

# 2019-2020 LEGAL CHANGES WASHINGTON SMALL BUSINESS OWNERS NEED TO KNOW

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## Mandatory Arbitration

**At Risk:** Every business

**Why It Matters:** Lawsuits filed in Superior Court in King, Snohomish, and Pierce counties that seek damages of up to \$100,000 are, as of September 2019, officially diverted to "civil arbitration." This is a big departure from the previous limit of \$50,000 and affects all contract, personal injury, property damage, and other claims solely seeking money damages.

**What To Do:** Check your county's local rules to see if your Superior Court judges have also adopted the \$100,000 limit. Private binding arbitration (which is not the same as mandatory civil arbitration) and District Court are alternatives to Superior Court. Because mandatory civil arbitration may not be the best venue for your dispute, seek legal advice and revise your contracts as necessary and desired.

**More Resources:** <https://cornerpointlaw.com/blog/litigation/washington-mandatory-civil-arbitration-no-agreement-necessary/> and <https://app.leg.wa.gov/RCW/default.aspx?cite=7.06&full=true>

## Wrongful Death

**At Risk:** Every business whose products, services, operations, or employees could cause personal injury

**Why It Matters:** Washington's wrongful death laws previously limited damages for family members of deceased unmarried adults with no children. As of July 2019, parents and siblings are now less restricted in their ability to recover for emotional distress and the loss of love and companionship.

**What To Do:** Consult your attorney and/or insurance agent to make sure you have adequate liability coverage for these additional potential claimants, and continue diligent efforts to reduce the risk of injury related to your business.

**More Resources:** <https://cornerpointlaw.com/blog/risk-management/washingtons-new-wrongful-death-laws-2019-what-businesses-need-to-know/> and <https://app.leg.wa.gov/RCW/default.aspx?cite=4.20&full=true>



## Non-Compete Agreements

**At Risk:** Every business that uses (or plans to use) non-compete agreements

**Why It Matters:** Starting January 1, 2020, salary takes center stage. An employer's non-compete agreement will only be enforceable if the employee earns \$100,000/year or more (adjusted annually for inflation). Even when salary thresholds are met, business owners need to understand that there are additional limitations on non-compete agreements. Furthermore, this law is retroactive - meaning it will apply to non-compete agreements entered into before the law takes effect - and imposes strict penalties for violations. Employers may continue to use non-solicitation provisions and non-disclosure agreements at lower pay rates.

**What To Do:** Review your existing contracts to identify any non-compete provisions that will soon be unenforceable. Consult your attorney to determine whether new contracts or salary adjustments are needed.

**More Resources:** <http://lawfilesexst.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1450-S.PL.pdf>



## Public Discrimination

**At Risk:** Every business with premises open to the public

**Why It Matters:** As of January 2019, Washington law clearly imposes direct liability on employers for their employees' unlawful discrimination against or harassment of customers or other third-parties in places open to the public - even if employers do not know of the discrimination and are not negligent in their supervision of employees.

**What To Do:** Consult your attorney and/or insurance agent to make sure that you have adequate employment practices liability insurance coverage for potential third-party claims, and continue to invest in harassment and discrimination prevention.

**More Resources:** <https://www.courts.wa.gov/opinions/pdf/952051.pdf>



## Paid Family & Medical Leave

**At Risk:** Every business with at least one employee

**Why It Matters:** Generally speaking, starting January 1, 2020, all qualifying employees - those who worked \*anywhere\* in Washington for at least 820 hours during the previous year - may take up to 12 weeks of paid family and medical leave for the employee's (or employee's family member's) serious health condition, illness, or injury. Family leave for the birth or placement of a child or certain military-connected events is also allowed.

**What To Do:** Benefits will be calculated and paid by ESD (the same agency that handles unemployment benefits), so the administrative responsibilities will not fall solely on employers. Still, employee absences will impact business, and interpretation of the law is still uncharted. Consult your attorney to help you synthesize your existing policies, Paid Sick Leave laws (as required by the State and local ordinances), Paid Family & Medical Leave, and any applicable federal laws to ensure compliance. Employee handbooks likely need to be revised. And put a good temp agency on your speed dial.

**More Resources:** <https://paidleave.wa.gov/>



## Equal Pay & Opportunity

**At Risk:** Every business hiring employees

**Why It Matters:** As of July 2019, employers may not obtain the wage or salary history of a prospective employee, unless the information is volunteered by the job applicant, or is requested after an offer of employment and compensation. Businesses with at least 15 employees must also provide position-specific information as to wage and salary ranges - including for internal promotions and transfers - but the timing of when depends on whether the position is new. Penalties for violations include payment of attorneys' fees and damages of at least \$5000.

**What To Do:** Less than 15 employees? Legally, this is an easy requirement, but administratively may prove a challenge. Remove questions about salary history from job postings and applications, and make sure that the individual(s) doing the hiring and interviewing are aware of off-limit questions. 15+ employees? Do the same, and also determine how your business will disclose wage and salary ranges in accordance with the law.

**More Resources:** <http://lawfilesexst.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1696-S.PL.pdf>



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