CIVIL SERVICE: AN OVERVIEW
41ST ANNUAL CIVIL SERVICE CONFERENCE

September 20, 2022

Foster Garvey

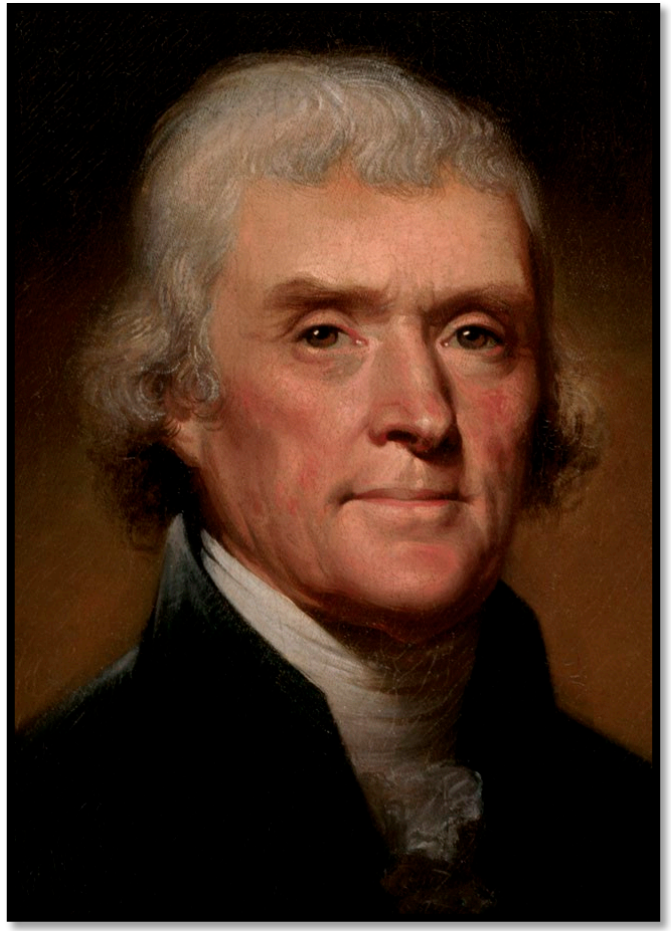
SEATTLE PORTLAND WASHINGTON, D.C. NEW YORK SPOKANE BEIJING

Program Outline

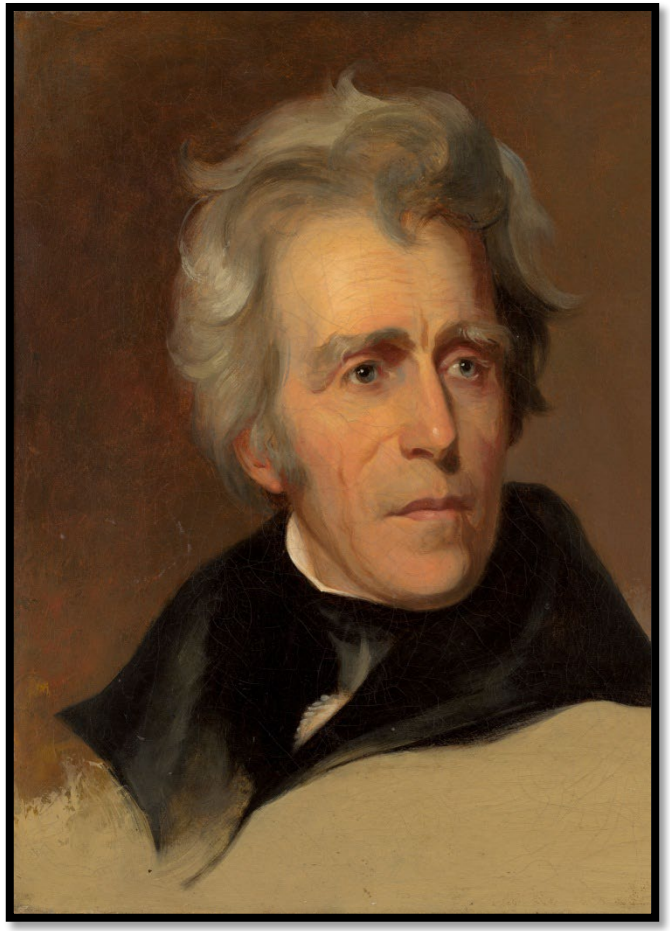
- Introduction
- Basics
- Hearings
- OPMA and PRA

INTRODUCTION

Background – Why Civil Service?

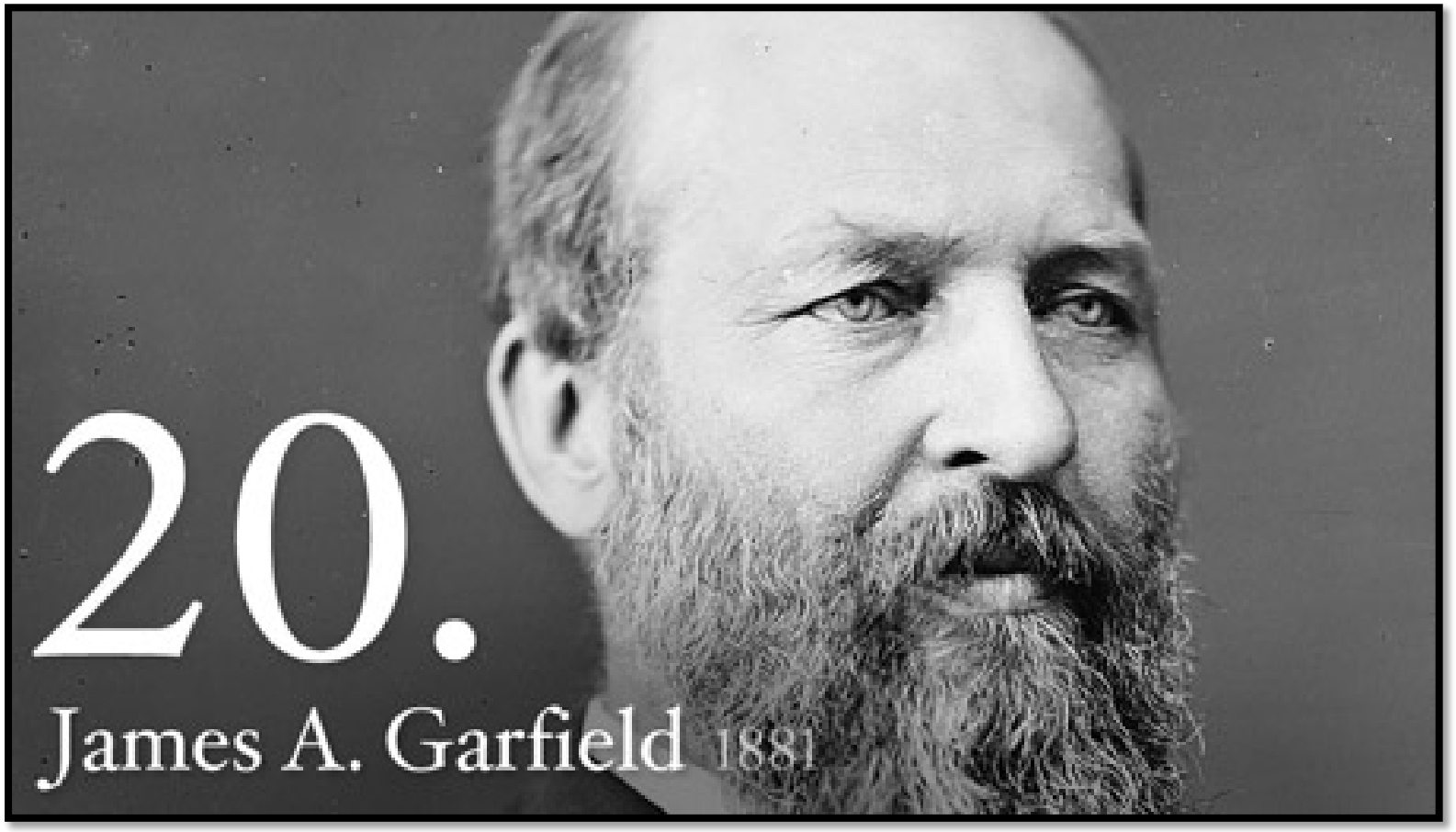


Jefferson
(1801-1809)



Jackson
(1829-1837)

Background

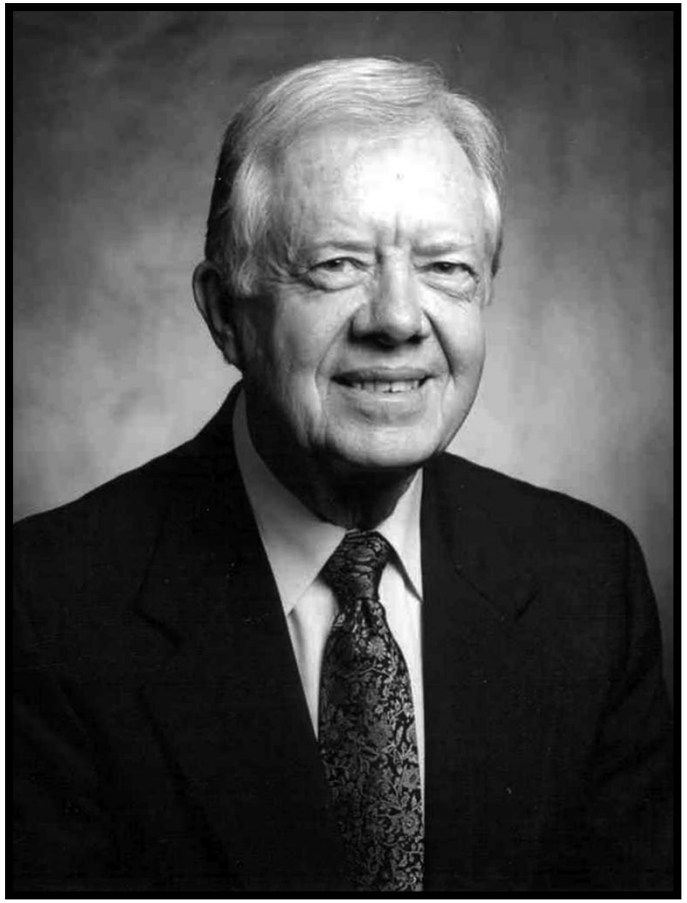


Background

Pendleton Act —

Civil Service Reform Act of 1883

Background



Civil Service Reform Act of 1978

Progressive Era

Systems – Cities General

Systems - Fire

Ch. 41.08 RCW

(1935)

Systems – City Police

Ch. 41.12 RCW
(1937)

Systems – County Sheriff

Ch. 41.14 RCW

(I-23, 1958)

Other Municipal Systems

BASICS

Basics - Foundation

- Structure
- Purpose
- Coverage
- Jurisdiction
- Collective bargaining

Structure

Reynolds v. Kirkland Police Commission

Washington State- Purpose of Civil Service

- Merit
- Tenure
- Independent Commission

Vested Rights?

Greig v. Metzler

Who Runs Department?

Easson v. Seattle

Who Covered?

Teamsters v. Moses Lake

RCW 41.12.050
Persons Included -- Restricted Exemptions:

If the police chief is exempt, the classified civil service includes all full paid employees of the department of the city, town, or municipality, except the police chief and an additional number of positions, designated the unclassified service, determined as follows:

Department Position	Unclassified Position Appointments
6 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

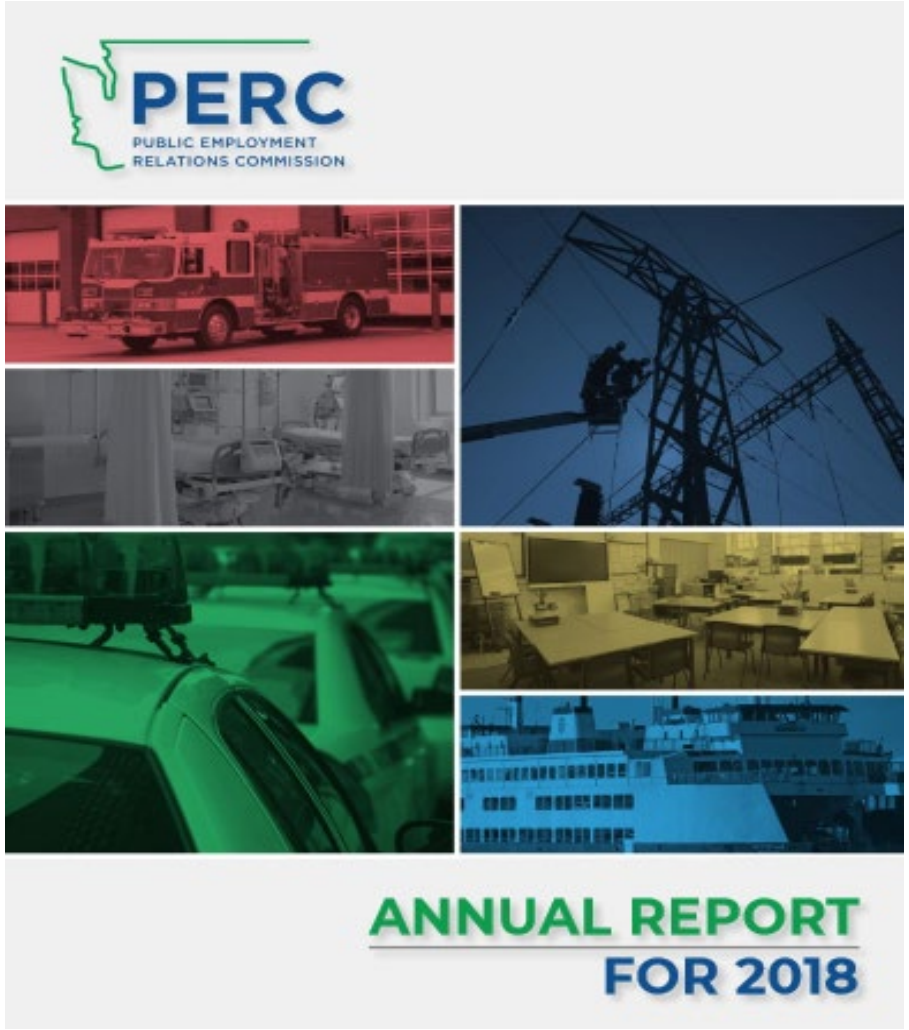
RCW 41.12.050
Persons Included -- Restricted Exemptions:

- Assistant chief
- Deputy chief
- Bureau commander, and
- Administrative assistant or administrative secretary.

LABOR RELATIONS

Chapter 41.56 RCW and Collective Bargaining

Public Employment Relations Commission



Subjects of Bargaining – Sword and Shield

- MANDATORY
- PERMISSIVE
- ILLEGAL

Civil Service v. Collective Bargaining

Spokane v. Civil Service Commission

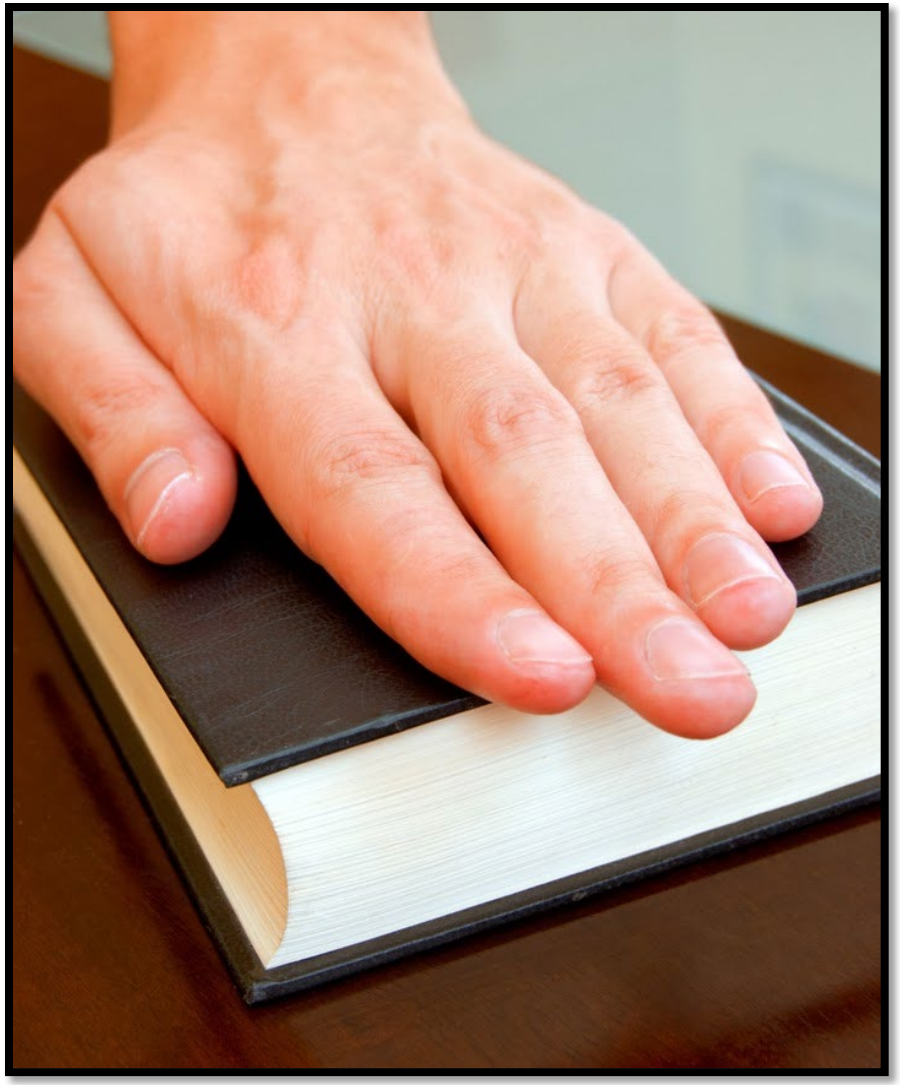
Basics of Civil Service Actions

- Classification of Positions
- Examinations
- Registers and Eligibility
- Certification and Appointment
- Probation
- Discipline and Discharge

Classifications

State ex rel. Reilly v. Civil Service

Examinations: Written or Oral?



Stoor v. Seattle

Examinations: Test Materials

Hellend v. King County

Answer

A. It is a “crime” because it violates an existing statute.
B. It is not a “crime” because the statute is obsolete and not usually enforced.
C. It is a “crime” because the exposure may incite others to more serious crime.
D. It is a “crime” because the offensiveness to public opinion justifies the use of the obsolete statute.
E. It is not a “crime” because public opinion would not support the police in taking enforcement action.

See Helland v. King County, 84 Wn.2d 858 (1975)

Examinations: Follow the Rules

See State ex rel. Hearty v. Mullin, 198 Wash. 99 (1939)

Examinations: Open or Promotional?

O'Brien v. Civil Service Commission

Examinations: Who Tests?

Simonds v. Kennewick

Examinations: Basics

Employment selection procedure is valid if

"Predictive of or significantly correlated with important elements of job performance."

29 CFR § 16-7.5(B)

See, TITLE VII of the Civil Rights Act of 1964,
42 USC § 2000-e2(a)

Examinations: Test Sequence?

See Leonel v. American Airlines

COVID-19 and Testing/Onboarding

What You Should Know About COVID-19

and the ADA, the Rehabilitation Act,

and Other EEO Laws:

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term

COVID-19 and Testing

- An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer
- According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace. . .
- and therefore the employer may withdraw the job offer
- those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer.

[*Last checked 5/17/2021]*

Test Sequence

- Civil Service
- Departmental?
  - Background
  - Polygraph
  - Medical
  - Other

Commission Review of Registers

- Who tests?
- Who determines candidate eligibility?
- Managing appeals

Register/List: Rule of Three (Or More)?

Seattle Police Officers Guild v. City of Seattle

AFFIRMATIVE ACTION?

"Selective certification coupled with the engineering department's policy of filling the first of every three vacancies with a qualified minority candidate is not only appropriate, but also essential to eradicate in the instant case the present effects of past discrimination. . . . It is not enough that employment procedures utilized by employers are fair in form. They must be fair in operation."

Lindsay v. Seattle, 86 Wn.2d 698 (1976)

SELECTIVE CERTIFICATION

"The ethics of our society would judge people on their ability and their individualized worth. But past discriminatory practices incongruent with those same ethics and with the abstract, idealistic perfection of a color-blind society, envisioned by the Fourteenth Amendment, have left minorities to varying degrees educationally and economically disadvantaged."

Lindsay v. Seattle, 86 Wn.2d 698 (1976)

SELECTIVE CERTIFICATION

"In light of the underrepresentation of minorities in the Seattle Fire Department as well as in City employment as a whole, and particularly considering the substantial underrepresentation in upper-level positions, we find the City's interest in employing selective certification to eliminate the racial imbalance in its employment to be compelling. The fact that minorities participate on an equal basis in the tax support of the City further supports this conclusion."

Maehren v. Seattle 92 Wn.2d 480 (1979)

1999: I-200

RCW 49.60.400 prohibits the exercise of racial preferences in any aspect of public employment, regardless of the race of the party alleging injury, and provides a separate cause of action for its violation by incorporating the remedies available under other sections of the Washington Law against Discrimination (WLAD).

I-200

RCW 49.60.400 provides, in pertinent part, that

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment …

(8) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

Parents Involved in Cmty. Schs v. Seattle Sch. Dist. No. 1, 149 Wn.2d 660 (2003)

We hold that the open choice plan's use of a racially cognizant tie breaker does not violate RCW 49.60.400. The School District's open choice plan does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin as meant by law. To the extent the tie breaker is race conscious, it furthers a core mission of public education: to make available an equal, uniform and enriching educational environment to all students within the district.

While we do not reach the constitutional question, we note that article IX imposes on the State the mandatory and paramount duty to provide an education that prepares students for citizenship. This may require positive steps to provide a diverse, culturally rich and racially integrated educational experience.

Dumont v. City of Seattle, 148 Wn. App. 850 (2009)

Our Supreme Court has been very explicit: systems that are racially cognizant but that do not specifically advantage one racial group to the detriment of another do not implicate the terms "discriminate" or "grant preference" as they are used in RCW 49.60.400. . . . Rather, "racially neutral programs designed to foster and promote diversity … would be permitted by the initiative.". . . As our Supreme Court has pointed out, the ballot statement in favor of I-200 itself stated that the initiative "does not end all affirmative action programs. It prohibits only those programs that use race or gender to select a less qualified applicant over a more deserving applicant for a public job, contract or admission to a state college or university."

[Citing *Parents Involved in Cmty. Schs.*, 149 Wn.2d at 687.]

Chapter 14, Laws of 2020

RCW 41.14.060 and 41.14.130 amended:

"The commission shall certify the names of the

((~~three~~)) five persons highest on the eligible list . . ."

Certification and Appointment

See Crippen v. City of Bellevue

Vahle v. City of Lakewood, No. 53317-1-II (10/27/2020 – unpublished)

- Promotions within a bargaining unit are mandatory subjects of bargaining
- Collective bargaining agreement confirmed rule of 5
- City authorized Commission to implement standards
- [In 2002, the legislature amended former RCW 41.06.150(2) to omit the benchmark rule of six, providing rulemaking authorities with even greater flexibility to enact rules governing the number of names to certify.]

  [*See* LAWS OF 2002, ch. 354, §§ 203, 411.]

Department Screening?

Probation

HEARINGS

Discharge/Discipline

Reprimands?

City of Yakima (1991)

Resignation

Micone v. Civil Service Commission

Commission Jurisdiction?

Yakima v. Yakima Police Civil Service

Hearing Process

- Quasi-judicial Proceedings
- Be Careful!
- Avoid **Appearance** of Unfairness

Increased Penalties

Pool v. City of Omak

Other Remedies?

- *Bahra v. Cnty. of San Bernardino*, 945 F.3d 1231 (9th Cir. 2019)

Arbitration v. Civil Service

City of Kelso

Cause?

“In Good Faith For Cause” v.

“Just Cause”

Seattle Police Dept. v. Civil Service

Seven Elements of Just Cause

- Employee Knowledge of Rules?
- Rules Reasonable to Job?
- Investigation?
- Investigation Fair & Objective?
- Sufficiency of Evidence/Proof?
- Rules Applied Evenhandedly?
- Penalty Reasonable to Offense/Service Record

Fair Investigation

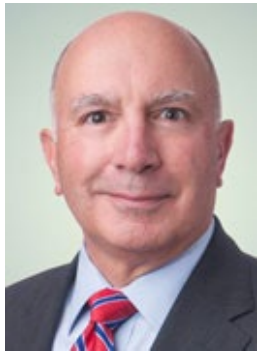
- Conduct of internal investigation as basis for claim of disparate impact

Sidibe v. Pierce County (September 29, 2020)

OPMA AND PRA

Government in a Greenhouse

Contact Us



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