.44.180);
- Washington Minimum Wage Requirements and Labor Standards Act (RCW 49.46);
- Washington Equal Pay and Opportunities Act (RCW 49.58);
- Washington Fair Chance Act (RCW 49.94) (prospective employees);
- Washington Silenced No More Act (RCW 49.44.211);
- Washington Jury Duty Leave (RCW 2.36.165); and
- Washington Military Leave (RCW 73.16).

Law stated - 15 July 2024

State-specific laws

Who do these cover, including categories of workers?

The following Washington-specific laws apply to the following categories of workers (for employers subject to the respective statute), unless specifically exempted:

- the Washington Law Against Discrimination (RCW 49.60.010) (all employees, prospective employees, and independent contractors);
- the Washington Industrial Welfare Act (RCW 49.12) (all employees);
- the Washington Paid Family and Medical Leave Act (RCW 50A) (employees that have worked 820 hours for a Washington employer during the previous year);
- the Washington Family Care Act (RCW 49.12; WAC 296-130) (all employees);
- the Washington Paid Sick Leave Act (RCW 49.46; WAC 296-128) (all employees);
- the Washington Genetic Testing Protection Law (RCW 49.44.180) (all employees and prospective employees);
- the Washington Minimum Wage Requirements and Labor Standards Act (RCW 49.46) (all employees);
- the Washington Equal Pay and Opportunities Act (RCW 49.58) (all employees and prospective employees);
- the Washington Fair Chance Act (RCW 49.94) (prospective employees);
- the Washington Silenced No More Act (RCW 49.44.211) (all employees, prospective employees, and independent contractors);
- Washington Jury Duty Leave (RCW 2.36.165) (all employees); and
- the Washington Military Leave (RCW 73.16) (employees that are members of the US military or military spouses).

Law stated - 15 July 2024

Misclassification

Are there state-specific rules regarding employee/contractor misclassification?

Under Washington law (RCW 49.44.170) and federal labor laws, if an employer misclassifies a worker as an independent contractor instead of an employee, the employer can be held liable for damages, including unpaid wages, interest, back taxes, fines, and attorneys' fees. Because workers who are misclassified can be denied access to workers' compensation benefits, unemployment benefits, and other protections afforded to employees, misclassification can have severe consequences for both the employer and the worker. Non-compliance with Washington state contractor laws can result in fines, penalties, and legal action.

To determine whether a worker is an employee or an independent contractor, the Washington Department of Labor uses a six-factor test, which includes the following criteria:

- the degree of control the employer has over the worker;
- whether the worker absorbs the cost of doing business and may profit or operate at a loss;

- whether the worker is invested in equipment or materials;
- the degree of skill required to do the worker's job;
- the permanence of the working relationship between the employer and the worker; and
- whether the service rendered by the worker is an integral part of the employer's business

Law stated - 15 July 2024

Contracts

Must an employment contract be in writing?

Employment agreements can be oral, written, or a combination of the two. However, if a term of the agreement is that the contemplated duration of the employment will exceed one year, the employment contract must be in writing as required by the Washington statute of frauds. Regarding employment at-will, some employers and employees, particularly at the management level, prefer to have the employment agreement in written form and signed by both parties.

Law stated - 15 July 2024

Contracts

Are any terms implied into employment contracts?

Generally, under Washington law, an implied covenant of good faith and fair dealing is part of all contracts. However, Washington courts generally do not imply a duty of good faith and fair dealing in employment at-will contracts. Nevertheless, Washington courts have held that under certain circumstances, an implied covenant of good faith may be appropriate for employment at-will contracts.

Law stated - 15 July 2024

Contracts

Are mandatory arbitration agreements enforceable?

Yes. Washington state courts generally favor enforcing arbitration clauses in agreements. The Uniform Arbitration Act (RCW 7.04A) states that a court will order parties to arbitrate unless it finds that there is no enforceable agreement to do so. The party challenging the arbitration has the burden of proving that the clause is unenforceable. Clauses will also be enforced unless there is clear evidence that the intention to arbitrate has been waived. Arbitration agreements can also be invalidated upon a ground that exists at law or in equity for the revocation of a contract.

Law stated - 15 July 2024

Contracts

How can employers make changes to existing employment agreements?

No specific state requirements exist in this regard. Except as stated in any written agreement, parties may alter written or oral contracts orally. However, best practice would be to record any contractual changes in writing, signed by both parties.

Law stated - 15 July 2024

HIRING

Advertising

What are the requirements relating to advertising open positions?

Employers with 15 or more employees (including at least one Washington-based employee) must disclose in each job posting the wage scale or salary range and a general description of all benefits and other compensation.

Upon request, employers must also disclose the wage scale or salary range for an open position to employees offered an internal transfer or promotion.

There are also several restrictions on the language in job postings. Employers may not advertise job openings in a way that excludes individuals with arrest or conviction records from applying, such as using advertisements that state "no felons," "no criminal background," or that convey similar messages. RCW 49.94.010. The job posting may not express a limitation or discriminate on the basis of protected classes including age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, veteran or military status, or disability. RCW 49.60.180(4).

Law stated - 15 July 2024

Background checks

(a) Criminal records and arrests

Washington's "Ban the Box" statute prohibits all public and private employers from inquiring or receiving information through a criminal background check into an applicant's criminal record until the employer has determined the applicant is otherwise qualified for the position. RCW 49.94.010(1). After an applicant has been deemed qualified, the employer may inquire about an applicant's criminal record. Advertising that explicitly excludes people with criminal records is prohibited. RCW 49.94.010(2). The law does not apply to those working with children or vulnerable people; financial institutions legally permitted or required to conduct background checks; law enforcement; and volunteer positions.

Law stated - 15 July 2024

Background checks

| (b) Medical history

Washington law prevents any employer from requiring, directly or indirectly, that any employee or prospective employee submit genetic information or undergo screening for genetic information as a condition of employment. RCW 49.44.180.

An employer may not ask about pregnancy, including medical history and other information relating to pregnancy. Employers may ask how long an applicant intends to stay in the job or if the applicant anticipates any absences, as long as they ask men and women the same questions. Wash. Admin. Code 162-12-140(3).

Law stated - 15 July 2024

| Background checks

| (c) Drug screening

The Washington Legislature has not enacted a uniform statute regulating drug testing by private employers. State law does not specify the circumstances under which testing conducted by a private employer is authorized or prohibited.

Washington law authorizes the use of medical and recreational cannabis (RCW 69.50.360 and 69.51A.005). Washington employers are not required to accommodate on-site medical cannabis use, and they may establish drug-free work policies. RCW 69.51A.060(4), (7).

The Washington legislature recently passed a law prohibiting employers from discriminating against applicants because of cannabis use off-the-clock and away from the workplace. 2023 Wash. Legis. Serv. Ch. 359 (S.B. 5123); see RCW 49.44.240. An employer cannot discriminate on the basis of drug test results showing non-psychoactive cannabis metabolites in the employee's hair, blood, urine, or other bodily fluids. RCW 49.44.240(1)(b).

Law stated - 15 July 2024

| Background checks

| (d) Credit checks

Washington's Fair Credit Reporting Act restricts the inquiry and use of consumer credit information by employers, including the method of disclosing and obtaining reports for employment purposes, the relevancy of the information, and the action taken based on the report's findings. RCW 19.182.020.

Employers cannot obtain consumer reports for employment purposes for prospective employees unless either:

- before the report is obtained, the employer makes a clear and conspicuous disclosure in writing to the consumer that a consumer report may be obtained for the purposes of considering the consumer for employment; or
- the consumer authorizes acquisition of the report.

RCW 19.182.020(2)(a).

Employers must give employees written notice before obtaining consumer reports for employment purposes, unless an employer has reasonable cause to believe that an employee has engaged in a specific activity that violates the law. A written statement contained in guidelines or manuals available to or provided to employees satisfies the notice requirement. RCW 19.182.020(2)(b).

Employers cannot obtain consumer reports for employment purposes when any information in the report is relevant to the consumer's creditworthiness, credit standing, or credit capacity, unless the information is either:

- substantially job related and the employer's reasons for using the information are disclosed to the consumer in writing; or
- required by law.

RCW 19.182.020(2)(c).

Employers must provide the following to a job applicant or current employee before taking any adverse employment action based on a consumer report:

- the name, address, and telephone number of the consumer reporting agency providing the report;
- a description of the consumer's rights; and
- a reasonable opportunity to respond to any information in the report the consumer disputes.

RCW 19.182.020(2)(d).

Law stated - 15 July 2024

Background checks

(e) Immigration status

Without a bona fide occupational qualification, an employer in Washington may not inquire about or discriminate on the basis of an applicant's citizenship or immigration status. RCW 49.60.180. However, an employer may ask whether an applicant (1) is prevented from lawfully being employed in the United States because of their visa or immigration status, and (2) can provide proof of their right to work in the United States after hire. Wash. Admin. Code 162-12-140.

Law stated - 15 July 2024

Background checks

(f) Social media

In Washington, employers may not request, require, or coerce an employee or applicant to disclose login information for his or her personal social media accounts. The employer

cannot require the employee or applicant to: access their account in the employer's presence for purposes of surveillance; add a person, including the employer, as a contact on their social media account; or change their account privacy settings for purposes of visibility. An employer cannot take adverse action against an employee who refuses to cooperate with these prohibited social media actions. There are exceptions for workplace investigations, work-related communication, employer-provided accounts and devices, and compliance with other laws. RCW 49.44.200.

Law stated - 15 July 2024

Background checks

(g) Other

Employers cannot require employees or applicants to take a lie detector or similar test as a condition of employment, with certain exceptions. RCW 49.44.120(1).

Law stated - 15 July 2024

WAGE AND HOUR

Pay

What are the main sources of wage and hour laws in your state?

The Washington Industrial Welfare Act (RCW 49.12), the Washington Minimum Wage Requirements and Labor Standards Act (RCW 49.46), and the remainder of Title 49 on the Revised Code of Washington. The Washington Administrative Code contains implementing regulations.

Law stated - 15 July 2024

Pay

What is the minimum hourly wage?

As of January 1, 2024, the minimum wage in Washington is \$16.28 per hour. The law also permits an employer to pay employees who are 14–15 years of age, 85 per cent of the state minimum wage rate, or \$13.84.

Annually on September 30, the Washington State Department of Labor & Industries calculates an adjusted minimum wage rate to the nearest cent to reflect increases in both inflation and the Consumer Price Index (CPI) for urban wage earners and clerical workers. Washington law does not address the effect of a decrease in the CPI on the adjusted minimum wage. Each adjusted rate takes effect on January 1 of the following year. (Rev. Code Wash. §49.46.020(2)(b))

Note that various municipalities have higher minimum wages, including Seattle, Bellingham, Burien, Renton, SeaTac, and Tukwila.

Law stated - 15 July 2024

Pay

What are the rules applicable to final pay and deductions from wages?

Upon termination, employees must be paid all wages due by the end of the established pay period. There is no requirement to pay out any unused vacation or PTO at termination.

An employer may deduct any portion of an employee's final wages and may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed, if the deduction is for any of the following:

- 1.
 - required by state or federal law;
 - for medical, surgical, or hospital care or service; or
 - to satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

An employer may make the following deductions if they are specifically agreed upon orally or in writing by the employee or employer and may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed, if the deduction is for any of the following reasons:

- 1.
 - for pension, medical, dental, or other benefit plans when such agreements have been specifically agreed upon orally or in writing in advance by the employee and employer; or
 - for a payment to a creditor or third party if the employee authorizes it orally or in writing in advance to pay a sum for the benefit of the employee. The creditor or third party can be the employer of the employee.

An employer can deduct wages from an employee's final paycheck for the following reasons, but only when these incidents have occurred in the final pay period and so long as the deductions do not reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed:

- for acceptance of a bad check or credit card, if it can be shown that the employee accepted the check or credit card in violation of procedures previously made known to the employee by the employer;
- for any cash shortage from a cash register, drawer or portable depository provided for that purpose, if it can be shown that the employee has sole access to the cash and has participated in the cash accounting at the beginning of the employee's shift and again at the end of said shift;

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for any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, if it can be shown that the shortage, walkout, breakage or loss was caused by a dishonest or willful act of the employee; or

- deductions taken due to alleged employee theft are permissible only if it can be shown that the employee's intent was to deprive and that the employer filed a police report.

(Wash. Admin. Code §296-126-025)

During an on-going employment relationship, an employer may deduct any portion of an employee's wages below the state minimum wage if the deduction is for any of the following reasons:

- Required by state or federal law; or
- For medical, surgical, or hospital care or service; or
- To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

Additionally, during an on-going employment relationship, an employer may deduct wages when the employee expressly authorizes the deduction in writing and in advance for a lawful purpose for the benefit of the employee. These deductions may reduce the employee's gross wages below the state minimum wage. ([Wash. Admin. Code §296-126-028](#))

An employer can recover an overpayment from an employee's paycheck without authorization if:

- the overpayment was infrequent and inadvertent;
- the employer detected and implemented a plan with the employee to collect payment within 90 days; and
- the employer provides advance written notice before the adjustment is made and the notice must include the terms under which the overpayment will be recouped.

([Wash. Admin. Code §296-126-030](#))

Law stated - 15 July 2024

Hours and overtime

What are the requirements for meal and rest breaks?

Non-exempt employees must receive a 30-minute meal break starting no less than two hours and no more than five hours from the beginning of the shift. Meal breaks must be paid when the employee is required to remain on duty on the premises or at a prescribed work site.

Non-exempt employees working three or more hours longer than a normal workday shall be allowed at least one 30-minute meal break prior to or during the overtime period. No non-exempt employee shall be required to work more than five consecutive hours without a meal period.

Non-exempt employees must receive a paid 10-minute rest break for every four hours worked, scheduled as close as possible to the middle of the work period. No non-exempt employee shall be required to work more than three hours without a rest period. However, if the nature of the work allows employees to take intermittent rest periods equivalent to ten minutes for each four hours worked, scheduled rest periods are not required. (Wash. Admin. Code §296-126-092)

Adult employees may voluntarily waive meal breaks, but not rest breaks.

Minors under 16 years of age must receive a paid 10-minute rest break for every two hours worked, and a 30-minute meal break after working four hours or more. Minors cannot waive meal breaks. (Wash. Admin. Code §296-125-0285; Wash. Admin. Code §296-125-0287)

Law stated - 15 July 2024

Hours and overtime

What are the maximum hour rules?

Washington state law places no maximum hour restrictions on most private sector employees. For minors permitted to work by the Washington Department of Labor and Industries, specific hour limits apply by age and vary depending on whether that workweek is also a school week (WAC § 296-128-400). Generally, during “non-school weeks” minors as young as 14 years of age are permitted to work 40 hours per week in non-agricultural jobs.

Law stated - 15 July 2024

Hours and overtime

How should overtime be calculated?

Overtime for non-exempt employees in Washington is calculated at one and one-half times the employee’s regular rate of pay for all hours worked over 40 in a seven-day workweek. Hours worked include those worked in Washington, and outside the state. (Rev. Code Wash. §49.46.130; Wash. Admin. Code §296-128-550)

Law stated - 15 July 2024

Hours and overtime

What exemptions are there from overtime?

Washington exempts salaried administrative, executive, professional employees, and outside salespeople. In addition, Washington provides exemptions to a lengthy list of specialized jobs and industries, including certain domestic, airline, and retail categories.

Where there are differences between federal and state laws or rules governing wages, hours, and working conditions, the standard more favorable or protective to the employee applies. (Rev. Code Wash. §49.46.120). (Rev. Code Wash. §49.46.010(3)(c); Wash. Admin. Code §296-128)

Record keeping

What payroll and payment records must be maintained?

Washington law requires employers to keep the following records for at least three years, and make the records available to an employee upon request:

- name, address, social security number, and occupation of each employee;
- the rate and dates of pay for each employee;
- dates of employment;
- number of hours of work and days worked; and
- the total wages paid each pay period (net and gross)

(Rev. Code Wash. § 49.46.070; Wash. Admin. Code §296-17-3520, 296-126-214, 296-126-050)

Failure to maintain required records or interference with the right of an employee to access the records to which they are entitled may entail criminal penalties on an employer.

Law stated - 15 July 2024

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

Protected categories

(a) Age?

The Washington Law Against Discrimination (WLAD) prohibits employers with at least eight employees from refusing to hire, discharging, or discriminating against an individual 40 years of age or older in the terms or conditions of employment because of that individual's age (Rev. Code Wash. § 49.60.180).

The Washington Human Rights Commission (HRC), upon finding violation of the WLAD prohibition on age discrimination, can make a complainant whole and may order employment, reemployment, promotion, back pay, or other benefits lost due to the discriminatory practice (WAC § 162-08-298).

Additionally, Seattle prohibits age discrimination of individuals at any age, including individuals below age 40.

Law stated - 15 July 2024

Protected categories

(b) Race?

The WLAD prohibits employers with at least 8 employees from refusing to hire, terminating, or discriminating against any person in the terms or conditions of employment because of that individual's race (Rev. Code Wash. § 49.60.180).

The prohibition on discrimination based on race includes traits historically associated or perceived to be associated with race, including hair texture and protective hairstyles (Rev. Code Wash. § 49.60.040(21)).

Law stated - 15 July 2024

Protected categories

(c) Disability?

The WLAD prohibits employers with at least eight employees from refusing to hire, terminating, or discriminating against any person in the terms or conditions of employment because of that individual's sensory, mental, or physical disability (Rev. Code Wash. § 49.60.180). The use of a trained dog guide or other service animal by a person with a disability is also protected by the WLAD (Rev. Code Wash. § 49.60.180(1)–(3)).

The WLAD defines "disability" very broadly, though it makes clear that not every individual with a disability is entitled to a reasonable accommodation. Only where an employee can show an impairment that substantially limits their ability to perform their job, and where the employee has put the employer on notice of the existence of said impairment, is that employee entitled to receive a reasonable accommodation (see Rev. Code Wash. § 49.60.040(7)(d)).

Law stated - 15 July 2024

Protected categories

(d) Gender?

The WLAD prohibits employers with at least eight employees from refusing to hire, terminating, or discriminating against any person in the terms or conditions of employment because of that individual's sex (Rev. Code Wash. § 49.60.180). This encompasses discrimination based on a woman's potential to become pregnant and her need take leave from work for childbearing (WAC § 162-30-929).

Employment opportunities may, however, be restricted to one sex if a bona fide occupational qualification (BFOQ) is proven for a particular role. This BFOQ exception is allowed "[w]here it is necessary for the purpose of authenticity or genuineness (e.g., model, actor, actress) or maintaining conventional standards of sexual privacy (e.g., locker room attendant, intimate apparel fitter)" (WAC § 162-16-240).

Law stated - 15 July 2024

Protected categories

(e) Sexual orientation?

The WLAD prohibits employers with at least eight employees from refusing to hire, terminating, or discriminating against any person in the terms or conditions of employment because of that individual's sexual orientation (Rev. Code Wash § 49.60.180).

Sexual orientation includes heterosexuality, homosexuality, bisexuality, as well as gender expression or identity, which is defined as "having or being perceived as having a gender identity, self-image, behaviour, or expression . . . different from that traditionally associated with the sex assigned to that person at birth" (Rev. Code Wash. § 49.60.040(26)).

Law stated - 15 July 2024

Protected categories

(f) Religion?

The WLAD prohibits employers with at least eight employees from refusing to hire, terminating, or discriminating against any person in the terms or conditions of employment because of that individual's creed (Rev. Code Wash. § 49.60.180). In 2014, the Washington Supreme Court clarified that this imposes a duty on employers to reasonably accommodate an employee's religious practices. *See Kumar v. Gate Gourmet, Inc.*, 180 Wn.2d 481 (2014).

The WLAD also prohibits employers from requiring that an employee disclose a sincerely held religious belief, unless said disclosure is for the purpose of providing a requested religious accommodation (Rev. Code Wash. § 49.60.208).

Law stated - 15 July 2024

Protected categories

(g) Medical?

Washington state law prevents any employer from requiring, directly or indirectly, that any employee or prospective employee submit genetic information or undergo screening for genetic information as a condition of employment (Rev. Code Wash. § 49.44.180).

Employers also may not require individuals to take an HIV or hepatitis C test as a condition of hiring, promotion, or continued employment, or otherwise discriminate against any individual in the terms or conditions of their employment based on the results of such a test, unless the absence of an HIV or hepatitis C infection is a BFOQ for the job in question (Rev. Code Wash. § 49.60.172).

Law stated - 15 July 2024

Protected categories

(h) Other?

The WLAD further prohibits employers with at least eight employees from refusing to hire, terminating, or discriminating against any person in the terms or conditions of employment because of that individual's marital status, creed, color, national origin, citizenship or

immigration status, or honorably discharged veteran or military status (Rev. Code Wash. § 49.60.180).

Additionally, Seattle recently passed an ordinance listing “caste” as a protected category.

Law stated - 15 July 2024

Harassment

What is the state law in relation to harassment?

The WLAD has been interpreted to prohibit harassment of an individual based on that individual’s membership in a protected class. Harassment has been found actionable only if it sufficiently pervasive as to alter the conditions of employment and create an abusive working environment (see, e.g., *Antonius v. King County*, 153 Wn.2d 256 (2004)).

Employers may be strictly liable for harassment under the WLAD if the employer authorized, knew, or should have known of the harassment and failed to take corrective measures. Liability may also be imputed to an employer for harassment if the harasser is an owner, partner, or manager of the employer of sufficiently high rank “that the harasser is the employer’s alter ego” (see *Davis v. Fred’s Appliance, Inc.*, 171 Wn. App. 348, 362–63 (Ct. App. 2012)).

Law stated - 15 July 2024

Family and medical leave

What is the state law in relation to family and medical leave?

Washington’s new Paid Family and Medical Leave (PFML) law entitles eligible employees to up to 12 weeks of paid leave for their own serious health condition or to care for their family (Rev. Code Wash. § 50A.15.020). Employees can take up to 16 weeks of paid leave when family and medical leave are used in conjunction and are entitled to up to two extra weeks of leave for certain pregnancy complications (Rev. Code Wash. § 50A.15.020(3)(c)).

Employees are eligible for PFML benefits after working for at least 820 hours in the qualifying period in Washington (Rev. Code Wash. § 50A.15.010). Following amendment to the PFML in 2022, employees are now entitled to take paid family medical leave during the seven calendar days following the death of a qualifying family member.

The entitlement to PFML benefits to take leave for the birth of a child expires at the end of the 12-month period beginning on the child’s date of birth. Similarly, an employee’s entitlement to PFML benefits to take leave to care for a family member’s serious health condition or to care for the employee’s own serious health condition, expires at the end of the 12-month period following the date on which the employee filed an application for the benefits (Rev. Code Wash § 50A.15.065).

Law stated - 15 July 2024

PRIVACY IN THE WORKPLACE

Privacy and monitoring

What are employees' rights with regard to privacy and monitoring?

The Washington Privacy Act prohibits an employer from intercepting or recording an employee's private communications without the employee's consent. [RCW 9.73.030](#). Employers are also generally prohibited from searching employees' privately owned vehicles. [RCW 49.44.230](#).

Employers must also take reasonable steps to destroy records that no longer need to be retained if such records contain an individual's financial and health information and/or personal identification information issued by governmental entities. [RCW 19.215.020](#).

Employers also cannot require employees to take lie detector tests as a condition of continued employment. [RCW 49.44.120](#).

Law stated - 15 July 2024

Privacy and monitoring

Are there state rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

Employers generally can't require and/or coerce job applicants or employees to:

- disclose log-in information for the social media account;
- access their personal social media account in the employer's presence in a manner that allows the employer to view the contents of the account;
- add particular persons, including the employer, to the list of contacts associated with their personal social media account; or
- alter the settings on their social media that affect a third party's ability to view the contents of the account.

[RCW 49.44.200](#).

Law stated - 15 July 2024

Bring your own device

What is the latest position in relation to bring your own device?

Washington law does not regulate an employer's choice of a bring your own device policy.

Law stated - 15 July 2024

Off-duty

To what extent can employers regulate off-duty conduct?

Washington law does not limit the ability of employers to regulate employees' legal, off-duty conduct. However, an employer cannot discriminate against a job applicant in the initial hiring process for off-duty cannabis use. [RCW 49.44.240](#).

Law stated - 15 July 2024

Gun rights

Are there state rules protecting gun rights in the employment context?

Washington doesn't have any laws protecting gun rights in the employment setting. Both public and private employers can prohibit employees from possessing firearms on the job and at the workplace. See *Cherry v. Municipality of Metropolitan Seattle*, 116 Wn.2d 794 (1991).

Law stated - 15 July 2024

TRADE SECRETS AND RESTRICTIVE COVENANTS

Intellectual property

Who owns IP rights created by employees during the course of their employment?

An employment agreement can assign the rights to any IP created in the course of employment to the employer. However, Washington law provides that such an employment agreement will not apply to "an invention" created entirely on the employee's own time unless either:

- the invention relates:
- directly to the employer's business; or
- to the employer's actual or demonstrably anticipated research or development; or
- results from work that the employee performed for the employer.

[RCW 49.44.140](#).

Law stated - 15 July 2024

Restrictive covenants

What types of restrictive covenants are recognized and enforceable?

Washington laws recognizes non-compete agreements, non-solicitation agreements, and non-disclosure agreements.

[RCW 49.62.020](#) governs most non-competes. RCW 49.62.020 provides that a non-compete is void and unenforceable unless:

- the employer discloses the terms of the agreement in writing to the prospective employee when the employee accepts the employment offer and, if the agreement becomes enforceable only at a later date due to changes in the employee's compensation, the employer specifically discloses that the agreement may be enforceable against the employee in the future;
- if the agreement is entered into after the employment begins, the employer provides independent consideration for the agreement;
- the employee's earnings from the employment exceed \$100,000 per year, adjusted annually for inflation. Effective January 1, 2024, the earning threshold is \$120,559.99; and
- if the employee is laid off, enforcement of the agreement includes compensation equivalent to the employee's base salary at the time of termination for the period of enforcement minus compensation earned through later employment during the period of enforcement.

Washington courts have limited the length of a reasonable non-compete. Non-compete agreements of over 18 months are presumed to be unenforceable. [RCW 49.62.020](#). An employer must show, by clear and convincing evidence, that a non-compete of more than eighteen months is necessary for the employer's business.

[RCW 49.62.020](#) does not apply to provisions prohibiting solicitation of employees or current customers.

Washington courts also limit the geographic scope of non-competes.

- Washington courts generally enforce geographical limitations covering those clients that the former employee serviced during employment. See *Perry*, 748 P.2d at 230.
- Additionally, courts have upheld generalized geographic restrictions with a 30-mile radius. See *Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc.*, 935 P.2d 628, 636 (Wash. Ct. App. 1997).

Additionally, a non-compete is void and unenforceable against Washington-based employees if the non-compete:

- requires the independent contractor or employee to adjudicate the non-compete outside Washington;
- deprives the independent contractor or employee of the protections or benefits of Washington non-compete law; or
- allows or requires the application of the law of a jurisdiction other than Washington.

[RCW 49.62.050](#).

Non-solicitation agreements are analyzed similarly to non-compete agreements. If an agreement is broader than necessary, then a court can modify and narrow it to make it

reasonable. *Össur Holdings, Inc. v. Bellacure, Inc.*, 2006 WL 2401269, at *7 (W.D. Wash. Aug. 18, 2006).

Washington employers may use nondisclosure agreements including to prevent the disclosure of trade secrets. *Pac. Aerospace & Elecs., Inc. v. Taylor*, 295 F. Supp. 2d 1188, 1204-05 (E.D. Wash. 2003). Non-disclosure agreements cannot restrict an employee's right to disclose or discuss workplace conduct, or the existence of a settlement involving conduct, that the employee reasonably believed under Washington state, federal, or common law to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or sexual assault, or that is recognized as against a clear mandate of public policy. [RCW 49.44.211](#).

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Non-compete

Are there any special rules on non-competes for particular classes of employee?

Non-competes for lawyers are subject to particular restrictions. A lawyer may not offer or make:

- a partnership, shareholders, operating, employment, or similar type of agreement that restricts the rights of a lawyer to practice after employment terminates, except an agreement concerning retirement benefits; or
- an agreement where a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

[Rules of Professional Conduct 5.6](#).

Non-competes for broadcasters are also subject to particular restrictions. Non-compete agreements entered after December 31, 2005, between broadcasting industry employers and their employees are void and unenforceable where the employer terminates the employee without just cause or lays off the employee. [RCW 49.44.190](#).

Law stated - 15 July 2024

LABOR RELATIONS

Right to work

Is the state a "right to work" state?

Washington is not a right to work state.

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Unions and layoffs

Is the state (or a particular area) known to be heavily unionized?

Washington is the [third](#) most unionized state with a unionization rate of [16.5%](#).

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Unions and layoffs

What rules apply to layoffs? Are there particular rules for plant closures/mass layoffs?

Washington has no state laws that restrict layoffs, mass layoffs, or plant closures. It does not have a mini-WARN Act.

Law stated - 15 July 2024

DISCIPLINE AND TERMINATION

State procedures

Are there state-specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

Washington has no state-specific requirements for discipline and grievance procedures for private employers.

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At-will or notice

At-will status and/or notice period?

Washington is an employment at-will state. Accordingly, in the absence of a contract of employment for a specified period of time, an employer or employee may terminate the employment relationship at any time, for any reason, without financial repercussion.

Furthermore, neither an employer nor an employee is required to provide notice of the termination of employment. However, Washington law requires that any employer, upon written request by a discharged employee, must furnish a signed written statement detailing the reason for termination and the effective date thereof (WAC § 296-126-050(3)).

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At-will or notice

What restrictions apply to the above?

An employer's ability to terminate an employment relationship for any reason does not protect terminations based on the employee's membership in a protected class (e.g., the employee's race, gender, or sexual orientation). The ability of both employers and employees

to terminate the employment relationship is further subject to any limitations agreed upon in a prior employment contract or collective bargaining agreement.

Law stated - 15 July 2024

Final paychecks

Are there state-specific rules on when final paychecks are due after termination?

Washington state law provides that an employee must be paid their final wages no later than the next regularly scheduled pay date following termination (Rev. Code Wash. § 49.48.010(2)).

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