

2025 Legal Update

PRESENTED BY

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FOR

44th Civil Service Conference

About Foster Garvey

- Full-service law firm with approximately 150 attorneys across offices in Seattle, Portland, Spokane, Washington, D.C., New York and Tulsa
- Over a century of service supporting public agencies, institutions and mission-driven organizations
- Collaborative, multidisciplinary teams that help clients manage day-to-day issues and long-term planning
- Decades of experience in labor, employment & immigration law, focused on negotiations, workplace policies, investigations, regulatory compliance and more
- Counsel to public employers of all kinds on collective bargaining, investigations, and other labor and employment issues

Opening Thoughts

- This presentation provides **an overview** of legal updates from over the past year.
- If you have specific questions about the application of these legal changes to your situation, please consult with your attorney.



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Welcome News for Public Employers

PFML/FMLA Stacking is Addressed ...

Paid Family Medical Leave (PFML) Amendments ([ESSHB 1213](#)) – Effective January 1, 2026*

- Amendments address leave stacking for job restoration. As long as an employer meets **specific notice** requirements, leave taken under FMLA can be counted against an employee's PFML job restoration allotment, even if the employee does not apply for PFML.

... and Employees Must Exercise Right to Restoration

- Under the revised law, employees need to exercise their right to restoration to avoid forfeiture.
- Protections under the PFML will be phased in for employees of smaller employers over the next three years.
 - 25 or more employees on January 1, 2026
 - 15 or more employees on January 1, 2027
 - 8 or more employees on January 1, 2028
- For purposes of determining employer size, employees out on leave or other absences are counted if they are reasonably expected to return to employment.

... but PFML Amendments Make it Easier to Qualify and Require Maintaining Health Benefits

- Under existing PFML law, employees are only entitled to job restoration (return to employment in the same or an equivalent position) if they have worked for a Washington employer with 50 or more employees for least 12 months and have worked 1,250 hours within the 12 months prior to the leave. In January, eligible after only 180 days of employment and no hours of work requirement.
- Minimum qualifying leave period is reduced from 8 consecutive hours to 4.
- Employer-paid health benefits must be maintained. No longer need a one-day overlap with FMLA to maintain employer share of health benefits.



Changes to EPOA Wage Posting Requirements

Wage Posting Requirements, Cure Periods and Penalties/Damages Under the Equal Pay & Opportunities Act (EPOA) ([SSB 5408](#)) – Effective July 27, 2025

- Employers may now post a fixed wage (rather than a range) in job postings as long as a fixed wage is the actual offer for the role
- “Posting” does not include solicitations digitally replicated and posted without permission
- Until July 27, 2027, employers have five business days to correct deficient postings upon receiving notice, including contacting third-party posting platforms. If corrected within five business days, no penalties or damages will be levied
- After July 27, 2027, the cure provision no longer applies



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Equity Focused Legislation



New Equity Focused Requirements: Driver's Licenses

Driver's License Requirements ([SSB 5501](#)) – Effective July 27, 2025

- Employers may not require or post a requirement for a valid driver's license as a condition of employment unless driving is an essential job function or tied to a legitimate business purpose
- Penalties for violations include actual damages, statutory damages, interest and investigative costs, among other remedies

New Equity Focused Requirements: Background Checks

Fair Chance Act ([EHB 1747](#)) – Effective July 1, 2026/January 1, 2027

- Amended to prohibit asking about criminal history until after a conditional job offer has been made
- Adverse actions based on arrest records, juvenile records or adult convictions must be supported by a legitimate business reason, and employers are required to:
 - Notify the applicant or employee
 - Allow at least two days for response and, if an adverse employment decision is made, and after the response,
 - Provide a written decision documenting their assessment of statutory factors
- Statutory factors are post-conviction rehabilitation, good conduct, work experience, education and training. Employer documentation requirements are stringent
- If the job posting lists a requirement for a background check OR the applicant voluntarily discloses criminal history, employers must notify in writing of specific requirements of the Fair Chance Act and provide the Attorney General's Washington Fair Chance Act guide
- Significant penalties for noncompliance.

Background Check Exceptions

- Does not apply to:
 - Hiring persons with unsupervised access to children under 18 or vulnerable adults;
 - Employers required by federal or state law required to rely on criminal record information for employment;
 - Employment by a general or limited authority Washington law enforcement agency as defined in RCW [10.93.020](#) or by a criminal justice agency as defined in RCW [10.97.030](#)(5)(b); and
- The law permits employers to bar people with criminal records from working under a federal contract if the federal contract requires it.
- For employers with 15 or more employees, the law applies beginning July 1, 2026; for employers with fewer than 15 employees, the law will apply beginning January 1, 2027

New Equity Focused Requirements: Leave

Paid Sick Leave for Immigration Proceedings ([ESHB 1875](#)) – Effective July 27, 2025

- Since 2018, employers have been required by law to provide paid sick leave to overtime eligible workers to care for themselves or family members who are ill, injured or seeking medical care.
- Allows leave to prepare for or attend judicial or administrative immigration-related proceedings involving themselves or family members
- Documentation requirements are flexible; employer must accept an employee's written statement as verification. The documentation or written statement must not disclose any personally identifiable information about the employee's immigration status or protection, and confidentiality requirements apply. Like other paid sick leave uses, retaliation against employees for use of such leave is prohibited

New Equity Focused Requirements: Leave (continued)

A close-up photograph of two hands holding a white paper cutout of a family (two adults and two children) against a yellow background. The hands are positioned at the top right of the frame, with fingers gently gripping the edges of the paper.

Leave & Safety Accommodations for Victims of Hate Crimes ([SSB 5101](#)) – Effective January 1, 2026

- Washington's existing leave and safety accommodation law is expanded to protect victims of hate crimes, including those committed online or digitally
- Requires employers to grant reasonable leave and safety accommodations. Protections parallel those already in place for victims of domestic violence, sexual assault and stalking

New Equity Focused Requirements: Other

EPOA Broadened to Prohibit other forms of Discrimination ([SHB 1905](#)) – Effective July 1, 2025

- Protected classes now include age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability. Also, an aggrieved individual may claim discrimination based on the person's membership in more than one protected class

Workplace Protections Against Immigration-Based Coercion ([SSB 5104](#)) – Effective July 1, 2025

- Employees are protected from coercion related to their immigration status when exercising rights under specified Washington employment laws. Coercion is broadly defined to include threats intended to deter employees from engaging in legally protected activities or exercising rights, such as filing wage or labor condition complaints. Civil penalties from \$1000 to \$10,000 per violation

New Obligations Related to Public Records

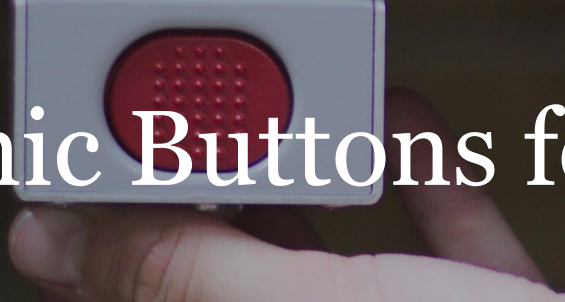
Public Records Act Exemptions of Harassment/Discrimination Investigation Records ([HB 1934](#)) – Effective July 27, 2025

- For public employers, investigation records involving harassment and discrimination must be redacted to protect information about the complainant, accuser or witness. Under existing law, the name of the complainant, accuser or witness is redacted unless they have consented to disclosure
- A new amendment provides for redactions of the complainant, accuser or witness's job title, image, email address, phone number and voice/audio recordings. If the complainant is an elected government official, name and title are not redacted



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Other Legislation



Panic Buttons for Isolated Workers

Panic Button Requirements for Certain Isolated Workers ([SSHB 1524](#))

- Beginning July 27, 2025, certain employers are required to provide panic buttons if they employ isolated employees.
- Applies to hotel, motel, retail, and security guard entities, and property services contractors who employs an isolated employee

New Obligations Related to Personnel Files

- The amended statute provides better clarity around the obligation to provide employees with access to their personnel file upon request
 - Private employers have a 21-day timeline to produce the records and can face a private right of action
 - Expands the definition of a personnel file to include job applications, evaluations, disciplinary records, leave and accommodation records, payroll records and employment agreements
- For public employers, requests for personnel files are now to be treated as public records requests, and the same timelines apply for providing a five-day notice to the requestor with a timeline of when the records will be produced



Unemployment Benefits for Striking Workers

- Striking workers can apply for up to 6 weeks of unemployment benefits, beginning January 2026
- There is a waiting period during which they are not eligible
 - Their disqualification ends the second Sunday following the first day of the strike, plus a one week waiting period (i.e., there's a two-plus week disqualification/waiting period)
- If a strike is unlawful under federal or state law, striking workers are not entitled to benefits. If it is later found that a strike was unlawful, workers may be liable for repayment of the strike benefits



New Limitation on Settlement Agreements

- Public employers may not require a worker to waive any right arising out of state or federal law as a condition of settling a grievance under a collective bargaining agreement



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Other Police/Fire Related Updates

4th Amendment Test for Use of Deadly Force

- ***Barnes v. Felix*** (May 2025)
- Following the use of deadly force by an officer, an individual's family sued alleging violation of the 4th Amendment right against excessive force. The lower court applied a “moment of threat” rule to evaluate the claim, which looked at the circumstances when the officer perceived the threat that led him to shoot, meaning the two seconds between when the threat began and the use of force occurred.
- This was rejected by the Supreme Court, holding that it must look at “the totality of the circumstances” when considering whether force is “unreasonable” under the 4th Amendment.

Police Use of Force Database

- Per RCW 10.118.030, Washington law enforcement agencies are required to report each incident where an officer employed by the agency used force and:
 - It resulted in a fatality, great bodily harm, or substantial bodily harm, or
 - An officer fired at someone, used a chokehold or vascular neck restraint, used a taser, less lethal shotgun, impact weapon, OC spray, any part of their body to strike a person, or used a vehicle to strike someone, or deployed a canine.
- The AG's Washington State Data Exchange for Public Safety (WADEPS) is now up and running. (See <https://wadeeps.org/>)



L&I Creates Clinical Guidelines for PTSD Claims

- Washington's Labor and Industries has published draft Clinical Guidelines for PTSD. Public comment closed on these in September, and they are set for public hearing later this month. The draft is intended to provide best practice guidelines for the treatment of PTSD. It specifies which therapies and medications are covered.

Paid Military Leave

- ***Bearden v. City of Ocean Shores (June 2025)***
- The Washington Supreme Court was asked by a federal court, “Is a public employee entitled to paid military leave under RCW 38.40.060 if the employee is not ‘scheduled to work’ by the employer because the employee is on active duty during an extended military leave of absence?”
- They answered in the affirmative, “Yes, a public employee is entitled to paid military leave under RCW 38.40.060 even if they are ‘not ‘scheduled to work’ by the employer because the employee is on active duty during an extended military leave of absence.”

Interest Arbitration for Small City Police Departments

- Previously towns and cities with a population of under 2,500 did not have access to interest arbitration upon impasse in collective bargaining. Interest arbitration is now part of their impasse procedures for law enforcement officers.
- This will impact around 37 cities and towns in Washington.



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Other Federal Developments

Federal Executive Orders

- “Ending Radical and Wasteful Government DEI Programs and Preferencing” (1/20/2025)
 - Rescinded Biden-era pro-DEI orders
 - Ordered all federal agencies to end any form of DEI programming and shutter DEI departments
 - A court has temporarily enjoined this order with respect to DOL grant recipients (the termination and certification elements of the order)
- “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (1/20/25)
 - Announced policy of federal government to recognize two sexes, male and female
 - Prohibits federal funds being used to promote gender ideology

Federal Executive Orders (continued)

- “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (1/21/25)
 - Rescinded several EOs regarding DEI, including requirement for federal contractors to give equal opportunity in hiring and to submit affirmative action plans
 - Announced intention to eliminate DEI programs that constitute “illegal discrimination and preferences” in private sector
 - Ordered all federal agencies to enforce civil-rights laws and to combat private-sector DEI preferences, policies, mandates, programs, and activities
 - Ordered all federal agencies to enforce civil-rights laws and to combat private-sector DEI preferences, policies, mandates, programs, and activities

Federal Executive Orders (continued)

- “Restoring Equality of Opportunity and Meritocracy” (4/23/25)
 - Deprioritizes enforcement of statutes and regulations to the extent they include disparate impact liability
- Note: Some aspects of the executive orders have been stayed, particularly as it relates to existing grants and funding

What Has Not Changed?

- Federal law (Title VII) and State Washington Law Against Discrimination still prohibit discrimination, include disparate impact discrimination
- Analysis has not changed

Bias Cases Brought by Members of Majority Group Cannot Be Held to Higher Standard

- *Ames v. Ohio Department of Youth Services* (June 2025)
- Heterosexual female claimed she was discriminated against because of sexuality, when she was denied promotion and demoted, followed by her position being filled by a gay man
- Lower courts required that she show background circumstances to support her suspicion that discrimination had occurred, as it is “unusual” for discrimination to occur against member of majority group.
- US Supreme Court unanimously disagreed with lower courts, rejecting a heightened evidentiary rule for those in a majority group.

9th Circuit Case on Religious Accommodation

- ***Detwiler v. Mid-Columbia Medical Center* (9th Cir. 2025)**
- A hospital employee had been granted a religious accommodation that allowed her to wear a mask and undergo weekly COVID-19 (nasal swab). She requested an accommodation to not use the nasal swab testing, which was denied.
- The Court of Appeals upheld the dismissal of her religious discrimination claim, reasoning plaintiffs must plead a sufficient nexus between their religion and the specific belief in conflict with a work requirement.
 - “To survive a motion to dismiss, a plaintiff need not establish her belief is consistent, widely held, or even rational. However, a complaint must connect the requested exemption with a truly religious principle. Invocations of broad, religious tenets cannot, on their own, covert a secular preference into a religious conviction.”
- Here, the request was based on her personal and secular belief that the COVID test was carcinogenic. It was predicated on concerns about health consequences.

Questions?

Thank you.



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