

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE 2024 LABOR DAY REPORT



Letter from the Attorney General

Dear Washingtonians:

Each year, Labor Day provides an opportunity to reflect on my work as Attorney General to protect and advocate for the rights, health, safety, and dignity of all Washingtonians. Since 2018, nine legal divisions in my office have supported the Worker Protection Initiative. As part of this Initiative, we ensure that these nine divisions meet regularly and collaborate to enforce Washington's worker protection laws.

This report highlights the important work of this Initiative from the past 12 months. In the past year, the Attorney General's Office:

- Advocated for workers in court and at the Legislature;
- Continued recovery of stolen unemployment resources; and
- Fought for workers against illegal discrimination.

I remain committed to this critical work and to building on our success. We will continue to uphold and defend the rights of workers across the state and support client agencies in their efforts to protect workers.



Bob Ferguson

Washington State Attorney General



Table of contents:

Taking Action to End Discrimination and Retaliation Against Pregnant Employees.....	3
Recovering Stolen Unemployment Benefits.....	3
Protecting Gig Economy Drivers Who Transport Passengers.....	4
Protecting Small Businesses from Fraud.....	4
Blocking Proposed Kroger-Albertsons Merger.....	5
Passing Legislation to Protect Workers and Public Agencies from Bad Actors.....	5
Support for Waiving Pandemic-era Overpayments of Unemployment Benefits.....	5
Protecting Benefits for Railroad Workers.....	5
Protecting Outdoor Workers from Extreme Heat.....	6
Supporting the Recovery of Unpaid Wages for Boeing Workers.....	6
Enforcing the Washington Law Against Discrimination.....	6
Seeking Justice for Victims of Assault and Harassment in Employment.....	6
New Protections for Warehouse Workers.....	6
New Protections for Health Care Workers.....	6
Recovering Unpaid Wages.....	7

Aug.

Taking Action to End Discrimination and Retaliation Against Pregnant Employees



On August 16, Attorney General Ferguson filed a civil rights lawsuit against O’Reilly Auto Parts alleging systemic discrimination and retaliation against pregnant employees. According to the lawsuit, it was company practice to unlawfully refuse pregnant workers reasonable workplace accommodations, such as the ability to sit or rest, limit how much they lift or handle hazardous materials, allow flexibility for restroom breaks, and pump breastmilk for newborn babies after returning to work postpartum. Additionally, the lawsuit asserts that O’Reilly managers routinely engaged in retaliation against employees who sought these accommodations by demoting them, threatening termination, and forcing them to take unpaid leave or quit altogether. The lawsuit is currently pending in King County Superior Court.

Sept.

Recovering Stolen Unemployment Benefits

Attorney General Ferguson announced the recovery, using state asset forfeiture authority, of more than \$42 million in unemployment benefit funds stolen by sophisticated criminals and identity theft rings during the COVID-19 pandemic. The recovered funds were returned to the state’s unemployment system and federal treasury. While multiple states suffered substantial losses, Washington was the first and one of the only states to exercise its forfeiture power to recover these funds.

In part because of these forfeiture litigation efforts and the assistance provided to the Employment Security Department (ESD) by the Attorney General’s Office (AGO), Washington was more successful than other states in mitigating, and securing recoveries of, unemployment fraud losses—helping to preserve funds for the benefit of eligible unemployed workers in Washington.

Total Forfeitures Recovered	
<u>Financial Institution</u>	<u>Forfeited Amount</u>
TD Bank	\$597,015.41
PayPal	\$1,579,249.64
Wells Fargo	\$8,033,573.24
Citibank	\$2,777,665.72
JPMorganChase	\$6,775,439.16
Metropolitan Commercial	\$732,761.82
Capital One	\$2,396,661.27
Boeing Employees Credit Union (BECU)	\$19,952.13
Green Dot	\$735,030.97
Block	\$105,138.19
Choice Financial Group	\$238,687.36
Stride Bank	\$87,013.81
U.S. Bank	\$578,727.85
Bank of America	\$9,714,631.52
Citizens Financial Group	\$247,229.99
Banco Bilbao Vizcaya Argentaria (BBVA)	\$484,724.22
PNC Financial Services Group	\$5,062,510.12
Discover Bank	\$80,145.91

Table continued on next page

American Express	\$45,368.77
Santander Bank	\$165,633.70
Regions Bank	\$269,936.35
Incomm Financial	\$244,835.74
Netspend	\$630,702.37
Navy Federal	\$199,533.90
Huntington National Bank	\$115,060.95
Wise	\$115,291.42
Total	\$42,032,521.53

Nov.

Protecting Gig Economy Drivers Who Transport Passengers



The AGO continued to assist ESD and the Department of Labor and Industries (L&I) with implementing ESHB 2076 (2022) and SHB 1570 (2023), relating to rights and protections for Transportation Network Company (TNC) drivers. In November, ESD adopted rules for TNCs’ reporting of driver hours and wages, used to determine their qualification for unemployment insurance benefits. The AGO continues to advise ESD on other rules to implement the legislation and on processes relating to a new pilot program that allows TNC drivers to opt-in to Paid Family and Medical Leave (PFML) coverage, with TNCs reimbursing drivers for PFML premiums. The AGO also continues to support L&I’s implementation of these laws and assist with investigations. As required by the legislation, in late 2022, L&I adopted rules to implement and enforce requirements for driver receipts and weekly trip notices, tip and gratuity protections, minimum pay and deduction requirements, paid sick leave protections, deactivation requirements, and retaliation protections. Over the last year, L&I’s enforcement of these provisions resulted in the voluntary repayment of hundreds of thousands of dollars in back pay to drivers.

2024

Jan.

Protecting Small Businesses from Fraud

On January 8, Attorney General Ferguson filed a consumer protection lawsuit against Labor Law Poster Service and its owners for sending hundreds of thousands of deceptive solicitations targeting small businesses.

Businesses with employees are required to display certain workplace posters about a variety of workers’ rights and entitlements, such as workplace safety requirements or the right to access disability leave. These workplace posters are available for free download from many regulators and state agencies. Labor Law Poster Service sends businesses across the country deceptive letters that look like bills from a government agency. The letters include threatening language about legal consequences for not immediately purchasing their product, a “Complete State & Federal Posting Requirement Set,” for \$79.50 or more. The solicitations target small business owners, often newly registered small businesses, who may lack time and resources to thoroughly vet the legitimacy of the letters.



This lawsuit is the third such lawsuit against the company and its owners, who have repeatedly been ordered by the court to stop their unlawful conduct and pay penalties and restitution. This lawsuit accuses Labor Law Poster Service of violating the Washington Consumer Protection Act more than 300,000 times over the course of at least seven years and alleges that the company and its owners violated the prior permanent injunction as well as an earlier agreement that prohibited the company from sending deceptive letters.

Blocking Proposed Kroger-Albertsons Merger



On January 15, Attorney General Ferguson filed an antitrust lawsuit to block the proposed merger of Kroger and Albertsons, the two largest supermarket companies in Washington. Kroger owns Fred Meyer and QFC, with more than 21,000 workers in Washington. Albertsons owns Safeway and Haggen. The lawsuit asserts that the proposed merger is likely to lead to store closures, and Kroger executives have previously suggested strategically closing unionized stores “for a period of time to make them nonunion.” Unionized supermarket workers generally receive higher wages and better benefits compared to their non-unionized counterparts. Store closures and the elimination of competition between the two chains would eliminate jobs, increase incentives to reduce union participation of employees, and reduce choices for consumers, while increasing company profits.

In April, a judge rejected a motion by the companies to dismiss the lawsuit and ruled that the lawsuit can proceed. The trial is set to begin on September 16.

March

Passing Legislation to Protect Workers and Public Agencies from Bad Actors

On March 7, Governor Inslee signed SHB 2136 into law, requested by Attorney General Ferguson and sponsored by Representative Timm Ormsby (D-03), which extends prevailing wage sanctions to bad actor contractors to ensure they do not receive public funds. Under Washington law, contractors are required to pay their workers a prevailing wage — the basic hourly rate of wages and benefits paid to similarly situated workers in an area. When contractors violate this law repeatedly, they are prohibited from being selected to work on government projects and receive public funds. However, some repeat violators restart operations under a different company name and continue receiving public contracts. As a result, these bad actors are positioned to avoid accountability and profit by violating the law while disadvantaging honest businesses that play by the rules.



This bill applies to sanctioned businesses, including those receiving strikes and debarments, and prevents the “whack-a-mole” enforcement dynamic against intentional wage theft offenders who restart operations under a different company name to continue business as usual.

Support for Waiving Pandemic-era Overpayments of Unemployment Benefits

During the COVID-19 pandemic, some Washingtonians received overpayments of unemployment benefits. While some people must repay the overpayment, under many circumstances, repayment can be waived. The AGO continued to advise ESD on options and processes for waiving these overpayments, including the application process under expanded federal guidance and ESD’s authority to provide waivers for qualified individuals without requiring a waiver application. ESD broadly communicated with claimants about its waiver project.

Protecting Benefits for Railroad Workers

Under federal law, states are often limited in the ability to govern railroads and their operations. In the *Union Pacific Railroad Co. v. Feek* federal district court case, the railroad employer sought judgment that Washington is preempted from enforcing its Paid Family and Medical Leave law for railroad employees. The AGO represented the state, asserting that the railroad employer’s suit could not be brought in federal court. The Court granted the state’s motion to dismiss the federal case. The railroad is seeking further review.

May

Protecting Outdoor Workers from Extreme Heat

On May 10, the first heat wave of 2024 triggered new protections to prevent heat-related illness in agriculture, landscaping, construction, and other outdoor jobs. The AGO advised L&I on the development of these rules, which became permanently effective last summer. These rules are in place year-round, and require shade, water, and preventative cool-down periods for outdoor workers to prevent overheating. The rules require close observation of outdoor workers during heat waves and trigger increasing protections at higher temperatures.

Supporting the Recovery of Unpaid Wages for Boeing Workers



Boeing and L&I signed a compliance agreement on May 24 acknowledging payment of \$11.5 million in unpaid wages to nearly 500 workers. These payments were made after L&I received complaints from Boeing workers performing aircraft maintenance overseas, which led to a broader investigation into travel pay and policies for workers in Washington. Under Washington law, all travel time related to work is considered work time, and employers owe overtime and sick leave accrual based on those hours. The investigation found that Boeing did not pay this overtime or paid sick leave related to offsite worksite travel. The investigation was done by L&I's Proactive

Investigation and Enforcement Unit, and the AGO provided legal counsel.

June

Enforcing the Washington Law Against Discrimination

As a result of a civil rights lawsuit, on June 6, a jury found a veterans nonprofit and its founder and CEO, Thelbert "Thad" Lawson Jr., liable for pervasive and ongoing sexual harassment of 12 women who worked, volunteered, or shopped at two thrift stores in Wenatchee and Kennewick. The harassment included offensive and unwanted touching, sexually charged remarks, and inappropriate requests for sex. Lawson also retaliated against employees who complained about this conduct. The jury found that this harassment and retaliation violated the Washington Law Against Discrimination and awarded \$1.45 million in damages to the 12 women, as well as \$17,267.50 in back wages to workers. All of the money will go to the harassment victims.

Seeking Justice for Victims of Assault and Harassment in Employment

The Attorney General brought a civil rights lawsuit against Greenridge Farms and Baker Produce in Pasco over multiple allegations from female farmworkers of sexual assault and sexual harassment by a company supervisor. The unlawful conduct occurred from 2018 until the supervisor was fired in March 2024. Greenridge Farms and Baker Produce agreed on June 17 to pay \$470,000 to resolve the lawsuit. All of these funds will go to the four women who reported the assaults, harassment, and retaliation. The consent decree also requires the companies to institute new anti-discrimination and sexual harassment policies within 60 days that encourage employees to come forward with complaints. These policies must include specific procedures for making anonymous discrimination or harassment complaints in the worker's primary language.

July

New Protections for Warehouse Workers

In April 2023, the Legislature passed SSHB 1762, which provides new protections for warehouse workers and directs L&I to engage in rulemaking for implementation and enforcement beginning July 1, 2024. These new protections require warehouse employers to: provide written descriptions of warehouse quotas; create retaliation protections; ensure that the quota expectations allow warehouse workers enough time to take breaks, use the restroom, and travel to breakrooms and restrooms; give workers access to and use of necessary tools and safety equipment; and provide additional compensation for missed breaks resulting from unreasonable quotas. The AGO worked closely with L&I to develop rules to implement these protections and to develop new practices and protocols to conduct investigations of potential violations of these new protections.

New Protections for Health Care Workers

In April 2023, the Legislature passed ESSB 5236, which clarifies protections and enforcement regarding mandatory overtime and uninterrupted meal and rest breaks for certain health care workers. The new law includes staffing plans and retaliation protections. The Department of Health (DOH) and L&I enforce this new law, and the AGO provides legal counsel and guidance for enforcement and oversight.

Aug.

Recovering Unpaid Wages

MORE
THAN **\$125,000**
RECOVERED & PAID TO
77 WORKERS

Over the past 12 months, the AGO resolved six wage theft cases referred for enforcement by L&I. In each case, the employers signed legally binding agreements to comply with Washington's wage and hour laws to pay workers fairly. Most of these employers also agreed to requirements to conduct self-audits to ensure they do not repeat the violations. In total, \$125,370.63 in unpaid wages were recovered, paid to 77 workers.