WASHINGTON SUPREME COURT ADOPTS EXPANSIVE DEFINITION OF "JOB APPLICANT" UNDER EPOA PAY TRANSPARENCY STATUTE

Date: 8 September 2025

US Labor, Employment, and Workplace Safety Alert

By: Joby C. Celoza

On 4 September 2025, the Washington Supreme Court (the Court) issued its highly anticipated decision in *Branson v. Wash. Fine Wine & Spirits, LLC* (*Branson*).[1] In *Branson*, the court held that any person who applies to a job posting that does not comply with the pay transparency requirements of the Washington Equal Pay and Opportunities Act (EPOA)[2] may seek damages under the statute, regardless of whether the individual actually intended to seek employment with the employer.

In March 2022, the EPOA was amended to require employers to disclose salary, wage, and benefits information in all job postings.[3] Pursuant to the 2022 amendment, employers that violate the EPOA were subject to broad liability for the greater of actual damages or statutory damages of US$5,000 per violation.[4] The Court in *Branson* was addressing a certified question from the Western District of Washington—specifically, whether a plaintiff seeking damages must be a “bona fide” applicant or otherwise have a “good faith” basis for applying to a job posting in order to seek statutory damages under the EPOA. In reaching its holding, the Court declined to consider the subjective intent of the applicant and instead held that “any person who applies to a job posting” that does not properly disclose salary or wage information has standing to sue under the statute.

While the case returns to the trial court, the Court's ruling in *Branson* could potentially expose Washington employers with noncompliant job postings to significant penalties arising from claims brought by “tester” applicants who solely seek penalty damages under the EPOA. Although the Court dismissed the defendant employer's concerns that its interpretation of the statute would lead to absurd results—including, among other concerns, expansive class action liability arising from a single noncompliant job posting—in her dissent, Justice McCloud expressed a concern that the majority's ruling would result in “individuals seeking a statutory bounty unrelated to any harm suffered.”[5]

However, Washington employers are not without any reprieve. In May 2025, the EPOA was amended to provide employers an opportunity to correct a violation of the EPOA within five business days of being notified of the violation in writing. So long as an employer corrects a noncompliant posting or contacts any applicable third-party posting entity with a demand to correct the job posting, neither the Washington Department of Labor and Industry nor a court may assess or award damages or other relief for the corrected violation. The 2025 amendments to the EPOA further provide for penalties ranging from US$100 to US$5,000 for a civil action arising from a noncompliant posting, taking into account various factors, including the willfulness with which a violation occurred and the size of the employer, in assessing the appropriate penalties.

©2005-2026 K&L Gates LLP. All Rights Reserved.

Branson left open questions regarding the constitutionality of the statute's application in light of the Court's expansive definition of "job applicant." For example, the Court declined to consider whether the imposition of onerous statutory penalties arising from class action lawsuits related to a single noncompliant posting would constitute an unconstitutional penalty disproportionate to the offense under the 14th Amendment.

Going forward, Washington employers should continue to ensure that all current and future job postings on their websites or those maintained on third-party websites comply with the EOA's pay transparency requirements and include the requisite wage or salary and benefit information. Employers should also be vigilant in ensuring any notice of noncompliant postings are promptly directed to an appropriate person or department to ensure corrections are timely made within the short five-business-day window permitted to cure any deficiencies. For employers outside of Washington, *Branson* is a reminder to review job posting practices for compliance with state and local pay transparency statutes.[6]

Our Labor, Employment, and Workplace Safety practice can assist with any questions regarding this evolving legal landscape.

FOOTNOTES

[1] No. 103394-0 (Wash. Sept. 4, 2025) (slip op.).

[2] RCW 49.58.110.

[3] *See* K&L Gates Legal Alert, Washington State Issues New Guidance on Pay Transparency Requirements for Job Postings, January 6, 2023, https://www.klgates.com/Washington-State-Issues-New-Guidance-on-Pay-Transparency-Requirements-for-Job-Postings-1-6-2023.

[4] Notably, Washington employers are liable under the EPOA for job postings that are maintained by the employer (i.e., on their website) or by third parties, such as Indeed.com. The Plaintiffs in *Branson* both applied for jobs with the defendant employer through a posting on Indeed.com that did not include wage or salary information. However, the 20 May 2025 amendment to the EPOA makes clear that employers will not be held liable for third-party postings that are digitally replicated and published without the employer's consent.

[5] *See Branson*, No. 103394-0, slip op. at 12 (Wash. Sept. 4, 2025) (McCloud, J., dissenting).

[6] *See* K&L Gates Legal Alert, Massachusetts Joins Growing Number of States With a Pay Transparency Law, August 2, 2024, https://www.klgates.com/Massachusetts-Joins-Growing-Number-of-States-With-a-Pay-Transparency-Law-8-2-2024; K&L Gates Legal Alert, California Pay Transparency Act: Considerations for Employers, March 28, 2023, https://www.klgates.com/California-Pay-Transparency-Act-Considerations-for-Employers-3-28-2023; and K&L Gates Legal Alert, Help Wanted: What Employers Need to Know About Pay Transparency Requirements in Job Postings, October 31, 2022, https://www.klgates.com/Help-Wanted-What-Employers-Need-to-Know-About-Pay-Transparency-Requirements-in-Job-Postings-10-28-2022.

©2005-2026 K&L Gates LLP. All Rights Reserved.

KEY CONTACTS



JOBY C. CELOZA
ASSOCIATE

SEATTLE
+1.206.370.5767
JOBY.CELOZA@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.