

Ryan Swanson's 34th Annual Employment Law Webinar



# Recent Developments in State and Federal Law

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# Washington Silence No More Act

## What is it?

- A law which prohibits nondisclosure and nondisparagement provisions that prevent an employee or contractor from disclosing or discussing conduct the individual reasonably believes to be illegal acts of discrimination, harassment, retaliation, wage and hour violations, sexual assault, or other conduct recognized as being against a clear mandate of public policy.

# Washington Silence No More Act (con't.)

## When did it go into effect?

- June 9, 2022

## Applicable to:

- All employers with employees in Washington state
- Agreements between:
  - Employers and current, former or prospective employees
  - Hiring entities and their current, former or prospective independent contractors

## Washington Silence No More Act (con't.)

- Employers are prohibited from requesting or requiring an employee to enter into, and are prohibited from enforcing a provision of any agreement that prohibits discussion or disclosure of:
  - Conduct that the individual reasonably believes to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or sexual assault.
  - Conduct that is recognized as being against a clear mandate of public policy.
  - The existence of a settlement involving any of the above conduct.
- Retaliation is prohibited
- Pre-existing agreements which contain prohibited terms are unenforceable

# Washington Silence No More Act, cont.

- Employers may
  - Prohibit disclosure of the amount of a settlement
  - Protect Trade Secrets, proprietary information or confidential information that does not involve illegal acts
- Consequences
  - Entering into a new agreement that contains prohibited terms or attempting to enforce a pre-existing agreement that contains prohibited terms may result in penalties.
  - The act provides for civil causes of action and for a minimum damages award of \$10,000, plus attorneys' fees and costs.

# Washington Silence No More Act (con't.)

## What does it mean to Washington employers?

- Many standard offer letters, confidentiality agreements, etc., may contain nondisclosure and nondisparagement provisions which violate the new law.
- Employers with employees in Washington state should:
  - review their employment agreements, confidentiality agreements and non-compete agreements, and
  - carefully consider language contained in any settlement agreements with employees.
- The restrictions are applicable to independent contractors.

# Washington Equal Pay Act Changes (Pay Transparency)

## Summary

- Requires many Washington employers to disclose the salary range and benefits in their job postings.

## To which employers does it apply?

- Those with 15+ employees.

## When does it go into effect?

- January 1, 2023

# Washington Equal Pay Act Changes (Pay Transparency) (con't.)

## What must employers do to comply?

- Disclose the wage scale or salary range in all job postings.
- Include a general description of all benefits and other compensation in every job posting.

## What penalties apply to violations?

- Government enforcement/civil penalties
- Private cause of action



# Washington Equal Pay Act Changes (Pay Transparency) (con't.)

## Unanswered questions:

- Which benefits must be included?
- What is a 'job posting'?
- Does the law apply to jobs which could be performed remotely from other states?
- How are the 15 employees calculated?

# Seattle's Independent Contractor Protection Ordinance

## What is it?

- An ordinance providing additional protections to ICs working in Seattle.

## What must employers do?

- Provide certain notices to their independent contractors
- Timely pay their independent contractors

# Seattle's Independent Contractor Protection Ordinance (con't.)

## When must employers provide notice?

- For new ICs: Before the contractor begins work
- For existing ICs: By September 30, 2022, or by the date of compensation, whichever is sooner.

# Seattle's Independent Contractor Protection Ordinance (con't.)

## To which ICs do the new regulations apply?

- Self-employed independent contractors with no employees who perform any part of their work in Seattle for a commercial hiring entity and will or reasonably expect to receive at least \$600 in compensation from the hiring entity in the calendar year
- Exceptions: lawyers, those whose relationship is due solely to a property rental agreement, and any others which can be excluded by rule if the director finds they have adequate bargaining power.

## What information must be provided?

- A notice of rights.
- A pre-work written notice that outlines the proposed terms and conditions of work and payment. The Ordinance does not require any specific terms or conditions for this pre-work notice; it only requires that such a notice be provided.

# Seattle's Independent Contractor Protection Ordinance (con't.)

## Resources:

- Forms containing the notice requirements which hiring entities may use are available on the Seattle Office of Labor Standards website at <https://www.seattle.gov/laborstandards/ordinances/independent-contractor-protections->

# Washington Wage Recovery Act

**Permits employees with a wage claim to put a lien on employer assets**

- Lien is pre-judgment
- Lien can be placed on real property, accounts, goods, intangibles
- Employee must file suit within eight months

# Federal Caselaw and Developments

## *Dobbs v. Jackson Women's Health Organization*

- Health Equity Policies

## *Freyd v. University of Oregon*

- What constitutes 'comparable work' for Equal Pay analysis?
- Disparate impact of bonus structures (retention bonus)

## National Labor Relations Act (NLRA) Trends

# Thank you.

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