

Washington

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

No new laws or regulations enacted in 2015 or 2016.

II. Pre-Employment Inquiry Guidelines

Certificates of Restoration

In Washington, a court may issue a "certificate of restoration of opportunity" to an individual who was previously sentenced by a Washington court. The certificate confirms the individual's changed circumstances since being sentenced. The certificate also restricts the ability of state licensing boards and agencies to consider a license applicant's criminal history in determining whether to issue the license. The certificates help reduce some barriers to employment and offer potential employers concrete and objective information about an applicant.

The new law provides that an employer may, in its sole discretion, determine whether to consider a certificate of restoration of opportunity in making employment decisions. In addition, an employer is immune from suit in law, equity, or under the administrative procedure act for damages based upon its exercise of discretion or the refusal to exercise such discretion.

With respect to negligent hiring liability, the new law provides that in any action at law against an employer arising out of the employment of the recipient of a certificate of restoration of opportunity, evidence of the crime for which a certificate of restoration of opportunity has been issued may not be introduced as evidence of negligence or intentionally tortious conduct on the part of the employer. The new law clarifies that it does not create a protected class, private right of action, any right, privilege, or duty, or to change any right, privilege, or duty existing under law related to employment.

Rev. Code Wash. (ARCW) § 9.97.010 and Rev. Code Wash. (ARCW) § 9.97.020 (Effective Date 06/09/2016).

III. Family and Medical Leave

In November 2016, Washington voters approved a measure requiring employers to provide paid sick leave to eligible employees.

Accrual of Paid Sick Leave

Employees will accrue one hour of paid sick leave for every 40 hours worked. An employer may provide paid sick leave in advance of accrual and there is no limit on the number of hours an employee may accrue in a year. Unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of 40 hours.

Use of Paid Sick Leave

Beginning on the 90th day of employment, employees are entitled to use accrued sick leave for:

- an employee's illness, injury, or health condition, including diagnosis, treatment, care, and preventive medical care;
- care for a family member's illness, injury, or health condition, including diagnosis, treatment, care, and preventive medical care;
- when an employee's place of business or an employee's child's school or place of care is closed by a public health official for any health-related reason; or
- for qualified absences under the state's domestic violence leave law.

A "family member" is:

a child (including a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status);

- a parent (including biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child);
- a spouse;
- a registered domestic partner;
- a grandparent;
- grandchild; or
- a sibling.

The employer must provide regular notification to employees about the amount of paid sick leave available to the employee and employers are not required to pay employees for any accrued, unused paid sick leave upon separation from employment.

Notice and Certification

An employer may require employees to give reasonable notice of an absence from work, as long as the notice requirement does not interfere with an employee's lawful use of paid sick leave. However, an employer may not require that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose. If required, the employee must provide verification to the employer within a reasonable time period during or after the leave. Verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

Rev. Code Wash. (ARCW) §§ 49.46.200, 49.46.210 (Effective Date 1/1/2018).

IV. Wage and Hour Laws

The Washington State Department of Labor & Industries announced the minimum wage would not increase in 2016 because the consumer price index for all urban wage earners and clerical workers decreased by .3% from August 2014 to August 2015. Thus, the state minimum wage remained \$9.47 per hour for non-exempt employees for 2016.

(Effective Date 01/01/2016).

However, in November 2016, Washington voters also approved a measure to increase the minimum wage incrementally beginning January 1, 2017, as follows:

- \$11.00 per hour effective January 1, 2017;
- \$11.50 per hour effective January 1, 2018;
- \$12.00 per hour effective January 1, 2019;
- \$13.50 per hour effective January 1, 2020; and
- continued incremental increases based on the cost of living effective January 1st of each following year.

Tips, gratuities, and service charges are in addition to, and not counted towards, an employee's hourly minimum wage.

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

Data Security Breach Notification

Washington has amended its data security law. The law requires any person or business that conducts business in Washington and that owns or licenses data that includes personal information to notify affected individuals when the person or business discovers or is notified of a data security breach involving consumers' personal information.

Exception to Notice Requirement

The amendment creates an exception to the notification requirement. Notice is not required if the breach of the security of the system is not reasonably likely to subject consumers to a risk

of harm. The breach of secured personal information must be disclosed if the information acquired and accessed is not secured during a security breach or if the confidential process, encryption key, or other means to decipher the secured information was acquired by an unauthorized person. "Secured" means encrypted in a manner that meets or exceeds the National Institute of Standards and Technology (NIST) standard or is otherwise modified so that the personal information is rendered unreadable, unusable, or undecipherable by an unauthorized person.

Content of Notice

When notice is required, the amendment adds provisions setting forth minimum requirements for the contents of the notice. Notice sent to consumers must be in plain language and include, at minimum, the following information:

- The name and contact information of the reporting person or business;
- A list of the types of personal information that were or are reasonably believed to have been the subject of the breach; and
- The toll-free telephone numbers and addresses of the major credit reporting agencies if the breach exposed personal information.

Timing of Notice

The law provides that the notice must be given in the most expedient time possible and without unreasonable delay. However, notification may be delayed if:

- The data owner or licensee contacts a law enforcement agency and the agency determines that the notification will impede a criminal investigation.
- A covered entity needs time to determine the scope of the breach.
- A covered entity needs time to restore the reasonable integrity of the data system.

Under the amendment, "without unreasonable delay" means no more than 45 calendar days after the breach was discovered, subject to the exceptions listed above.

Notification to Attorney General

The amendment adds a requirement that the person or business entity must also provide notice of a data security breach to the state attorney general in addition to notifying affected consumers. If notice must be provided to more than 500 Washington residents as a result of a single breach, the person or business entity must also electronically submit a single sample copy of the security breach notification, excluding any personally identifiable information, to the state attorney general. The person or business must also provide to the attorney general the number of Washington consumers affected by the breach, or an estimate if the exact number is not known.

Rev. Code Wash. (ARCW) § 19.255.010 (Effective Date 07/24/2015).