New Washington Employment Laws: 2025 and Beyond

By: Kimberly A. Kamel

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Disclaimer

This presentation provides a general overview of recent developments in Washington employment law for informational purposes only. It is not intended to constitute legal advice or to address specific real-world factual scenarios. Attendance at this presentation does not establish an attorney-client relationship with the presenter or their firm, unless expressly agreed to in writing.

Agenda

1. Personnel File Access and Production
2. Washington's "Mini-WARN" Act and Layoff Notification Requirements
3. Pay Transparency and New Cure Period
4. Fair Chance Act and Criminal Convictions in Hiring
5. Compensation for Union Workers on Strike
6. Pregnancy Accommodations and Paid Lactation Breaks
7. Spokane's "Ban the Address" Ordinance
8. Workplace Coercion for Immigrant Workers
9. Paid Sick Leave for Immigration Proceedings

ACCESS TO PERSONNEL FILES

Effective July 27, 2025

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Access to Personnel Records – Current Rules

At least once per year and within a reasonable time of an employee or former employee's request, the employer must make the employee's personnel files available for their inspection.

If requested by the employee (or former employee), an employer must review the employee's personnel files and remove any irrelevant or erroneous information. If information remains in the files that the employee disagrees with, the employee may submit a statement of rebuttal or correction within two years of that review to be included in their file.

Access to Personnel Records – **Changes** to the Rules

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Access to Personnel Records – **Changes** to the Rules

At least once per year and **within a reasonable time** of an employee or former employee's request, the employer must make the employee's personnel files available for their inspection.

"Reasonable time" was interpreted by Washington L&I to mean 10 business days. Now, employers must furnish the files **within 21 days**.

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Access to Personnel Records – **Changes** to the Rules

At least once per year and within a reasonable time of an employee or **former** employee's request, the employer must make the employee's personnel files available for their inspection.

The rules apply to former employees up to **three years** after separation.

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Access to Personnel Records – **Changes** to the Rules

At least once per year and within a reasonable time of an employee or former employee's request, the employer must make the employee's **personnel files** available for their inspection.

"Personnel file" includes all:

- Job application records
- Performance evaluations
- Nonactive or closed disciplinary records
- Leave and reasonable accommodation records
- Payroll records
- Employment agreements

*The rule changes do not require employers to change or create records or record retention schedules.

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Access to Personnel Records – **Changes** to the Rules

At least once per year and within a reasonable time of an employee or former employee's request, the employer must make the employee's personnel files **available** for their inspection.

The employer must furnish a **copy** of the files at **no cost** to the employee.

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Access to Personnel Records – Final Notes

- An employee or former employer may sue an employer for violations.
  - 5-day notice of intent to sue is required
  - Statutory damages are $250 / $500 / $1000 if the file is furnished up to 7 / 14 / 15+ days late
  - Attorneys' fees and costs available

- Within 21 days of written request from a former employee, an employer must provide a signed statement indicating the effective date of termination, whether the employer had a reason for the discharge, and if so, the reasons.

- There are still limitations (e.g., criminal investigations; records compiled for possible litigation)

- Continue to keep certain files separate (e.g., medical files; I-9s; investigations)

Washington's "Mini-WARN" Act

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Federal Background – 29 U.S.C. 2101 et cet.

- Federal Worker Adjustment and Retraining Notification Act ("WARN Act") requires employers to provide 60-days advance notice prior to a "mass-layoff" or a "plant closing" affecting 50+ employees.
  - Notice to local government, Employment Security Division, Employees, and Union (if applicable)
- WARN Act only applies to businesses with 100 or more employees.
- Regulations provide for two additional considerations:
  - Total employee count may be impacted by subsidiary structure
  - Up to a 90-day lookback for "mass-layoffs"
- Several States have adopted their own version, referred to as "Mini-WARN" Acts—frequently reduce the employer size requirement.

Washington State Specific Requirements

- Engrossed Substitute Senate Bill 5525.
- Takes effect July 27, 2025
- Similar operating mechanism to the Federal WARN Act—but employee threshold for applicability is only 50 employees
- No current regulations
- Additional requirement to provide job titles affected, and names of employees holding those jobs, and employee addresses.

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Pay Transparency and New Cure Period

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Pay Transparency – What is it?

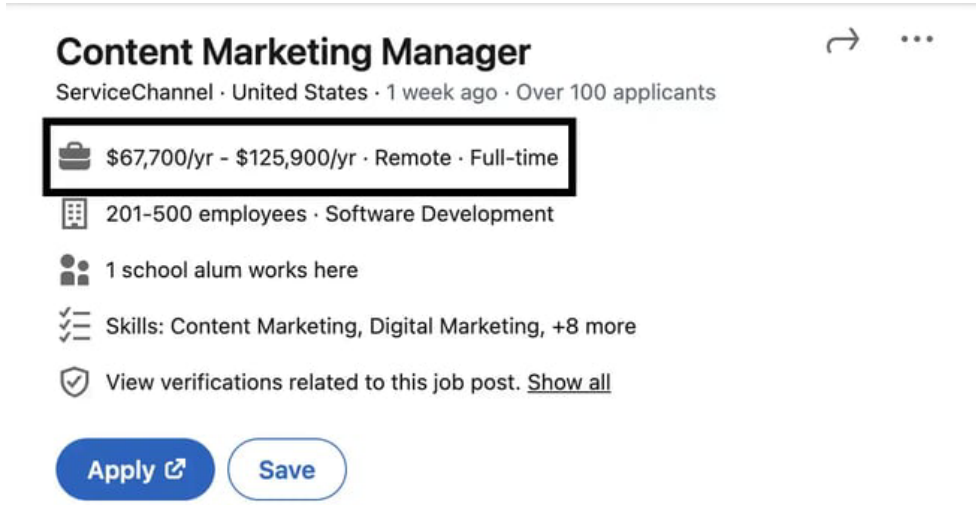
Requires employers to provide a salary range and general description of benefits offered

Became effective January 1, 2023

RCW 49.58.110

Part of Washington's Equal Pay & Opportunity Act (EPOA)

Applies to employers with 15+ employees



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Pay Transparency – What was the Problem?

National employers posting jobs in WA

- Subject to suits for failure to comply with WA Pay Transparency Law
- Plaintiff's firms filing dozens of lawsuits against regional and national employers
- Roughly ***250 suits*** filed since 2023

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Pay Transparency – The Solution

Allow employers to be ***notified*** of deficient job postings and give them an opportunity to ***correct*** the issue(s).

Takes effect ***July 27, 2025***

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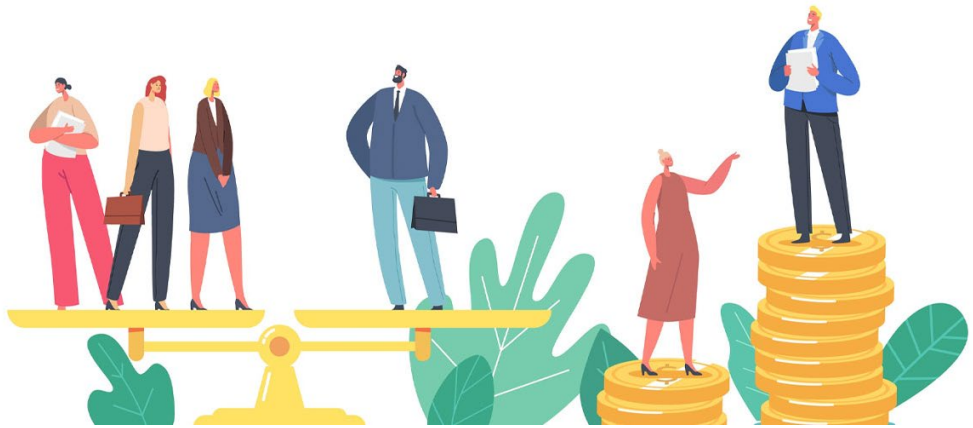
Pay Transparency: What Changed?

1. Employers must disclose fixed wage amounts if only a fixed wage is offered

Example: you offer a "Department Supervisor" position at $75,000/yr.

- Must disclose the salary amount when posting job



2. A solicitation to recruit job applicants that is published without the employer's consent does not make the employer liable

Example: A third-party staffing agency reposts your job openings on their site without your consent.

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Pay Transparency: What Changed?

3. Prior to an individual bringing a claim against an employer, they must provide the employer written notice of a pay transparency violation

- Employer must correct violation within ***5 business days***, or contact third party (e.g., LinkedIn) with a demand to update the posting
- If corrected, no penalties or claims against the employer

Note: this applies to job postings between July 27, 2025, and July 27, 2027. After July 27, 2027, ***this safe harbor disappears***.

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Pay Transparency: What Changed?

4. Clarifications to penalties assessed by L&I:

- Step 1: L&I investigates and tries to resolve via conference
- Step 2: L&I issues citation: penalty between $100 and $5,000 per affected applicant/employee (was previously $5,000)
  - Range depends on if violation was willful/repeat and size of employer
- Step 3: L&I orders employer to pay:
  - Investigative costs
  - Statutory penalty of $500 (or $1000 if repeat violation) in addition to above
  - Other relief for affected employees/applicants applying for internal promotions/transfers

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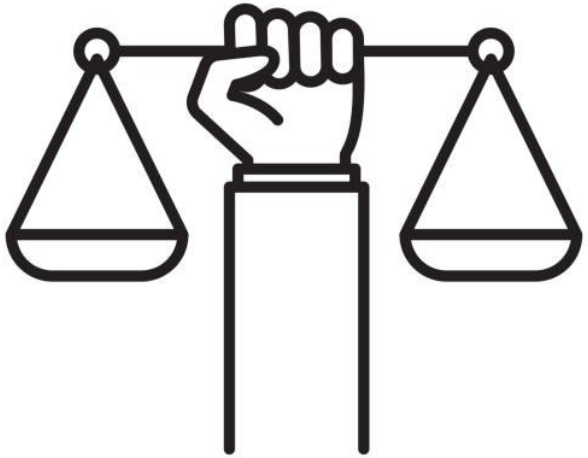
Pay Transparency: What Changed?

5. Clarifications to civil suits that affected employees/applicants may bring:

- Can file suit within 3 years of violation
- Can file suit ***regardless*** of whether employee/applicant pursued administrative complaint
- Employee/applicant now only entitled to these remedies (used to be remedies available under other statutes)
  - **RCW 49.58.110**



Note: Employees/applicants who prevail are entitled to attorney's fees and costs

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Pay Transparency: Employer Takeaways?

Ensure all job postings include a salary amount/range

Ensure all job postings include a general description of benefits, commission, other compensation, etc.

Look out for guidance from L&I on this subject

- **Note:** There is a WA Supreme Court case, *Branson v. Washington Fine Wines,* that will determine who a "bona fide" applicant is, i.e., who can actually bring a claim under this statute. A ruling has not yet been issued.

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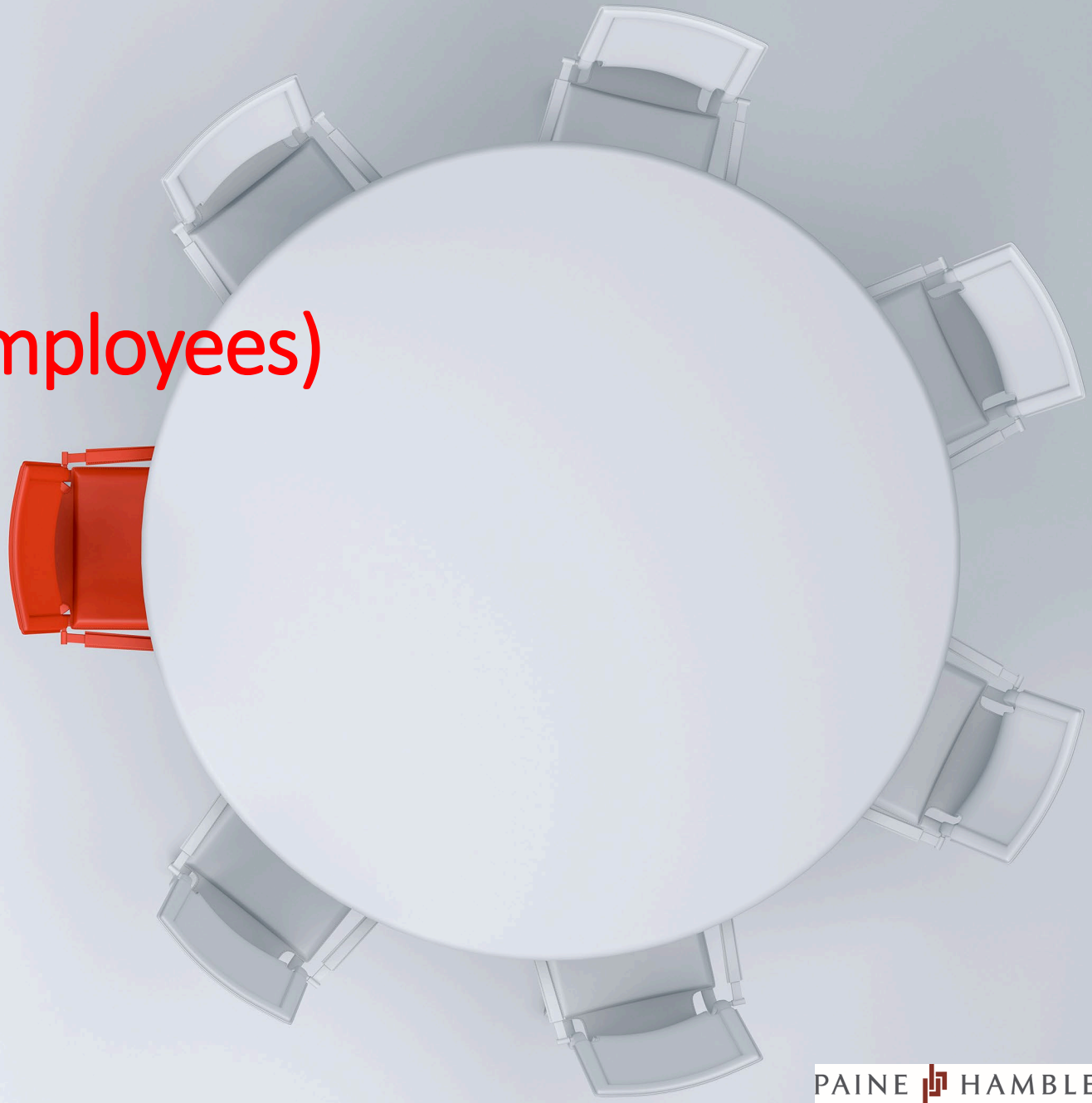
FAIR CHANCE ACT BACKGROUND CHECKS

Effective July 1, 2026 (15+ employees)
Effective January 1, 2027



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Fair Chance Act – Current Rules

An employer may not inquire as to an applicant's criminal history unless and until the employer determines the applicant is "otherwise qualified" for the position.

Job postings and other advertisements for employment opportunities may not include messaging excluding or disqualifying potential applicants based on criminal history.

Employers may not automatically or categorically exclude applicants with a criminal record from an employment position.

Violations result in monetary penalties up to $1000 per occurrence.

Fair Chance Act – **Changes** to the Rules

An employer may not inquire as to an applicant's criminal history unless and until the employer determines the applicant is "otherwise qualified" for the position **and makes an offer of employment conditioned on obtaining the applicant's criminal record.**

Job postings and other advertisements for employment opportunities may not include messaging excluding or disqualifying potential applicants based on criminal history.

Employers may not automatically or categorically exclude applicants with a criminal record from an employment position.

Violations result in monetary penalties up to $~~1000~~ **$15,000** per occurrence.

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Fair Chance Act – **Additions** to the Rules

1. Establishes specific procedures when taking a tangible adverse employment action because of criminal history. A **tangible adverse employment action** includes rejecting an otherwise qualified applicant, termination, suspension, discipline, demotion, or denial of promotion.

2. Requires employers to perform a six-factor analysis to justify such action.

3. Governs employers' response when applicants voluntarily disclose criminal records.

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Fair Chance Act – Criminal Record Inquiry – Step One

STEP ONE – CONDITIONAL OFFER

Make no inquiry as to the criminal record of any applicant.

Determine that an applicant is otherwise qualified for the position and make an offer of employment conditioned on obtaining the applicant's criminal record.

Fair Chance Act – Criminal Record Inquiry – Step Two

STEP TWO – ASSESS CRIMINAL RECORD

Consider only adult conviction records (not arrest records or juvenile conviction records).

Determine whether there is a **legitimate business reason** for taking a tangible adverse employment action because of the criminal record.

Fair Chance Act – Criminal Record Inquiry – Step Two

STEP TWO – ASSESS CRIMINAL RECORD

A **legitimate business reason** means the employer believes in good faith that the nature of the criminal conduct underlying the adult conviction record will:

(a) Have a negative impact on the applicant's fitness or ability to perform the position; or

(b) Harm or cause injury to people, property, business reputation, or business assets, AND the employer has performed and documented the following **six-factor analysis**.

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Fair Chance Act – Criminal Record Inquiry – Step Two

STEP TWO – ASSESS CRIMINAL RECORD

Consider the following six factors:

1. The seriousness of the conduct underlying the adult conviction record;
2. The number and types of convictions;
3. The time that has elapsed since the conviction, excluding periods of incarceration;
4. Any verifiable information related to the individual's rehabilitation, good conduct, work experience, education, and training, as provided by the individual;
5. The specific duties and responsibilities of the position sought or held; and
6. The place and manner in which the position will be performed.

Fair Chance Act – Criminal Record Inquiry – Step Three

STEP THREE – NOTIFY APPLICANT OF DETERMINATION

If there is a legitimate business reason for taking a tangible adverse employment action, notify the applicant and identify the record (e.g., conviction) on which the employer is relying for purposes of assessing its legitimate business reason.

Fair Chance Act – Criminal Record Inquiry – Step Four

STEP FOUR – HOLD THE POSTION OPEN

After giving notice, hold open the position for a minimum of two business days.

Allow the applicant to correct or explain the record or provide supplemental information concerning their rehabilitation, good conduct, work experience, education, and training.

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Fair Chance Act – Criminal Record Inquiry – Step Five

STEP FIVE – MAKE FINAL DETERMINATION

Evaluate whether any verifiable supplemental information provided by the applicant changes the outcome of the six-factor analysis.

If taking an adverse employment action, the employer must provide a written decision, including specific documentation as to its reasoning and assessment of each of the relevant factors, including the impact of the conviction on the position or business operations, and its consideration of the applicant's rehabilitation, good conduct, work experience, education, and training.

A written decision is required when taking an adverse employment action solely based on the adult conviction record—whether or not the applicant provides supplemental information.

Fair Chance Act – Criminal Record Inquiry – Example

HR Manager Marie posts an opening for an entry level cashier position and interviews 12 candidates. Marie determines that Josh and Shelby are qualified for the role. Marie offers the position to Josh, conditioned on a satisfactory background check. Josh accepts and authorizes the background check.

Marie discovers that Josh has multiple DUIs and was convicted of theft two years ago. Marie believes the criminal conduct underlying the theft conviction will cause harm to business assets, so she performs the six-factor analysis. Marie determines there is a legitimate business reason to deny employment because theft is a serious offense which occurred recently, and cashiers have access to cash in the till as well as customer credit card numbers.

Marie calls Josh and tells him that there appears to be a legitimate business reason to rescind the offer based on the theft conviction.

Marie holds the position open for two days and does not extend a conditional offer to Shelby during that time.

Fair Chance Act – Criminal Record Inquiry - Example

Josh submits a letter to Marie explaining the circumstances of the theft as well as a letter of reference from his church leader assuring prospective employers that Josh has changed his ways. After careful re-consideration of the factors in light of the supplemental information, Marie determines that there is still a legitimate business reason to withdraw the offer.

Marie sends Josh a written decision relaying her analysis of each factor, the impact of the conviction on the position, and how the supplemental information was considered. After doing so, Marie extends a conditional offer to Shelby.

Fair Chance Act – Voluntary Disclosure

- If an applicant voluntarily discloses criminal history without solicitation by the employer, the employer must immediately inform the applicant in writing of the Fair Chance Act's requirements on employers and provide the applicant a copy of the Washington Fair Chance Act Guide for Employers and Job Applicants.

- The same rule applies if the employer discloses to the applicant that the position is subject to a background check.

Fair Chance Act – Final Notes

- As the effective dates draw near, we expect the AG to update the Fair Chance Act Guide and provide a uniform fact sheet to respond to voluntary disclosures.

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- Exceptions include positions with unsupervised access to minors or vulnerable persons; nonemployee volunteers; employment by criminal justice or law enforcement agency; as allowed by federal law.

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- Employers must not retaliate by taking adverse employment action against an employee or applicant who reports a violation or informs others of the Act's requirements.

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- Employers must not retaliate by taking adverse employment action against an employee or applicant who reports a violation or informs others of the Act's requirements.
- Enforced by the Attorney General; monetary penalties are paid to the aggrieved party
  - First violation: education, warning, up to $1500 penalty
  - Second violation: $3000
  - Subsequent violations: $15,000 each

Fair Chance Act – Final Notes

These changes have the potential to create significant risk and liability for Washington employers who conduct background checks.

Please contact your employment attorney to:

- Review and update job applications, workplace postings, company webpages, internal recruitment and hiring policies, etc. for compliance.
- Provide training to recruiters, hiring managers, and other personnel involved in interviewing or hiring.
- Assist in evaluating whether your business has a legitimate business reason to take a tangible adverse employment action against a particular applicant or employee.
- Draft legally sound written determinations with the requisite six-factor analysis.

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Strikes/Lockouts – What is it?

Strike: a coordinated work stoppage ***by employees***, organized by their labor union, to protest working conditions, wages, or other employment issues and pressure management into negotiating

Lockout: a temporary work stoppage initiated ***by an employer*** to prevent unionized workers from performing their jobs during a labor dispute, often as leverage in contract negotiations

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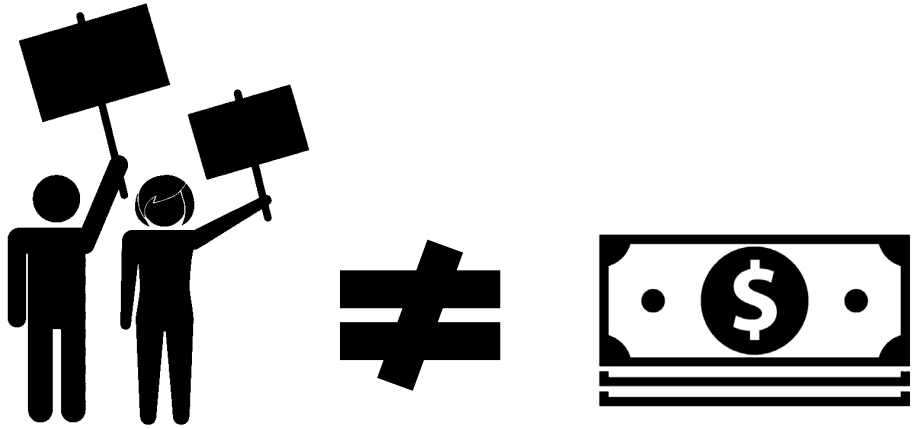
Strikes/Lockouts – What was the Problem?

Existing law provides that employees on strike or subject to a lockout were ineligible for unemployment benefits

- This incentivized shorter strikes/lockouts and quicker resolution of disputes

Claim was made that this structure favors employers and disproportionately harms employees



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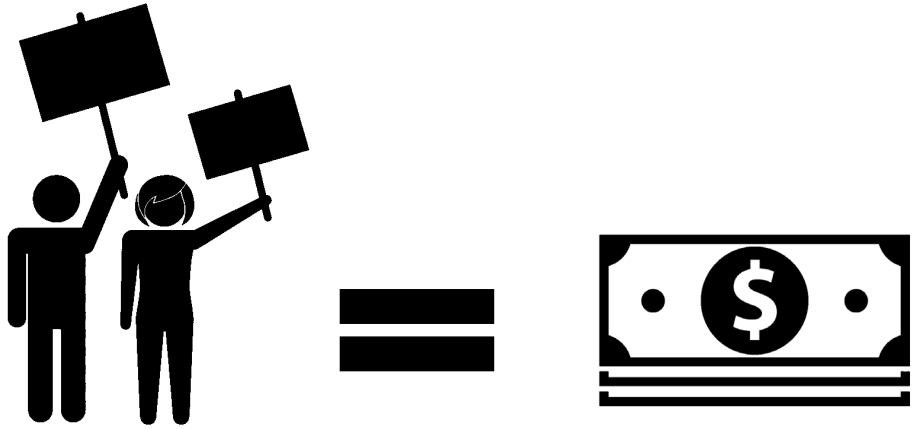
Strikes/Lockouts – The Solution

Award benefits (unemployment) to employees who are either on strike or subject to a lockout after a certain duration of the strike/lockout

Opponents of this change are concerned that this solution will encourage more strikes and strikes that are prolonged

Takes effect ***January 1, 2026***



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Strikes/Lockouts: What Changed?

Amends RCW 50.20.090

Allows workers on strike/lockout eligibility for unemployment benefits from Washington's Employment Security Department (ESD)

Employment Security Department
WASHINGTON STATE

WA joins just two other states with this eligibility

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Strikes/Lockouts: What Changed?

1. Benefit Eligibility Timing:

- Benefit eligibility begins for employees on the second Sunday following the first day of the strike
- Benefits actually begin one week after eligibility
  - RCW 50.20.010(1)(d)
- Benefits end on the day the strike ends or after benefits have been afforded for ***six weeks***

Strikes/Lockouts: What Changed?

1. Example:

Strike begins

Employee eligibility begins

Employee begins receiving UI benefits

AUGUST 2025

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

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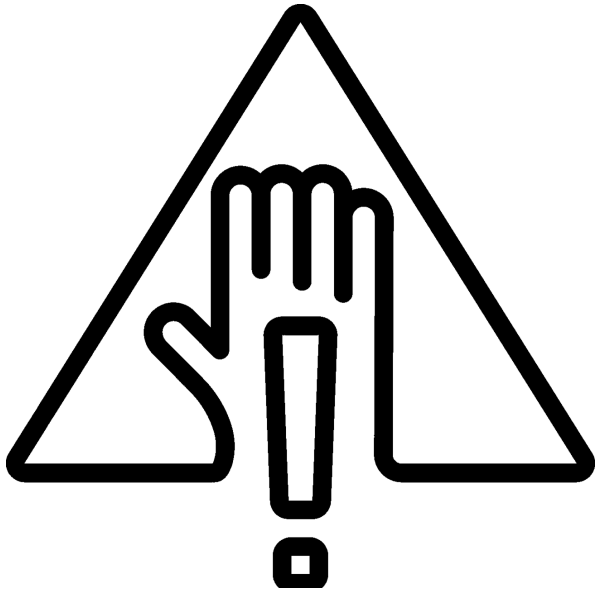
Strikes/Lockouts: What Changed?

2. Caveats/Reductions:

- While employees become ***eligible*** for benefits on the second Sunday following the first day of the strike, employees are still subject to the statutory one-week waiting period to actually receive benefits after becoming eligible

- Benefits may be taken back from striking employees if the strike is ruled by a court to be prohibited by state/federal law



Strikes/Lockouts: Experience Rating

Does this new rule affect an employer's experience rating?

YES

RCW 50.29.021(1)(c)(iv)

- new carve-out for benefits paid to striking workers being charged to (and thus impacting) employer's experience account

…except:

RCW 50.29.026(3)(a-b)

- The ESD may "evaluate" whether the employer can make a voluntary contribution
- ESD has sole right to determine whether employer may do this to preserve experience rating

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Strikes/Lockouts: Employer Takeaways?

Employees must still comply with unemployment requirements in order to remain eligible for benefits, including:

- Have worked at least 680 hours in the base year.
- Be off work through no fault of their own or for a specified good cause.
- Be both able and available to work and actively search for suitable work.

Look out for regulations from the ESD on this subject

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Pregnancy Accommodations – Prior Rule

Pregnancy accommodations are workplace accommodations that employers must make to accommodate pregnant employees

Employers with 15+ employees must accommodate pregnant employees

- Accordingly, most Washington employers already provide the required accommodations

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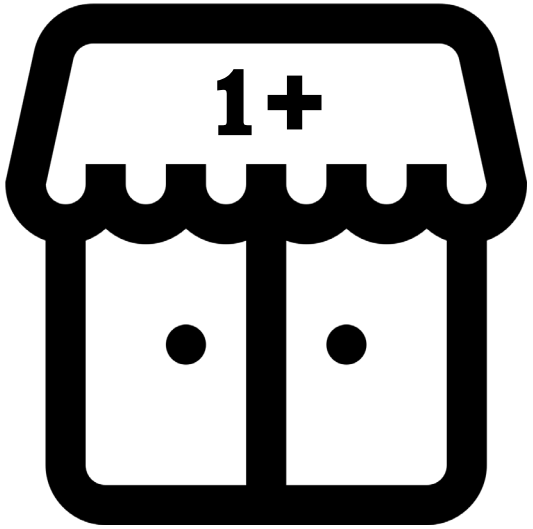
Pregnancy Accommodations – New Rule

Employers with **1 employee** must accommodate pregnant employees

Also, any religious or sectarian organization that is a non-profit is ***now considered an employer*** under the new rule

This takes effect on ***January 1, 2027***



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Lactation Breaks – Prior Rule

Lactation breaks are already a required accommodation in Washington

Employers must provide:

- "reasonable breaks"
- For up to 2 years after childbirth
- A private location (not a bathroom) for mother to use if one is available at jobsite

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Lactation Breaks – New Rule

In addition to the foregoing, employers must now also provide ***pay*** at the employee's regular rate for:

- Time spent on a break to express milk
- Time travelling to/from a location to express milk (even if offsite)

This takes effect on ***January 1, 2027***

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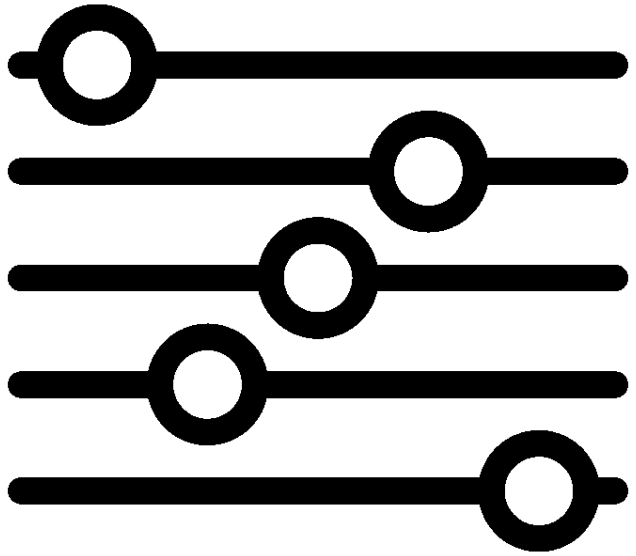
Lactation Breaks – Further Parameters

Since lactation breaks are now required to be paid, there are intersections with other meal/rest break laws:



1. Employees cannot be required to use paid leave time for lactation breaks or travel to/from it

2. Any time spent on a lactation break (or travel to/from it) is taken ***in addition to*** the normal required meal and rest breaks

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Lactation Breaks: Employer Takeaways?

Look out for guidance from L&I on this subject

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Spokane's "Ban the Address" Ordinance

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Striking Comp. → Paid Lact. → **"Ban the Addr."** → Workpl. Coercion → Immigr. Proceeding

“Ban the Address” – What is the Rule?

Prohibits employers within the City of Spokane from asking applicants to provide an address or residence history prior to granting a provisional offer of employment

Employers cannot make hiring decisions solely on the housing status of the applicant unless housing status has a bona fide effect on the applicant’s primary job duties

Became effective May 22, 2025

- Ordinance No. C36666
- First in the nation to enact a rule like this

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“Ban the Address” – Employer Takeaways?

Adjust job applications to remove requests for residence or residence history

Do not make oral/written inquiries of applicants regarding housing status or residence history

Do not disqualify an applicant solely because they are homeless or have a questionable residence history

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Workplace Coercion (Immigration)

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Striking Comp. → Paid Lact. → "Ban the Addr." → **Workpl. Coercion** → Immigr. Proceeding

Workplace Coercion – Immigration Status

- Substitute Senate Bill 5104 amends RCW 49.46.010—adding prohibited concepts of "coercing" and "threatening" employees on the basis of their immigration status.
  - Coercion is defined as "a threat to compel or induce a person to engage in conduct which the person has a legal right to abstain from, or to abstain from conduct in which the person has a legal right to engage in."
  - Threat is similarly defined as "implicit or explicit communication specifically pertaining to an employee's or an employee's family member's immigration status … made by the employer to deter an employee from engaging in protected activities"
- Imposes civil penalties, ranging from $1,000 from the first violation, $5,000 for a second, and $10,000 for each violation thereafter
- Does not appear to grant a private right of action on its face.

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Sick Leave for Immigration Proceedings

- Engrossed Substitute House Bill 1875 amends RCW 49.46.210—setting conditions of sick leave.
- Effective Date is July 27, 2025
- Additional requirement for employers:
  - "To allow the employee to prepare for, or participate in, any judicial or administrative immigration proceeding involving the employee or employee's family member"
- Limitations on what documentation an employer must necessarily accept:
  - A document from "An advocate for immigrants or refugees, an attorney, a member of the clergy, or other professional" evidencing the proceeding; or
  - "An employee's written statement that the employee or the employee's family member is involved in a qualifying immigration proceeding"; and
  - The employer's information request cannot disclose Personally Identifiable Information—to include an employee (or family member's) immigration status.

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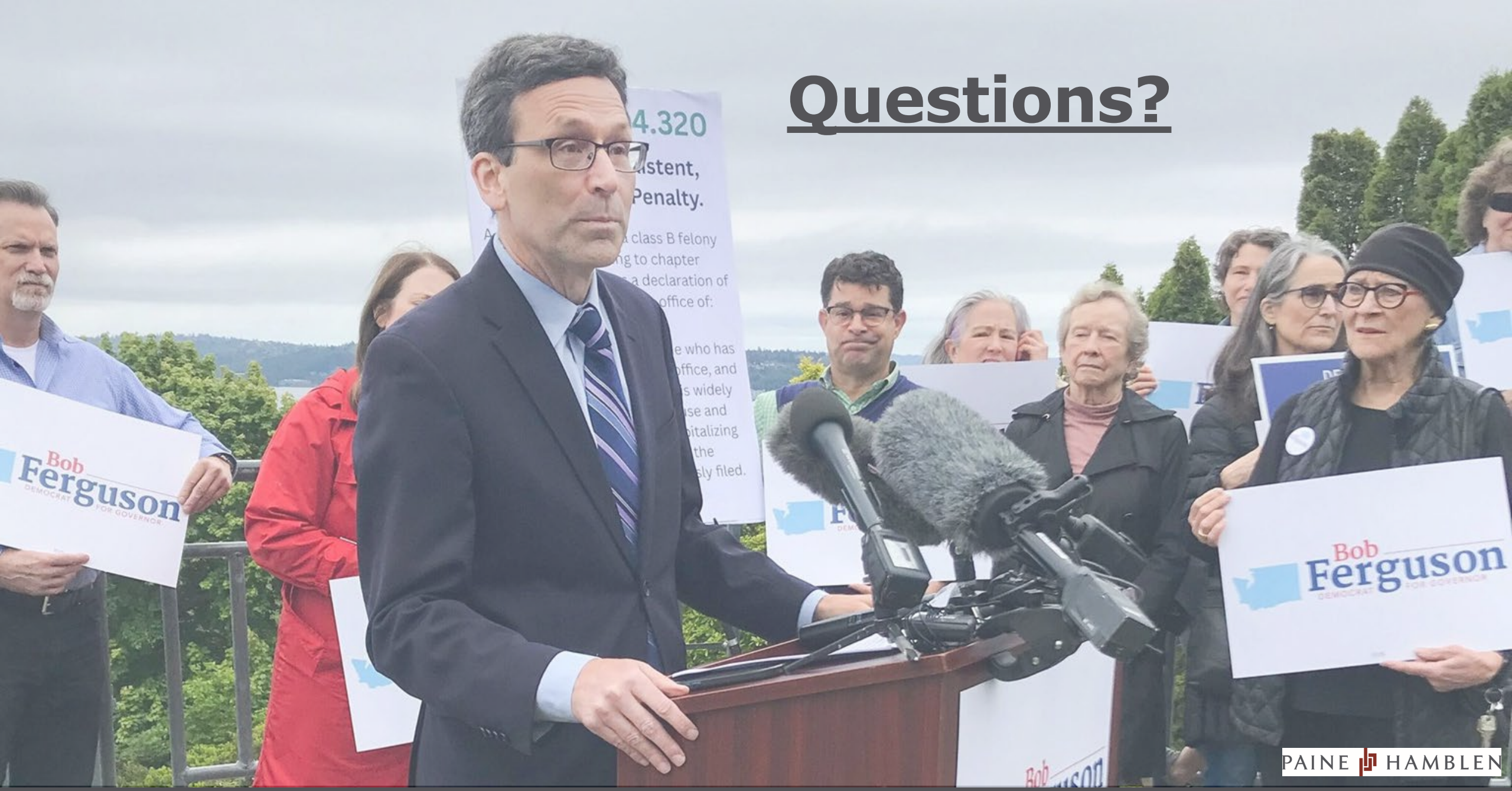
Questions?



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Thank you!