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Pay Transparency and Mini-WARN and Paid Lactation Breaks – Oh My! New Employment Laws Impacting Washington Employers

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Washington's legislative session recently ended with a number of significant new employment laws affecting Evergreen State employers. The new state laws cover the full range of the employment life cycle, from pay transparency, use of criminal records in hiring and personnel file requests to pregnancy accommodations, paid family and medical leave, mass layoffs and more. We summarize these key developments below.

WA WARN Act

Washington is the latest state to enact its own mini-WARN Act, joining several other states, like New York, California and Maryland. Under the Securing Timely Notification and Benefits for Laid-Off Employees Act (WA WARN Act), effective July 27, 2025, covered Washington employers will be required to give 60 days' advance notice before qualifying business closures or mass layoffs and, in some instances, short-term layoffs and sales of businesses. In the case of a short-term layoff, for example, notice may be required if a short-term mass layoff of three months or less is extended beyond three months. In the case of sale of part or all of a business, sellers may be responsible for providing notice of any business closing or mass layoff taking place up to and on the effective date of the sale. We outline the key requirements of the WA WARN Act below.

Covered employers

The WA WARN Act applies to employers employing 50 or more employees in the state (excluding part-time employees) – unlike the federal WARN Act, which only applies to employers with 100 or more employees (excluding part-time employees).

Triggering WA WARN

Under the WA WARN Act, a "mass layoff" is defined as "a reduction in employment force … [that] results in an employment loss during any 30-day period of 50 or more employees, excluding part-time employees." In turn, "employment loss" is defined as an employment termination other than a discharge for cause, voluntary separation or retirement; a layoff exceeding six months; or a reduction of hours of more than 50% of individual employees' work during each month of a six-month period. Unlike the federal WARN Act, a "mass layoff" is not tied to employment loss at a single site of employment or certain percentage of the workforce.

On the other hand, "business closing" is defined as "the permanent or temporary shutdown of a single site of employment of one or more facilities or operating units that will result in an employment loss for 50 or more employees, excluding part-time employees." Importantly, unlike the federal WARN Act, a "business closing" under the WA WARN Act is not expressly limited to employment losses occurring within a 30- or 90-day period – so employers may not have the ability to avoid triggering notice for a "business closing" by staging layoffs over time.

Notice requirements

Similar to the federal WARN Act requirements, notice under the WA WARN Act must be served to the state Employment Security Department (ESD) and to the affected employee, or if the employee is represented by a union, to the employee's bargaining representative. Notices must include the same content required under the federal WARN Act, plus the following items:

- Name/address of the impacted site and the company contact person.
- Whether the action is permanent or temporary (if temporary, whether it lasts longer or less than three months).
- Anticipated date of first employment loss and schedule of losses.
- Impacted job titles and names of employees in jobs (the ESD notice also must include the employees' addresses).
- Whether the action "is the result of, or will result in, the relocation or contracting out of the employers' operations or employees' positions."

Exceptions to the WA WARN Act

The WA WARN Act generally tracks the exceptions to notice requirements in the federal WARN Act, such as the faltering company exception, unforeseeable business circumstances and natural disaster exceptions. However, if an exception applies for only part of the 60-day notice window, the WA WARN Act provides that notice is required "at the time the exception no longer applies," unlike the federal WARN Act, which requires employers to provide notice "as soon as practicable," even if an exception applies. Employers seeking to rely on any exception to the WA WARN Act must substantiate that the exception applies through documentation submitted to the state. The state, in turn, is tasked with adopting rules regarding documentation requirements for these exceptions.

Paid family and medical leave protection

Unlike the federal WARN Act and other state mini-WARN Act laws, the WA WARN Act includes protections for employees on paid family or medical leave under the Washington Paid Family and Medical Leave Law as of the date of the layoff. In particular, the law prohibits covered employers from including in a mass layoff any employee currently on such protected leave, though this exception does not apply for employees laid off in a business closing.

Private right of action and damages

Like under the federal WARN Act, the ESD, aggrieved employees or their bargaining representative may file a lawsuit within three years of alleged violations. In addition to recovery of backpay, employees also may recover the "value of the cost of any benefits to which the employee would have been entitled had their employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan." Employers failing to provide notice to the state also may be liable for civil penalties of up to $500 per day for each day of violation.

Pay transparency law amendment

Since January 2023, Washington employers have been required to include pay ranges and a general description of benefits and other compensation in their job postings. Effective July 27, 2025, **WA SSB 5408** amended the state's Equal Pay and Opportunities Act (EPOA) to include the following employer-friendly revisions:

Notice and grace period to correct job postings

Potential plaintiffs are now required to notify an employer that a job posting does not comply with the EPOA. Employers are then given five business days from the date of notification of noncompliance to cure the alleged violation. If an employer corrects the job posting within the cure period, or requests that an authorized third-party posting entity correct the posting, the potential plaintiff cannot seek penalties or damages for the violation. This provision requiring notice and a grace period to correct job postings, however, expires on July 27, 2027.

No liability for unauthorized third-party postings

The amendment relieves employers from liability for postings that are "digitally replicated and published without an employer's consent."

Fixed-wage positions

Employers are expressly permitted to disclose the fixed wage amount in a posting, rather than a scale or range, if it is only offering a fixed wage for the position, including for internal job postings.

Range of damages

The amendment also made significant changes to the remedies available to employees under the EPOA. The law now provides for a sliding scale of damages between $100 and up to $5,000 per violation. The exact amount of damages to be awarded will be determined based on whether the violation was willful or repeated, the size of the employer, the amount necessary to deter future noncompliance by the employer, whether the damages comport with the purposes of the law and any other factor the court deems appropriate. Courts also may order actual damages, reinstatement, injunctive relief and other appropriate remedies.

Driver's license discrimination

Taking **a page from California's recent playbook**, effective July 27, 2025, Washington employers will be prohibited from requiring a valid driver's license as a condition of employment or stating in a job posting that an applicant must have a valid driver's license, unless driving is one of the essential job functions or "is related to a legitimate business purpose for a position." **WA SSB 5501** also provides for enforcement of the law by the Washington Department of Labor and Industries (L&I), which can assess actual damages, statutory damages, interest, and payment of the costs of investigation and enforcement against employers for violations.

Personnel Records Act amendment

The state's Personnel Records Act now adds a definition of "personnel file" and imposes deadlines for employers to respond to employee requests, effective July 27, 2025. Under **WA HB 1308**, such files now explicitly include the following materials: application materials, performance evaluations, inactive or closed disciplinary records, leave and reasonable accommodation records, payroll records and employment agreements. Importantly, however, HB 1308 does not require employers to create or retain records that employers do not currently have, nor does the law supersede state or federal privacy statutes regarding nondisclosure.

In addition, employers must now furnish copies of the personnel file at no cost within 21 calendar days of an employee or former

employee (or their designee) making a request for the personnel file, supplanting the previous "reasonable time" standard. Following a personnel file record request from a former employee (or their designee), employers also must provide a signed written statement stating the effective date of discharge, whether there were reasons for the discharge, and, if so, what the reasons were.

The law provides for a private right of action for violations and permits employees to recover statutory penalties ranging from $250 to $1,000 (depending on how many days have passed since the request was made), equitable relief, and attorneys' fees and costs. Employees must give five calendar days' notice before suing, but the statute is unclear on whether employers have an opportunity to cure once they receive this notice.

Immigration status protections

Paid sick leave law expansion

Effective July 27, 2025, **WA HB 1875** amends the state's existing paid sick leave law to allow leave for employees to "prepare for, or participate in, any judicial or administrative immigration proceeding involving the employee or employee's family member." Verification of the need for leave may come from attorneys, clergy or the employee's own written statement. The employee's documentation or written statements must not disclose any personally identifiable information about a person's immigration status or underlying immigration protection.

Coercion protection

Effective July 1, 2025, **WA SB 5104** protects employees from coercion in the workplace based on immigration status. Coercion occurs when an employer makes any implicit or explicit threat pertaining to the employee's or an employee's family member's immigration status that is made to deter the employee from engaging in protected activities or exercising rights under state law. Specifically, if an employer coerces an employee in furtherance of the employer committing a violation of wage payment or labor condition requirements, an employee may file a complaint with L&I within 180 days of the coercive action. The department may levy fines against the employer ranging from $1,000 for a first violation to $10,000 for a third or subsequent violation.

Other laws effective in 2026 and 2027

Washington also imposed significant additional employer obligations with respect to providing pregnancy-related accommodations, expanding the state's paid family and medical leave law and complying with the state's fair chance law and Domestic Violence Leave Act, summarized below.

Pregnancy-related accommodations

Effective July 1, 2027, **WA SSB 5217** expands the state's Healthy Starts Act (which currently requires accommodations for pregnant employees) to, among other things:

- Require **paid** lactation breaks for nursing employees, which also includes paid travel time to the lactation location.
- Apply the requirement to provide pregnancy-related accommodations to **all employers** with one or more employees, where it previously applied only to employers with 15 or more employees.
- Specify nine potential (and nonexhaustive) accommodations that employers must provide absent an undue hardship, including but not limited to providing "scheduling flexibility for prenatal and postpartum visits."

Fair Chance Act amendment

Beginning July 1, 2026, for employers with 15 or more employees and January 1, 2027, for employers with fewer than 15 employees, **WA HB 1747** will impose additional obligations on employers when considering criminal records of applicants and employees, including:

- Prohibiting employers from inquiring about criminal history (either through the applicant directly or a background check) until after making a conditional offer of employment.
- Prohibiting employers from taking a tangible adverse employment action based on an applicant's or employee's arrest or conviction record, with limited exceptions.
- Requiring employers to provide pre-adverse action and adverse action-type notices to an applicant before taking a tangible adverse employment action.
- Significantly increasing penalties for violations, from a maximum of $1,000 per violation to a minimum of $1,500 for the first violation and up to $15,000 for third and/or subsequent violations.

Hate crime victims

Effective January 1, 2026, **WA SB 5101** expands the state's Domestic Violence Leave Act to also require leave and safety accommodations for victims of hate crimes. This law previously applied only to employees who are victims of domestic violence, sexual assault, stalking and other crimes. Under the law, a "hate crime" is defined as the commission, attempted commission or alleged commission of an assault, physical damage or destruction of the property of another, or threats to a specific person or group of persons that "places that person, or members of the specific group of persons, in reasonable fear of harm to person or property." Hate crimes also can include offenses committed through online or internet-based communications.

Expanded Paid Family and Medical Leave Law (PFML)

Effective January 1, 2026, **WA HB 1213** makes significant changes to the state's PFML. Among other things, it eliminates the hours of work threshold and reduces the minimum length of employment threshold to qualify for job protection following a PFML absence, aims to address "leave stacking" issues by preventing employees from using both PFML and federal Family and Medical Leave Act (FMLA) leaves to extend their available leave time as long as written notice requirements are met, and reduces the minimum claim duration from eight consecutive hours to four consecutive hours.

Next steps

Employers should get ahead of the game by reviewing and updating policies and practices for compliance with these new laws. For example, we recommend that employers:

- Update handbooks and policies and train human resources (HR) personnel and managers on new discrimination protections, including policies relating to sick leave use, using criminal records in hiring, and pregnancy-related leaves and accommodations.
- Train HR and recruiting teams on the pay transparency amendments, including ensuring a dedicated contact person is listed on all job postings, to receive and respond to notices of noncompliance.
- Teach hiring teams how to correct noncompliant job postings within five business days, to take advantage of the new grace period.
- Educate hiring teams on new restrictions on requiring a valid driver's license as a condition of employment.
- Train HR staff on protocols relating to responding to personnel file requests and ensure that personnel files are appropriately

maintained and accessible.

- If planning any mass layoffs or business closures, consider working with employment counsel to ensure compliance with the state's new mini-WARN Act.

If you have any questions about these laws or how to comply, please contact your Cooley employment lawyer or one of the lawyers listed below.

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