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The Wash. Labor Developments That Experts Are Watching

By **Jessica Mach**

Law360 (February 9, 2023, 12:11 PM EST) -- The birthplace of Boeing and home to a robust lumber industry as well as nearly a dozen deep-water ports, Washington state has long been one of the most union-friendly jurisdictions in the U.S., even as tech gradually took over as the state's fastest-growing sector.

From novel policies concerning Uber and Lyft to proposed public sector laws and national organizing campaigns at Amazon and Starbucks, Law360 looks at the labor trends and developments in Washington that experts are watching.

Sectoral Bargaining in the Ride-Hailing Industry

Last year, the Washington Legislature passed a bill providing minimum wage, paid sick leave, workers' compensation benefits and protections related to termination for ride-hailing drivers across the state. H.B. 2076 went into effect on Jan. 1.

The result of years of negotiation between a Teamsters local and Uber and Lyft, the bill divided labor advocates, many of whom were opposed to what they viewed as a key concession: the bill's classification of drivers for ride-hailing services as independent contractors, rather than employees entitled to protections under federal and state employment laws.

According to Elizabeth Ford, a professor at Seattle University School of Law, one especially notable provision requires Drivers Union, a worker organization backed by Teamsters Local 117, to negotiate with Uber and Lyft over an appeals process for driver deactivations. Any agreement the parties reach needs to be approved by Washington's state labor agency.

Drivers Union is currently in ongoing negotiations over the appeals process, according to Kerry Harwin, the organization's communications director.

That process is in essence "a new kind of sectoral bargaining," Ford said, referring to a type of collective bargaining common in Europe where labor contracts cover an entire industry as opposed to a single employer.

"This kind of sectoral bargaining has long been promoted by academics, but it has been fairly rare in practice" in the U.S., Ford noted. "While the scope of this negotiation [in H.B. 2076] is narrow, it potentially provides a template for other kinds of government supervised, industry-based agreements."

In some ways, the yearslong push to raise labor standards for ride-hailing workers in Washington goes hand-in-hand with municipal labor policies in Seattle, like the Domestic Workers Bill of Rights the city passed in 2018, Ford said. Seattle is one of a handful of cities — along with 10 states, including California, Oregon, Hawaii and New York — that have set minimum labor standards for domestic workers not traditionally protected by employment laws.

"I do think it fits into this idea of an expanded view of worker organizing, and an explicit effort to organize workers that might not fit into a traditional definition of employee," Ford said.

Union Access to Public Employees' Information

While unions like the International Association of Machinists and the Teamsters have long had a foothold in Washington's largest private-sector industries, labor experts say public sector employees also account for a substantial amount of the state's high union membership rate.

"The public sector has extended bargaining rights to some really sizable, nontraditional employee groups like home health care workers that number in the tens of thousands," said Rodney Younker, an attorney at Summit Law Group in Seattle who represents employers.

Some of the most interesting labor developments in Washington in recent years concern employers, workers and unions in the public sector, experts say. For example, Ford noted a "yearslong struggle" between the Freedom Foundation, a conservative advocacy group, and the state's public-sector unions in the wake of the U.S. Supreme Court's 2018 decision in *Janus v. AFSCME*, which held that nonunion public employees cannot be required to pay union dues or fees as a condition of employment. The case prompted the Freedom Foundation to launch a campaign to inform public employees that they can opt out of union fees.

In 2020, the Washington Legislature passed a bill that banned disclosing certain information about public employees in response to requests under the state's public records act. Some public unions championed the law, saying it protected public employees from groups like the Freedom Foundation that used the disclosed information to target employees with misinformation.

Now, on what Ford calls the "flip side" of the post-Janus information access debate, the Legislature is considering bills that would require certain public employers to give union representatives information about newly unionized employees, such as their contact information, job site location and salary. California passed a similar law in 2017 in anticipation of the Janus decision.

The unions are "trying to shore up their ability to do internal organizing," Ford said.

Union-Employee Privilege

Another notable bill pending before the Legislature also concerns access to information in the public sector.

As proposed, H.B. 1187 would "create a privilege on par with, say, the attorney-client privilege or the marital spouse privilege, and apply that to communications between a union and an employee," Younker explained.

The bill would effectively prevent courts from ordering the disclosure of these communications and also prevent employers from requesting that information under the state's public sector collective bargaining law, Ford said.

Under the proposed bill, this privilege would not apply in cases where disclosure would be necessary for preventing injury or death; in civil or criminal actions against the union; or if the union has waived the privilege.

Though unusual, Washington is not the first state to consider such a bill. In 2005, Illinois became the first state to establish a privilege applying to communications between bargaining unit employees and union representatives.

"One thing that's interesting about this, from my perspective, is that there are a lot of communications that happen between employees and their unions that would presumably be covered by this privilege that actually happened on paid employer time," Younker said.

"There are situations that employers confront where employees bring forward claims of discrimination and alike based on things that happened in their interactions with their unions," he added. "To imagine that some part of that — which employers at some level are responsible for addressing — might be off-limits because of privileged communications is a complication."

Salary Disclosures in Job Postings

Washington State joined Colorado and New York City last year when it amended a state equal pay law to require employers include information about wages and benefits in job postings. That amendment **went into effect** on Jan. 1.

Though not strictly a labor policy, the amendment could potentially galvanize organizing activity, said Jim Shore, a Seattle-based partner at Stoel Rives LLP who represents employers.

"That's information that could become readily accessible to people who are trying to organize," Shore said. "Let's say, for example, a union represents a competitive workforce, and there are benefits in that union's contract or perhaps higher wages than [what] the employer who was seeking employees has publicized in their job posting. The union might conceivably start contacting that employer's employees and saying, 'Hey, you know, if you join us, we can get you this.'"

Amazon and Starbucks

The e-commerce giant and the coffee chain are facing two of the most scrutinized organizing campaigns in the country, and employers in their home state are watching closely — with many bracing for more organizing activity.

"These are Seattle institutions," Shore said of Amazon and Starbucks.

Shore added that since the campaigns began gaining traction, he's been "getting calls from a lot of clients and from companies that I've never represented before, asking to talk to me about what they can best do to address the issues of union organizing."

As is the case in many places across the country, the Amazon and Starbucks campaigns have shifted the organizing landscape in Washington by making clear "the power of a homegrown union," Ford said, referring to both the independent Amazon Labor Union and Starbucks Workers United. Although Workers United is affiliated with the Service Employees International Union, the established union has allowed Starbucks workers to lead the way, she said.

To date, Starbucks workers have voted to unionize at more than 270 locations across the country, according to Law360's **Starbucks Unionization Tracker**. The Amazon Labor Union, meanwhile, remains the only **legally certified** labor representative of Amazon employees in the U.S. after winning the first union representation election at a Staten Island, New York, facility last year.

Despite these successes, however, the campaigns have also seen setbacks, facing fierce counter-campaigns by the companies as well as challenges reaching a first contract agreement.

Still, Ford said she doesn't believe momentum among workers is slowing down.

"From my vantage point, I'm not seeing a diminishment of that momentum in Washington," she said. "The answer may be different in Alabama. But I think because we are so used to a strong labor movement, there's lots of room and lots of support for the organizers and a recognition that this isn't anything different than any worker who's ever organized a union has faced."

--Additional reporting by Braden Campbell and Amanda Ottaway. Editing by Alanna Weissman.