




Washington's Job Posting Rules

Catharine Morisset
Partner, Seattle Office
cmorisset@fisherphillips.com

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Prepared for:



**Washington
Hospitality
Association**


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Today's Agenda*

- **Washington Equal Pay Act 1/2023 Job Posting Requirements**
- **FAQs**
- **Compliance Next Steps**

*If you need legal advice, please consult with a lawyer.



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Overview Requirements

- Employers (≥ 15) must disclose wage scales or salary ranges and benefit information, in any “posting” for a job opening.







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Overview of the “New” Requirements



-  ALL job postings – external and internal.
-  Must include “a general description of all the benefits”
-  Must include wage or salary **range**
-  Must include “other compensation”

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Job Postings: Wages



- If the employer does not already have an existing wage scale or salary range for a position, a scale or range **should be created** prior to publishing the posting.

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Job Postings: Benefits



- Health care benefits, retirement benefits, paid days off (e.g., paid sick leave beyond what is required under state law, vacation benefits, etc.), and any benefits that would need to be reported for federal tax purposes.

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Job Postings: “Other” Compensation



- This means, for example, any discretionary bonuses, stock options, or other forms of compensation that would be offered to the hired applicant in addition to their established salary range or wage scale.

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Recordkeeping Requirements

- Law’s effective date = 1/1/2023
- Must keep at least 3 years
 - All job postings
 - All applications
 - All interview records
 - All job offer records
 - Documentation for any analysis of how you determined wage scale, etc.



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Enforcement: L&I

- Each employee or “job applicant” statutory damages equal to the actual damages or \$5,000 + 1% monthly interest
- Civil penalty:
 - (i) For a first violation, up to \$500
 - (ii) For a repeat violation, up to \$1000 or 10% of the damages, whichever is greater

A violation as to each affected employee constitutes a **separate violation.**



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Enforcement: Private Right of Action

- Actual damages; statutory damages equal to the actual damages or \$5000 per applicant, whichever is greater; interest 1% per month on all compensation owed
- Costs and **reasonable attorneys' fees.**
- Recovery of any wages and interest must be calculated from the first date wages were owed to the employee.
- Class action



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Enforcement: Private Right of Action

- The court may also order reinstatement and injunctive relief.
- SOL: 3 years from the date of the alleged violation
- Class action



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Common Questions



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Does the job posting requirement apply if we have under 15 employees in Washington?

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Does the job posting requirement apply if we have under 15 employees in Washington?

- **Careful. Employees outside of WA count.**
 - 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
 - Measured as of time of posting.



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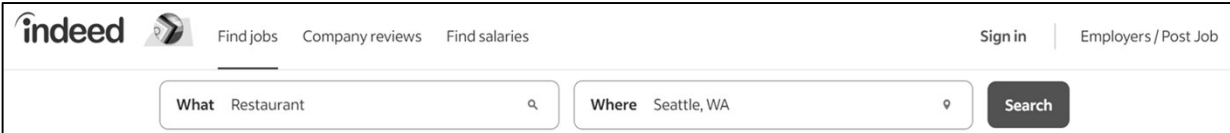
What is a job posting? What about internal postings?

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What is a job posting?

- A “posting” means “any solicitation intended to recruit job applicants for a specific available position”
- The law applies whether the posting is done directly by an employer or indirectly through a third party (such as a recruiter)
- Includes both hard copy and electronic posting
- Any time the job announcement “includes qualifications for desired applicants.” RCW 49.58.110.



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What is a job posting?

- **Not a job posting:** A website banner that reads “*Hiring Now-All Jobs. Food Handler’s permit required.*” Because no specific position is referenced, this is not a job posting.
- **A job posting:** 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.”
 - Because a specific position and job qualifications are referenced, this is a job posting.

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What is a job posting?



- **Internal postings = job postings**
- Existing employees who apply to a posting are considered job applicants for the position for which they have applied.
- **BUT:** the employer must provide the wage scale/salary range only upon request of an employee offered an internal transfer to a new position or promotion.

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Job posting v. NOT a job posting

Yes

- An electronic reader board outside of a business: "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."
- Social media post: "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](#)."

NOT

- A window sign: "Help Wanted"
- A window sign: "Help Wanted. Part-time Dishwasher. Experience Needed."
- A website banner: "Hiring Now-All Jobs. Food Handler's permit required."
- A social media post: "Manufacturing jobs available, apply now online. Weekend shifts required."
- An electronic reader board outside a business: "Help Wanted- Server. Offering minimum wage plus tips"

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What is a "wage scale or salary range"?

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What is a “wage scale or salary range”?

YES

- \$60,000 to \$75,000/year
- \$22.00 to \$29.00/hour
- \$20 to \$25/hour plus tips*
- \$20 to \$21/hour, with a tip pool.*

*tips are optional

No

- “\$60,000/year and up”
- “Up to \$29.00/hour”
- \$65,000 to \$1,650,000/year”
- Applicable minimum wage
- Starting pay: \$20/hour
- Average \$27/hour with tips

What is a “wage scale or salary range”?



EXAMPLE 5.1-1: If the employer publishes a job posting for a job opening that can be filled with varying job titles, depending on experience, the employer should specify all potential wage scales or salary ranges. The job posting should clearly define the lowest to highest pay established for each potential job position:

- Accounting Analyst 1- \$27.00 - \$29.00 per hour
- Accounting Analyst 2- \$65,000 - \$75,000 per year
- Accounting Analyst 3- \$80,000 - \$95,000 per year



*Can we just list the minimum pay?
Or the maximum?*

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**Can we just list the minimum pay?
Or the maximum?**



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Starting Range?

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.

<https://lni.wa.gov/workers-rights/wages/equal-pay-opportunities-act/equal-pay-and-opportunities-act-ga> .

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Do we really have to list the high end pay for someone currently working in that job?

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Do we really have to list the high end pay for someone currently working in that job?



Example 1:

- Starting pay: \$28/hour to \$28/hour
- Pay range for position: \$28/hour to \$34/hour

Example 2:

- Starting salary: \$60,000 to \$65,000/year.
- Salary range for position: \$60,000 to \$75,000/year

The first bullet is hiring target.

The second includes the highest paid person in that job category (or the top end of the scale if you currently don't have anyone in the position)

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I really can't just list minimum wage?

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No Flat Rates of Pay

Q. What if employers 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 be as transparent as possible on their job postings. Employers should create the full range of compensation for a job before they post the position and consider possible pay changes based on factors such as:



- o Performance
- o Qualifications
- o Seniority or longevity

<https://lni.wa.gov/workers-rights/wages/equal-pay-opportunities-act/equal-pay-and-opportunities-act-qa>

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How detailed must the benefits description be?

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How detailed must the benefits description be?

- “A general description of all benefits should provide the applicant with the employer’s most reasonable and genuinely expected benefits offered for the job.”
- Employers do not have to include the total monetary value but may choose to do so. Still must also include the required general description
- Consider whether using electronic links to benefits information summaries would be an effective way of disclosing that information for job postings online

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How detailed must the benefits description be?

Insurance: List out the types of insurance, such as medical insurance, vision insurance, dental insurance, life insurance, and disability insurance.

Retirement Plans: List the retirement option, such as 401k, employer-funded retirement plans, deferred compensation, and other defined benefit or defined contribution plans.

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How detailed must the benefits description be?

Paid Time Off or Vacation: List the number of days or hours, such as 8 hours/month or 12 days/year.

Paid Holidays: List the number of paid holidays, such as 10 paid holidays per year. The employer does not have to list each paid holiday.

More Generous Paid Sick Leave: If the employer provide paid sick leave policy more generous that state or local law, list the number of hours per month or days per year, such as 3 hours of paid sick leave for every 40 hours worked or 8 hours of paid sick leave per month.

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How detailed must the benefits description be?

• **EXAMPLE 5.2-1** General Description of All Benefits:

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, as well as eight hours of Washington paid sick leave every month. Employees will also enjoy twelve paid holidays throughout the calendar year. Two weeks of paid parental leave will also be available for use after successful completion of one year of employment.

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How detailed must the benefits description be?

- Consider whether using electronic links to benefits information summaries would be an effective way of disclosing that information for job postings online (and eliminate space).



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What is “other compensation”?

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What is “other compensation”?



“Other Compensation” includes, but is not limited to, any discretionary bonuses, stock options, or other forms of compensation in addition to established salary range or wage scale.

Other examples: commissions, bonuses, profit-sharing, merit pay, stock options, travel allowance, relocation assistance, and housing allowance.

Employers but may choose to give total monetary value of other compensation, but still must include the general description of benefits and other compensation in addition to the wage scale or salary range.

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What is “other compensation”?

EXAMPLE 5.3-1 General Description of Other Compensation:

“Hired applicant will be able to purchase company stock, receive annual bonuses, and can participate in profit-sharing. Hired applicant will also receive an equity grant in the form of either a direct grant of stock that will be specified in the employment contract or an option to purchase stock in the future for a specified price.”

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What is “other compensation”?

In 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.



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How much flexibility do we have in determining the “range?”

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How much flexibility do we have in determining the “range?”

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- Must be actual range
- The range should extend from the lowest to the highest pay **established by the employer prior to publishing** the job posting. If the employer does not already have an existing wage scale or salary range for a position, a scale or range should be created prior to publishing the posting.

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How much flexibility do we have in determining the “range?”

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Permissible factors for differences in pay may include:

- Differences in education, training, or experience
- Seniority
- Merit/work performance
- Compensation based on quantity or quality of production
- Regional differences in compensation
- Differences in local minimum wages

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Are we “stuck” paying a candidate what we listed in the job posting?

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Are we “stuck” paying a candidate what we listed in the job posting?

- Generally, YES.
 - The salary range should be the “real” range or else it is meaningless
 - Exception= hired for different job: The employer may offer the applicant the wage scale or salary range specific to the actual position ultimately offered.
 - But: “If a person is offered a position that is different than the position applied for, the employer should disclose wage and salary information by providing a copy of the compliant posting for the position offered.”

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Are we “stuck” paying a candidate what we listed in the job posting?

- Again, yes
- Pay negotiation at the time of hire **is not** an acceptable defense for gender pay differences.
- Employers can negotiate pay during the hiring process, but if the pay offered to a new employee causes a gender pay difference between similarly employed employees, any difference in compensation must be based on justifiable job-related factors (not the negotiation itself).

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What if we have a collective bargaining agreement?

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What if we have a collective bargaining agreement?



- Existing EPOA law does **not** provide an exemption for collective bargaining agreements.
- Nothing in amendments, so a “job posting” must comply

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Compliance Next Steps



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Compliance Next Steps

- **Review L&I's Administrative Policy (ES.E.1)**
<https://lni.wa.gov/workers-rights/docs/ese1.pdf>


Equal Pay and Opportunities Act

Policy #	Title	Statute/Code
ES.E.1	Equal Pay and Opportunities Act	RCW 49.58

Compliance Next Steps



- **Determine and document pay ranges for all positions**
 - Assess your policies for determining salaries and make adjustments (**UP!**) where necessary.
 - Document objective criteria (e.g., education level, experience level, etc.) to use before making offers of employment within a particular wage scale/salary range.



Compliance Next Steps

- **Update job posting templates**
 - Must include wage scale/salary range.
 - Where that may vary depending on experience, consider defining the pay for each experience level.
 - Must include benefit information
 - Must include “other compensation”
- **Confirm your third-party recruiters understand the law**
- **Develop a process to consistently publish the required information for both internal and external job postings**

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Compliance Next Steps


- **Maintain copies of all postings, applicants, interviews**
 - Gather them now = law went into effect January 1, 2023
 - Three years

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Compliance Next Steps



Training, Training, Training!

Train your supervisors, managers, compliance, and human resource personnel on the implications failing to comply.



Consider conducting a pay equity audit

Will help unearth whether there are any significant discrepancies.


May provide a safe harbor in certain states (but NOT WA)

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Other Potential Issues to Keep in Mind

Competition in a tight labor market: easy to “shop” for highest paying position

Employee relations: damaged morale if jobs are posted with different compensation from what current employees in those positions are paid.

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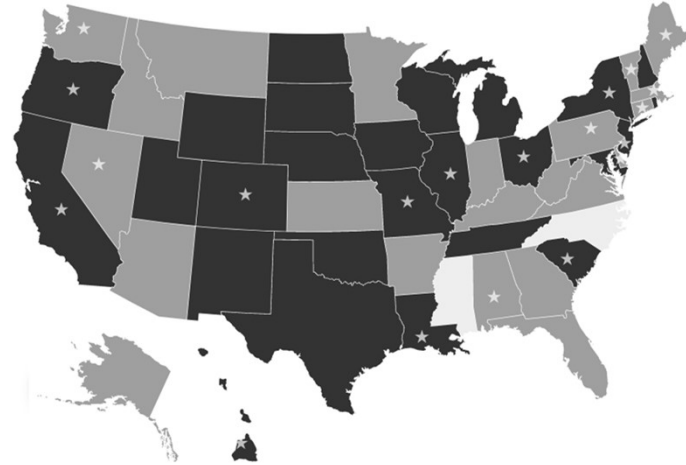
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Fisher Phillips Pay Equity Map

- Fisher Phillips' Online **Pay Equity Interactive Map** shows the various pay equity laws by simply clicking on each state
- Located at <https://www.fisherphillip.com/pay-equity-map/index.html>



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Questions?

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Catharine Morisset | cmorisset@fisherphillips.com | 206.693.5076
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The image shows a LinkedIn profile card for Catharine Morisset. On the left is the LinkedIn logo. To its right is a circular profile picture of Catharine Morisset, a woman with glasses and a dark jacket. Further right is a banner image of a mountain range. Below the profile picture, the name 'Catharine Morisset' is displayed, followed by the text 'Advocate and Advisor Offering Proactive Solutions to Workplace Legal Challenges'. To the right of the name is the Fisher & Phillips logo and the text 'Fisher & Phillips LLP'. At the bottom right of the profile card is the website 'fisherphillips.com'.

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