

Employment and Labor Relations

Foster Pepper's Employment and Labor Relations attorneys have the knowledge and experience in advising employer and management-side clients regarding compliance with employment and labor laws and in successfully defending employers and managers when disputes lead to adversarial proceedings or litigation.

We focus on understanding the business of our clients and providing services tailored to their particular needs. Our Employment and Labor Relations attorneys also draw on impressive corporate, municipal, health care, land use and real estate experience within the Firm to address our clients' questions effectively and efficiently. Our clients include publicly traded corporations, closely held businesses, commercial and investment banks, municipalities, government agencies, professional corporations, partnerships, joint ventures, non-profit organizations, and individual executives and professionals. Industries served by Foster Pepper include affordable housing, biotech and emerging technologies, construction, education and schools, energy and utilities, environmental, financial institutions, hospitality, real estate, regulatory and government affairs, retail, right-of-way, securities, sports and sports facilities, transportation, and yacht and aircraft.

Our Employment and Labor Relations attorneys are primarily dedicated to the service of management. However, when executives and professionals change positions, they often engage us to review employment agreements and non-competes and to provide strategic advice to enhance their position in negotiations.

We also provide a variety of no cost services to our clients to keep them informed of changes in employment and labor laws. When significant developments arise, we publish news alerts via e-mail and our website, as well as regularly post relevant news on our Washington Workplace Law blog - www.washingtonworkplacelaw.com. We periodically host events and seminars to inform clients about important legal updates and industry trends.

Areas of Concentration

- Adversarial Proceedings / Litigation
- Employee Benefits, Executive Compensation and ERISA
- Employment Counseling
- Labor Relations
- Mergers and Acquisitions

Attorneys

Peltin, Steven R. <small>CHAIR</small>	Seattle
Block, Steven W.	Seattle
Bull, Samuel T.	Seattle
DiJulio, P. Stephen	Seattle
Feichtmeir, Alicia M.	Seattle
Filer, Tim J.	Seattle
Galloway, J. Scott	Seattle
Gilliland, Alexandra	Seattle
Guedel, W. Gregory	Seattle

Kauppila, Amy L.	Seattle
Larson, Jeremy (Jake) R.	Seattle
Magnano, Jr., Marco J.	Seattle
McCoy, Katie Carder	Seattle
Milodragovich, Janelle	Seattle
Nelson, John R.	Spokane
Robinson, Kerry G.	Seattle
Rowland, Milton	Spokane

Publications

Foster Pepper attorneys post regular commentaries on legal news devoted to assisting employers in Washington state on the Washington Workplace Law blog.

Visit the blog to read the latest news in this fast-changing area: www.washingtonworkplacelaw.com.

Employers: Beware of High School Diploma Requirements
by Steve Peltin, *WIB HR & Training Digest* - February 2012

Employment and Labor Relations Seminar Series

Wage and Hour Compliance - Beyond the Basics (part II) - May 2013

Wage and Hour Compliance - Beyond the Basics (part I) - February 2013

Filling the Empty Chairs - Legal and Effective Hiring - October 2012

Seattle Paid Sick and Safe Time - August 2012

Reasonably Accommodating Employees with Disabilities - June 2012

Conducting Effective Workplace Investigations - February 2012

Out of Sight but Not Out of Mind - Untangling Leave of Absence Requirements - September 2011

Social Media in the Workplace - May 2011

Foster Pepper News: Employers, Officers and Senior Managers Are Liable for Unpaid Wages, Penalties and Attorney's Fees

Foster Pepper PLLC - September 2009

New COBRA Provisions Now Effective

Foster Pepper PLLC - February 2009

It's Back - The Playing Field for Union Organizing Shifts

Foster Pepper PLLC - March 2009

New Federal Employment Laws Require Employers to Update Policies for Granting Family and Medical Leave and Accommodating Disabilities in the Workplace

Foster Pepper PLLC - November 2008

New Standards Requiring Hospitals to Address Disruptive and Inappropriate Behaviors

Foster Pepper PLLC - September 2008

Washington Employers Must Comply with Two New Leave Laws

Foster Pepper PLLC - May 2008

Areas of Concentration

Adversarial Proceedings / Litigation

Thoughtful planning and foresight can reduce, but not totally eliminate, an employer's exposure to employment-related disputes and claims. When claims (whether individual or class action) are made or lawsuits filed, effective advocacy is essential. Our attorneys have extensive experience in federal and state courts, successfully defending virtually every kind of employment and labor claim, including

claims relating to:

- Wrongful discharge and retaliation
- The Americans with Disabilities Act
- Non-competition, non-solicitation and trade secrets
- The Civil Rights Act of 1964 (Title VII) and Sections 1981 and 1983
- Washington Law Against Discrimination
- Age Discrimination in Employment Act
- Fair Labor Standards Act and its state law counterparts
- Civil Service Hearings
- ERISA
- Sarbanes-Oxley and whistleblower claims under state law
- Family Medical Leave Act and its state law counterparts

We also effectively handle employment-related claims before a wide range of federal, state and local agencies, including the Equal Employment Opportunity Commission, the U.S. Department of Labor, the Washington Human Rights Commission, and the Department of Labor and Industries. Our attorneys are adept at avoiding protracted and public employment disputes by participating in alternative dispute resolution processes, including arbitration and mediation.

Employee Benefits, Executive Compensation and ERISA

We advise on employee benefits matters including legal issues arising under the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code, federal and state securities laws, and other laws that regulate employee benefit plans and executive compensation. Our experience includes advising public and privately held companies, financial institutions, insurers, public agencies, trustees, and fiduciaries in all aspects of the law. We advise on executive compensation, stock and benefits, including compliance with Section 409A of the Internal Revenue Code. We select, design and draft qualified and nonqualified retirement plans and stock option and other equity-based plans for employers, including 401(k) plans, profit sharing plans, deferred contribution plans, deferred benefit plans, ESOPs, and cash balance plans.

We advise employer clients with respect to funding vehicles, deductibility of contributions and other tax issues. We develop and draft prototype individual retirement accounts and individual retirement annuities, Section 403(b) annuity plans and contracts, and 457 arrangements, and obtain IRS approval of documents for prototype sponsors. We also obtain favorable IRS determination letters; prepare administration forms, notices and summary plan descriptions; review and negotiate recordkeeping, administration, and investment management agreements; assist with distribution planning and tax issues, Form 5500 filings, and IRS/DOL audits; and advise on fiduciary responsibility provisions of ERISA concerning investment of plan assets.

We also have substantial experience defending employers sued for breach of fiduciary duty and participant claims for benefits under ERISA. Utilizing the experience gained in these litigation matters, we routinely exercise preventative counseling with our clients by informing them of new developments in the law and the courts and recommending courses of action.

Employment Counseling

We strongly emphasize “preventive medicine” in employee relations, alerting our employer clients to

potential problems and taking steps early to reduce the possibility of expensive disputes and litigation. We have developed long term relationships with many of our clients through our counseling approach, helping our clients achieve their business goals by advising on best practices that minimize the risk of employment claims. We provide counseling in the following broad areas:

- *Discrimination Laws*
We advise our clients regarding employment practices to avoid claims for violation of discrimination and harassment laws. We provide management training to our clients' managers and supervisors to minimize claims. We guide our clients through workplace investigations into internal discrimination and harassment claims. When claims are filed with regulatory agencies and the courts, our experienced litigators defend our employer and management-side clients.
- *Terminations and Layoffs*
We help our clients with best practices to document employee disciplinary decisions before employment is terminated. We assist with workplace investigations into misconduct or other unlawful conduct and work to resolve discrimination and harassment issues before a claim results. We counsel our clients through the layoff and termination process, including compliance with the Older Workers' Benefit Protection Act and the WARN Act. We work closely with our clients to prepare separation agreements and to carry out terminations and layoffs to minimize claims. When claims result, we have substantial experience defending employers sued for wrongful discharge.
- *Wage and Hour and Regulatory Compliance*
Complying with federal and state wage and hour laws is increasingly challenging for employers. We work closely with our employer clients to help them properly classify workers and avoid costly mistakes relating to employee exempt status and independent contractors and other contingent workers. We help our clients when they are facing audits by regulatory agencies, including the U.S. Department of Labor, the Washington Department of Labor and Industries, and the Washington Department of Employment Security. We have substantial experience defending our employer clients when they are sued for misclassifying workers and other wage and hour violations in both individual and class actions.
- *Employment Agreements and Employee Handbooks*
We prepare employment agreements, including executive employment agreements and offer letters. We prepare employee handbooks and review policies for legal compliance and risk management. We also prepare other employment agreements, including agreements restricting competition and protecting trade secrets and other intellectual property. When litigation results, we have extensive experience successfully defending claims for breach of contract based on employment agreements and handbooks.
- *Non-Competition Agreements and Trade Secrets*
Our employment and labor relations attorneys have substantial experience drafting covenants restricting competition and solicitation of customers and employees, and litigating disputes over such covenants. We also advise our employer clients regarding protection of trade secrets and other proprietary and confidential business information and defend related claims in litigation. In addition, when only an immediate order from the court will prevent irreparable harm, and the stakes are high, Foster Pepper's Emergency Injunction attorneys are prepared to handle expedited proceedings to enforce or defeat restrictive covenants and address disclosure of trade secrets.
- *Disability and Leave Management*
We help our clients manage their workforce in compliance with leave and disability discrimination laws. We work closely with employers during the interactive process with employees to resolve accommodation issues that arise when employees have medical conditions.

We advise regarding compliance with federal and state family leave, pregnancy leave and other leave laws. We also advise regarding public accommodation issues, including use of service animals. We have significant experience successfully litigating disability discrimination claims and leave violations.

- *Background Investigations*

We counsel employers how to conduct background investigations in compliance with the Fair Credit Reporting Act and relevant state laws regulating the use of criminal convictions and credit history. We advise regarding legitimate inquiries during the hiring process.

- *Management Training*

Our lawyers provide interactive management training to help managers and supervisors comply with equal employment opportunity laws and minimize claims arising out of discrimination and harassment in the workplace. We also provide training on compliance with federal and state leave laws, including the federal Family and Medical Leave Act, requirements for properly hiring and firing employees, performance management, harassment and discrimination compliance, and responding to union organizing.

- *Drug and Alcohol Testing*

We prepare drug and alcohol testing policies for our employer clients, including those clients subject to the Drug Free Workplace Act. We advise employers regarding positive results when they may result in employee discipline. We have experience litigating constitutional challenges to drug and alcohol policies.

- *Public Disclosure Requests*

Our public disclosure team is prepared to help our public sector employer clients respond to public records requests that may implicate sensitive employment issues. When public disclosure requests result in claims being filed in court, our team also has significant experience successfully defending such litigation for public sector clients.

- *Health and Safety Laws*

We advise our clients regarding compliance with OSHA, WISHA and other state safety laws. We help our clients prepare safety and workplace violence policies. We develop pandemic flu policies. We counsel our employer clients when safety issues arise to help minimize claims.

- *Unemployment Compensation Benefits and Claims*

We advise our employer clients about the implications of terminations and layoffs that may affect eligibility for unemployment benefits. We represent management in hearings for unemployment benefits when litigation is likely.

Labor Relations

As labor law broadens and becomes more complex, the issues are often unexpected and need immediate attention. Our attorneys offer an impressive depth and range of experience that enables us to respond with agility and effectiveness when client needs arise. We provide prompt legal services of the highest quality at competitive costs.



We represent private and public employers, including municipalities, healthcare organizations, and construction and building firms, in a variety of labor relations matters including:

- Organizing campaigns and decertification proceedings
- Responding to unfair labor practice charges and unit clarification petitions before the NLRB and PERC

- Providing representation in arbitrations, NLRB and PERC hearings, and grievance mediation
- Counseling on day-to-day union matters, including interpretation of contract provisions
- Responding to information requests and CBA-related wage and hour issues
- Counseling on and drafting grievance responses and settlements
- Training managers on grievance handling and managing in a union environment
- Developing labor relations strategies (especially when relations are strained or “in the public eye”)

Mergers and Acquisitions

Our Employment and Labor Relations attorneys provide valuable support to clients who are in process of buying or selling businesses. We review due diligence materials to identify and evaluate employment, labor and benefits risks. We assist in preparing purchase agreement language that protects against those risks. If our client is the buyer, we prepare executive employment agreements and non-competes, transition services agreements, and documentation helpful in engaging a new workforce, such as offer letters and confidentiality agreements. After the transaction closes, our Employment and Labor Relations attorneys assist management in addressing the employment, labor and benefits risks identified in due diligence.