



Employment Law Note

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New Year, New Rules



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The New Year has brought with it several changes to the landscape of Washington's labor and employment laws. Employers unacquainted with these new rules risk stumbling into liability, as Washington's legislature has uniformly expanded employee protections in 2024. This note provides an overview of some of these developments.

Washington's Non-Compete Law

Since January 1, 2020, Washington law has prohibited workplace noncompetition agreements (or "non-competes") with limited exception. RCW 49.62.020. To be enforceable, a non-competes must (among other things) only apply to employees whose yearly earnings exceed the minimum statutory threshold amount. RCW 49.62.020 originally established that only employees earning more than \$100,000 per year may be party to a non-competes. This minimum salary figure is adjusted for inflation every year, as calculated by the Department of Labor and Industries. See RCW 49.62.040.

For 2024, the Department of Labor and Industries has determined that only workers who earn more than \$120,559.99 per year may be held to noncompetition agreements. This adjusted threshold amount took effect January 1, 2024. This means a noncompetition agreement that was enforceable in 2020 (based on 2020's criteria) is still valid and enforceable in 2024, even if it does not satisfy 2024's criteria.

The penalties for employers who violate the statute are considerable. For non-competition agreements executed before January 1, 2020, that are now considered unlawful, an employer faces no liability as long as they do not seek its enforcement. But for noncompetition agreements executed after January 1, 2020, the mere

existence of a noncompliant noncompetition agreement creates a private right of action for employees to pursue remedies against employers. These remedies include the higher of an employee's actual damages or a statutory penalty of \$5,000 (*i.e.*, the floor for an employer's liability starts at \$5,000), attorneys' fees, expenses, and costs for each violation of the statute.

Employers interested in entering into noncompetition agreements with their employees should be aware of these changes and consult with an attorney to ensure they do not trigger the strictures of Chapter 49.62 RCW.

Wage and Hour Laws

Washington

Washington adjusts its minimum wage based on the federal Consumer Price Index. Effective January 1, 2024, Washington's new minimum wage is \$16.28 per hour. For workers who are 14 or 15 years old, the minimum wage is \$13.84 per hour.

The salary threshold for Washington's overtime exemption has correspondingly increased. In accordance with Washington's salary threshold implementation schedule, to be exempt from the overtime premium, an employee (regardless of their employer's size) must earn a salary equivalent to at least twice the state minimum wage, or \$1,302.40 per week (\$67,724.80 per year). In addition, Washington employers who pay computer professionals on an hourly basis must now pay them 3.5 times the minimum wage (\$56.98 per hour) to be exempt.

Previously, Washington set different salary thresholds based on the employer's size. In 2023, for example, the salary threshold for small employers (*i.e.*, less than 50 employees) was 1.75 times the

minimum wage; for large employers (*i.e.*, 50 or more employees), the threshold was double the minimum wage. Accordingly, for small employers in particular, previously exempt employees may now be non-exempt and entitled to the overtime premium.

Seattle

Effective January 1, 2024, Seattle's minimum wage is \$19.97 per hour for employers with 501 or more employees. For employers with fewer than 500 employees, the minimum wage is still \$19.97 *unless* either (1) an employer pays at least \$2.72 per hour towards medical benefits or (2) the employee earns at least \$2.72 in tips.

Tukwila

Tukwila's minimum wage is now \$20.29 for employers with more than 500 employees, and \$18.29 for mid-size employers employing between 15 and 500 employees (or earning over \$2 million in gross revenue in Tukwila). The minimum wage rate for mid-size employers will increase again on July 1, 2024, to \$19.29 per hour.

SeaTac

In 2024, the minimum wage will increase to \$19.71 per hour for Hospitality and Transportation workers.

Because federal, state, and local minimum wage rates vary, and each rate may apply to the same employee, an employer must pay its employees the highest applicable minimum wage rate. See 29 U.S.C. § 218(a).

Off-Duty Cannabis Use

RCW 49.44.240 took effect January 1, 2024. The law prohibits an employer from making hiring decisions

based on a job applicant testing positive for non-psychoactive cannabinoids in pre-screening exams. Notably, no existing drug test can distinguish between psychoactive and non-psychoactive cannabinoids. Thus, any positive test for cannabis may not be considered by most employers when evaluating an applicant. The legislature "intends to prevent restricting job opportunities based on an applicant's past use of cannabis." Chapter 49.44 RCW §1.

There are important limitations on the statute's applicability. An employer may still test for cannabis during an employee's employment if it is done (1) following a workplace accident, or (2) because of suspicion of impairment while at work. Employers may screen applicants for other non-cannabis, controlled substances. And the statute does not apply to applicants for jobs requiring federal screening (*e.g.*, airline work), jobs involving the custody or security of others, and "safety sensitive" positions (that is, impairment on the job presents a substantial risk of death). Employers who believe their position is "safety sensitive" must designate the role as such prior to the applicant's application.

Final Thoughts

Washington has, as expected, continued with its commitment to expanding workplace protections. Liability for employers has correspondingly increased. Employers should compare these and other legislative changes against their own policies and procedures.

Employers with questions about their modified responsibilities in 2024 are encouraged to contact Sebris Busto James.

For more information about this month's Employment Law Note
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