

Applicants Do Not Need to Be “Bona Fide” Under the Washington Equal Pay and Opportunities Act, but Washington Supreme Court Leaves Open Several Other Defenses

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On September 4, 2025, in a 6-3 decision, the Washington Supreme Court held in *Branson v. Washington Fine Wine & Spirits* that a plaintiff need not prove he or she was a “bona fide” applicant to recover damages under Washington’s Equal Pay and Opportunities Act (“EPOA”). The Supreme Court reasoned that because the legislature provided no statutory definition to the term “job applicant,” the court would give the term its “plain and ordinary meaning by reference to a dictionary.” Accordingly, the Court stated that “[t]he plain language of the term ‘job applicant’ means a person who applies to a job posting, regardless of their subjective intent in doing so.” Further, the Court reasoned that to best effectuate the statute’s intended purpose, the term “job applicant” should be “more broadly defined.”

The dissent argued that the “legislative intent shows in the statute’s language in context, in its legislative history, and in the relevant’ agency’s interpretation.” However, “[t]he majority’s definition of ‘job applicant’ misconstrues those sources, misstates the legislature’s intent, and ends up stretching the meaning of ‘job applicant’ to include even plaintiffs who suffered no harm—a class no legislator sought to protect.” The dissent further argued that the majority’s conclusion was “not true to the statute and will result in absurd and unintended consequences.”

While the Court’s decision was in favor of the plaintiff, the Court explicitly left open several defenses available to defendants in the numerous EPOA matters that remain ongoing, specifically: 1) whether the EPOA provides for a private right of action for applicants; 2) whether applicants who do not have a good faith intent to obtain employment lack statutory standing because they are not within the zone of interest protected by the statute and because they have not suffered an injury in fact; and 3) whether the U.S. Constitution would prohibit the Washington legislature from creating a right to sue for a plaintiff that did not suffer any harm or any threat of harm. The Court also did not address whether portions of Senate Bill 5408, amending the EPOA, apply retroactively and create new defenses for employers.

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