



2022 LEGAL UPDATE

41st Annual Civil Service Conference | September 21, 2022

Steve DiJulio, Foster Garvey

Foster
Garvey

SEATTLE

PORTLAND

WASHINGTON, D.C.

NEW YORK

SPOKANE

BEIJING

Recruitment - General

- The labor force participation rate is **1.3 percentage points below the pre-pandemic level**. Had the labor force participation rate remained at the 2/2020 level, there would be 3.4 million more workers in the labor force at this time.
- There are approximately **5.2 million** more job openings than unemployed workers.
- Workers are putting in more hours, yet output is falling. The decrease in productivity combined with an increase in hourly compensation has resulted in a **10.8% increase in unit labor costs**.
- The Democrats' slim majority in Congress over the past two years has largely prevented either side of the aisle from advancing employment-related legislation. **Federal agencies and state legislatures, therefore, have become the main drivers of employment policy.**
- The pandemic exacerbated **job displacement**, which is creating employee demand for new ways of working, skillsets, and approaches to improving workplace policies.
- [wpi_labor_day_report_2022.pdf \(littler.com\)](#)

The Seattle Times

Washington State Patrol's hiring under fire as agency failed to diversify over decades

Sep. 26, 2021 at 6:00 am | Updated Sep. 26, 2021 at 6:45 pm



Thirty-one new Washington state troopers are sworn in Dec. 13, 2018. The WSP has long been under pressure to diversify its ranks. (Alan Berner / The Seattle Times)

Disclosure of Pay Information in Job Postings (eff. 1/1/2023)

3/30/22: Governor Inslee signed into law requirement for employers to affirmatively disclose in each job posting salary range or wage scale

- Plus general description of all benefits and other compensation
- Law applies to employers with 15 or more employees
 - Does not specify how employees counted
 - Does not address postings for remote positions
- Law does not appear to require job postings, but if post; must comply
- WA joins Colorado and NYC in imposing requirement

Fire Recruitment



Women and Minority Recruitment

While attempting to fill 113 vacancies at the Seattle Fire Department, Chief Harold Scoggins said they're focusing on recruiting more women and people of color. Currently, 93% of Seattle firefighters are men. "The leadership of our organization is overwhelmingly white. That's the fire service in general," said Seattle Fire Chief Harold Scoggins.

Assistant Chief at Kitsap Fire and Rescue Kara Putnam said she's also seen a lack of diversity over the course of her 14-year career. "I'm the first female Chief Officer at my organization, Central Kitsap Fire and Rescue, as well as Kitsap County," said Putnam. She says early on she had to overcome hurdles like proving she could do the job. But today she does see progress. "We just hired four brand new female firefighters, and so what I would like to be is a role model for them and to let them know you can find access to a leadership role in the fire service. You can be successful," Putnam said.

King – TV NBC 5 Seattle (6/14/2022)

Commission Recruitment!

There will be an open Commissioner in January 2023 on the City of Seattle's [Public Safety Civil Service Commission](#) (PSCSC), for appointment by the Seattle City Council. We are excited for the right candidate to join the PSCSC in its important and timely work.

The ask: Please help spread the word about this position on the PSCSC to your networks and contacts who may be interested.

Citizenship?



Citizenship?

The Milwaukee Fire Department has opened the door for more people to become firefighters.

The Milwaukee Fire Department can now hire anyone who is legally hireable, whether they're a United States citizen or not.

Chief Lipski said the department can benefit from more diversity, people who are multilingual and anyone who wants to serve their community.

"The word opportunity comes to mind for a lot of people," said Lipski. "Let's make sure everybody's welcome at the table."

In the land of opportunity, Chief Lipski wants to invite more people in. "If someone is otherwise legally hireable, whether or not they are a U.S. citizen, that's fine with us," said Lipski.

WITI-TV FOX 6 MILWAUKEE (8/11/2022)

Cannabis Use?



Cannabis Use?

Austin-Travis County EMS revised its job application by removing a disqualification for prior marijuana use in hopes of increasing applicants as they struggle to fill positions. Saving lives isn't an easy job. The president of the Austin EMS union, Selena Xie, said doing it short-staffed is even harder.

"It's really bad right now," said Xie. "We're about 80 paramedics down." After partnering with Texas Norml, putting together a petition and sending thousands of letters to the Austin City Council and EMS Interim Chief Jasper Brown, Xie said the City gave them the green light in late October to change the policy. She said the old policy was deterring out-of-state applicants where marijuana use is legal. "We didn't want Texans and people from all over this country to be not allowed to work for our department because of legal use," said Xie.

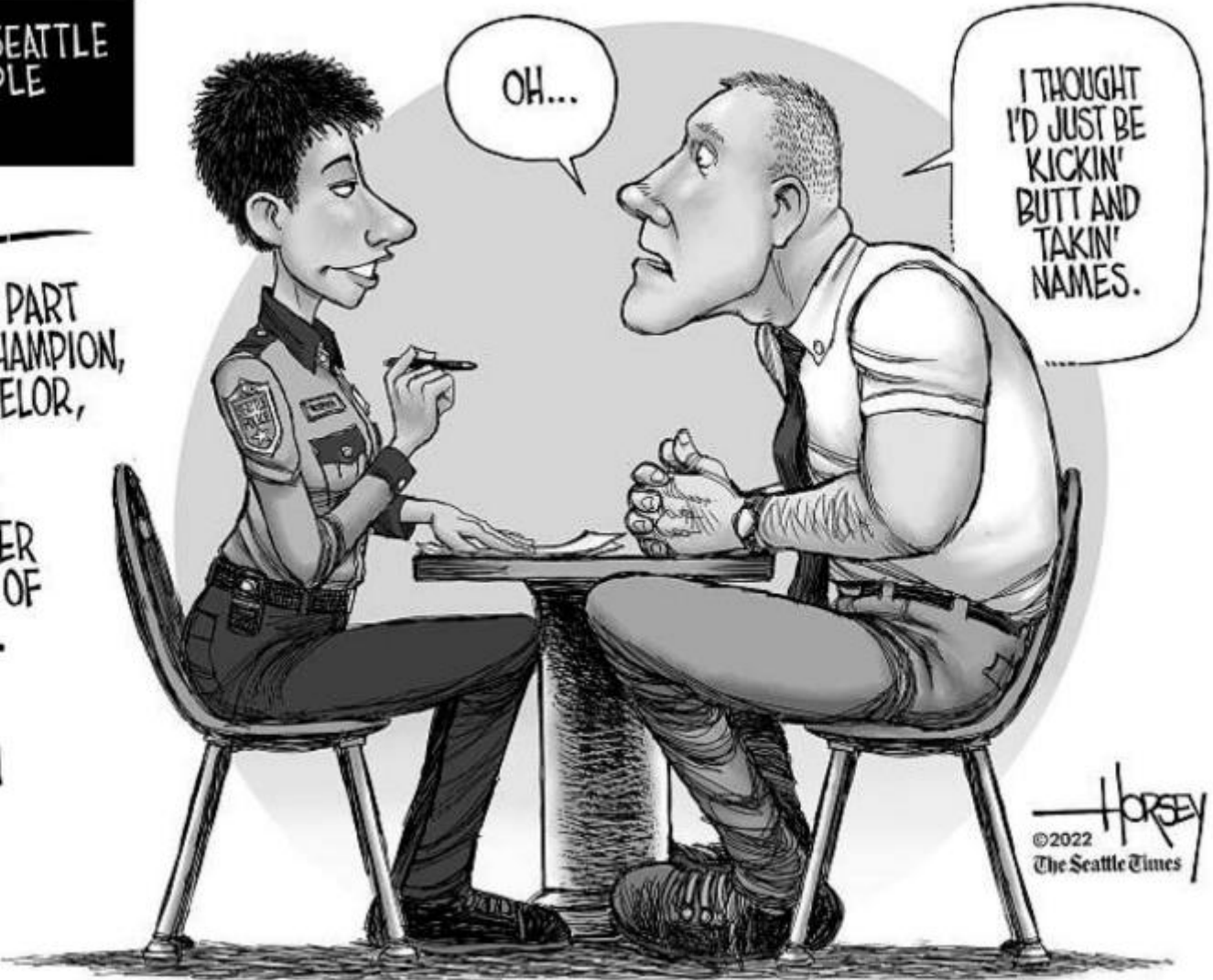
KVUE-TV ABC 24 AUSTIN

Police Recruitment

RECRUITING NEW SEATTLE
COPS: NOT AS SIMPLE
AS IT SOUNDS...

"SO, WE NEED
OFFICERS WHO ARE PART
SOCIAL JUSTICE CHAMPION,
PART GRIEF COUNSELOR,
PART COMMUNITY
ORGANIZER, PART
STOIC PHILOSOPHER
AND JUST A DASH OF
NINJA WARRIOR.

BASICALLY,
MAHATMA GANDHI
WITH A *TASER*."



COVID and the ADA – from EEOC (12/14/2021)

- **How does the ADA define disability, and how does the definition apply to COVID-19?**
- The ADA's three-part definition of disability applies to COVID-19 in the same way it applies to any other medical condition. A person can be an individual with a “disability” for purposes of the ADA in one of three ways:

COVID and ADA

1. “Actual” Disability: The person has a physical or mental impairment that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning, or operation of a major bodily function);
2. “Record of” a Disability: The person has a history or “record of” an actual disability (such as cancer that is in remission); or

COVID and ADA

3. “Regarded as” an Individual with a Disability: The person is subject to an adverse action because of an individual’s impairment or an impairment the employer believes the individual has, whether or not the impairment limits or is perceived to limit a major life activity, unless the impairment is objectively both transitory (lasting or expected to last six months or less) and minor.

COVID and ADA

The definition of disability is construed broadly in favor of expansive coverage, to the maximum extent permitted by the law. Nonetheless, not every impairment will constitute a disability under the ADA. The ADA uses a case-by-case approach to determine if an applicant or employee meets any one of the three above definitions of “disability.”

Revisiting Exempt Positions

- 1988 *Samuels v. City of Lake Stevens*: city's effort to exclude the position of chief of police from civil service violated Chapter 41.12 RCW
- 1987 A city or town may determine by ordinance that the civil service does **not** include
 - any fire chief appointed after July 1, 1987, RCW 41.08.050 ;
 - or a police chief appointed after July 1, 1987 (if the police department includes six or more commissioned officers), RCW 41.12.050.
- 2002 RCW 41.12.050 authorizes “unclassified service” for police
- 1958 RCW 41.14.070 exempt positions outset of county sheriff civil service
- Assignments?

Social Media: First Amendment v. Government Efficiency



Moser and Sabatini v. Las Vegas Metro Police (2021)



Balancing

Employee: Speaking as private citizen; on issue of public concern; and, leads to adverse employment action

Employer: Interests in maintaining efficiency of public service outweighs the employee's interests

Probationary Discharge



Probationary Discharge

Tamara Roberson appeals the trial court's order dismissing her lawsuit against Clover Park Technical College, arguing that Clover Park violated her rights under the collective bargaining agreement (CBA) by

- (1) terminating her employment;
- (2) violated RCW 49.44.170 by misclassifying her employment;
- (3) violated RCW 41.56.080 and RCW 41.56.140 by restraining her ability to file a grievance;
- (4) violated her right to hold employment under RCW 49.60.030(1)(a); and
- (5) violated her reversion rights under RCW 41.06.070(5)(a).

Tamara T. Roberson v. Clover Park Technical College (Jan. 11, 2022 - 55294-9)

<https://www.courts.wa.gov/opinions/?fa=opinions.disp&filename=552949MAJ>

Hearings on Appeals

See Cronin v. Central Valley School District (No. 37939 – III, 8/15/2022 – unpublished)

Following a lengthy legal dispute over whether Cronin was entitled to a statutory hearing, the parties participated in a **sufficient cause hearing that lasted more than 12 days**. The hearing officer found that the District proved four of the identified causes by a preponderance of the evidence and concluded that sufficient cause existed for Cronin's nonrenewal and discharge. Cronin appealed to the Spokane County Superior Court, which affirmed the hearing officer's decision.



Contact Us



P. Stephen DiJulio

Seattle

steve.dijulio@foster.com

206.447.8971

Foster Garvey

SEATTLE

PORTLAND

WASHINGTON, D.C.

NEW YORK

SPOKANE

BEIJING