

FOSTER PEPPER

Workplace Investigations in
the Age of #MeToo

PRESENTATION MATERIALS
November 27, 2018

FOSTER PEPPER PLLC
1111 Third Avenue, Suite 3000
Seattle, Washington 98101
www.foster.com

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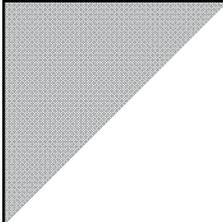
Presented by:

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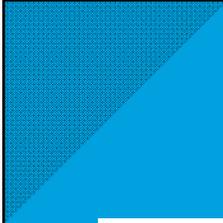


Presentation



WORKPLACE INVESTIGATIONS IN THE AGE OF #METOO

November 27, 2018
Employment & Labor Group Webinar



FOSTER PEPPER PLLC

nyhus

communicate. advocate. innovate.

PRESENTERS



Steve Peltin
206.447.6215
steve.peltin@foster.com



Steve DiJulio
206.447.8971
steve.dijulio@foster.com



Alicia Feichtmeir
206.447.8929
alicia.feichtmeir@foster.com



Roger Nyhus
206.323.3733
roger.nyhus@nyhus.com



Heidi de Laubenfels
206.323.3733
heidi.delaubenfels@nyhus.com

Importance of Investigations

Why are Investigations Important?

- Uncover truth
 - Litigation: mount effective defense, or avoid litigation
 - Manage public relations
 - Improve morale



High Cost of Investigation Failures

- Financial costs
 - Public relations problems
 - Loss of litigation defense
 - Make wrong decisions

Investigation Basics

When Should an Employer Conduct an Investigation?

- When required by law
- When required by policy statement or handbook
- When provides a defense in litigation
- When substantial risk of erroneous decision
- When other interests served

Who Will Investigate?

- EEOC: someone impartial and well-trained
- Special challenges for small businesses and investigations involving high-level employees
- Outside investigators
- Multiple investigators
- Lawyer investigators
- Law enforcement participation



Decide What You Want Your Investigator to Do

- Decision-maker or fact gatherer
- What type of report do you want
- How do you want information recorded



Who is the Decision-Maker?

- The investigator
 - More than one person
 - Member of management
 - Impartial
 - Good track record
 - Good witness



Preparing for Investigation

- Establish general approach for investigations
 - Understand goals for particular investigation
 - Promptly decide on plan
 - Periodically re-evaluate

Take Interim Actions

- Temporary transfers or shift or reporting changes
- Administrative leave
- Memorandum to complainant and alleged wrongdoer
- Notice to witnesses



Decide on a Plan: Gathering Information

- Collect all relevant documents
- Policies and procedures
- Reports and statements
- Personnel documents
- Identify potential witnesses
- Decide on an order for the interviews



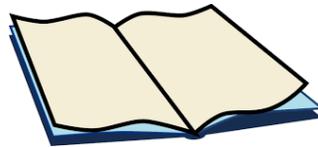
Attorney-Client Privilege/Work Product Doctrine

Will the attorney-client privilege or attorney work product doctrine apply to the investigation reports?

- *Soter v. Cowles Publishing*, 162 Wn.2d 716 (2007)
- *Morgan v. City of Federal Way*, 166 Wn.2d 747 (2009)

Investigations and the Public Records Act

Does the PRA protect the investigation report?



Interviews and Gathering Documents

Interview Witnesses

- Logistics
- Witness expectations
- Confidentiality considerations
- Concerns for attorney interviewers
- Outline questions for each person, but follow up



Interview Witnesses (cont.)

- Document each interview separately
- Seek/document facts, not opinions
- Document observations, not conclusions
- Confirm what was said and ask for corrections
- Discuss retaliation and confidentiality
- Review and finalize notes promptly

Complainant Interview

- What do you want to have done
- Identify witnesses, documents
- Appreciation for voicing concerns
- Remind confidentiality and no retaliation



Interview Alleged Offender

- Union and due process issues
 - Share enough detail to allow accused to refute
 - Did complainant participate or consent?
 - Ask about motive
 - Seek other witnesses, documents
 - What should be done for fair investigation?

Weingarten Rights

1975 U.S. Supreme Court decision involving a lunch counter employee who was questioned about the theft of some minor food items

- *NLRB vs. Weingarten, Inc.*, 420 U.S. 251 (1975)



Weingarten Rights – The Basics

If during an interview or investigation, an employee feels that disciplinary action could result, *employee may request that a union representative be present to assist.*

If during an interview or investigation, an interviewer becomes aware that disciplinary action may be taken, *interviewer must inform the employee of potential action, and what employee may be charged with.*

Garrity Rights



Garrity v. New Jersey, 385 U.S. 493 (1967)

The Garrity Rule – 5th Amendment Protection

- The Garrity Rule is not automatically triggered simply because questioning is taking place
- The officer must request Garrity protections
- If a written statement is being, the officer typically will insist that the Garrity Warning be typed into the statement
- Invoking Garrity does not mean that an employee may refuse an order to answer questions; the employee may still face charges for insubordination

Loudermill Rights – Due Process Right



Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (U.S. 1985)

Loudermill Rights

"The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story."

Loudermill Rights

- Oral or written notice of the charges
- An explanation of the employer's evidence
- An opportunity to be heard in response to the proposed action

Evaluating the Evidence and Making Decisions

Closing Gaps

- Revisit witnesses as needed to clear up inconsistencies
- Determine if additional witnesses or documents are needed



Review all Relevant Information

- Quality and sufficiency of the investigation
- Send investigator back if needed
- Review key policies, documents, statements
- Critical review of complainant's and alleged wrongdoer's positions

Credibility

- Bias
- Corroboration
- Plausibility
- Memory
- Demeanor
- Personal observations
- Employment history & character



Decide How to Document Your Decision

- Oral report or written report, or both
- Document considerations and conclusions
- Explain credibility determinations

Discipline and Other Responses

- Remedy for complainant (if complaint justified)
- Appropriate discipline for wrongdoer
- Factors to consider when determining discipline



Notice to Complainant

- In person or in writing
- Explain results
- Discuss remedial action, if any
- Find out if satisfied
- Provide a copy of policy
- Reminder to report retaliation
- Revisit confidentiality
- Document results of meeting

Notice to Alleged Offender

- In person or in writing
- Explain results
- Discuss disciplinary action, if any
- No retaliation
- Provide a copy of policy
- Document results of any meeting

Investigation Follow-up

- Memo to employee witnesses
- Communication to other employees
- Communication to outsiders
- Workplace dynamics



Crisis Communications in the #MeToo Era

Roger Nyhus
President & CEO
Nyhus Communications

Heidi de Laubenfels
COO
Nyhus Communications

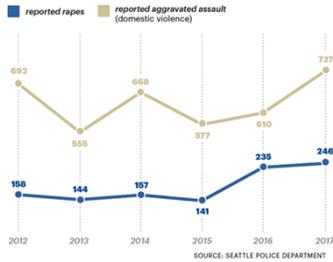


Context

SINCE THE MOVEMENT STARTED

REPORTS OF ASSAULTS ON THE RISE

While it may seem disheartening that the number of reported rapes and assaults are increasing, King County's sexual assault center says that, thanks to the #MeToo movement, people are more likely to report crimes when they happen.



AXIOS

#MeToo hashtag used over 19 million times on Twitter



A South Korean demonstrator during International Women's Day. Photo: Jung Yeon-Jae/GETTY Images



WE HAVE ENTERED A NEW NORM

- This is an issue that is here to stay, and our culture is shifting

- 
- Fortune 500 companies
 - International celebrities
 - Nonprofits
 - Law firms and their clients

Nyhus' Client Experience

nyhus
communicate. advocate. innovate.

Alaska
AIRLINES

HORIZON
AIR

Washington State
Convention Center
ADDITION

 **SWEDISH**

 **BOEING**

AMERICAN
EXPRESS

Ford


FOUR SEASONS HOTEL
Seattle

nyhus
communicate. advocate. innovate.

Crisis Management
is
Reputation Management

What is a Crisis?

- Crisis: a time of intense difficulty, trouble, or danger - *Webster's Dictionary*
- Crisis communications: "Protecting and defending an individual, company or organization facing a public challenge to its reputation. These challenges can involve legal, ethical or financial standing." - *Public Relations Society of America*
- A crisis is defined as a significant threat to operations or reputations that can have negative consequences if not handled properly. In crisis management, the threat is the potential damage a crisis can inflict on an organization, its stakeholders, and an industry - *Institute for Public Relations*

Guiding Principles

INTEGRITY IS KEY

- Optics matter, but so do actions
- Culture and values must drive the approach

**RIGHT MESSAGE, RIGHT MESSENGER,
RIGHT MEDIUM, RIGHT TIME**

- How you're communicating, in what medium, your response, the tone – all of these define your reputation, and public perception of you and your organization

**COMMITMENT TO DIVERSITY AND INCLUSION IS
EXPECTED OF ALL ORGANIZATIONS**

- Know what your position is and develop it
- There is now more scrutiny of an organization's leadership and boards for gender and ethnic diversity



MANAGING A CRISIS: BEFORE, DURING & AFTER

Always



INTERNAL COMMUNICATIONS ARE VITAL

- Employees
- Stakeholders
- Leadership

PREVENTION & PREPARATION ARE KEY

- Get out in front of problems to prevent them before they happen
- Have a plan, and a designated crisis team trained and ready
- Conduct annual exercises to test the plan and team
- Have an experienced crisis-communications partner



**UNDERSTAND & ADDRESS YOUR
VULNERABILITIES**



TIMELINESS MATTERS



**ADDRESS THE ISSUE DIRECTLY, DON'T
DEFLECT IT**



COME CLEAN AND TAKE YOUR LUMPS



MESSAGING IS KEY

- Right message at the right time
- Actively manage the crisis with right timing



LISTEN: UNDERSTAND BEFORE NEEDING TO BE UNDERSTOOD

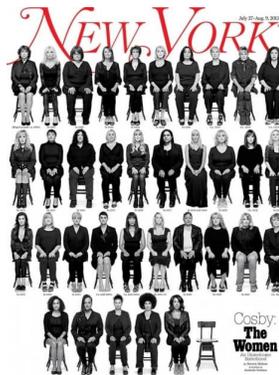


BE A SOURCE OF INFORMATION

*New York Times and New Yorker
Share Pulitzer for Public Service*



Reporters and editors at The New York Times on Monday after their articles detailing allegations of sexual harassment by powerful men, including the film mogul Harvey Weinstein, helped The Times win the Pulitzer Prize for public service. Hiroko Masuoka/The New York Times



AUTHENTICITY IS CRITICAL



**DO A SELF-ASSESSMENT & IDENTIFY ANY
LEADERSHIP, CULTURAL OR POLICY CHANGES
NEEDED**



**UW students create website outing
accused sexual assaulters**

A website created by University of Washington students allows people to anonymously accuse men of sexual assault, naming them without due process.

ENGAGE COMMUNITY/NONPROFIT PARTNERS IN RECOVERY

The Seattle Times

Since the Kavanaugh hearing, calls to King County sexual-assault hotline have tripled

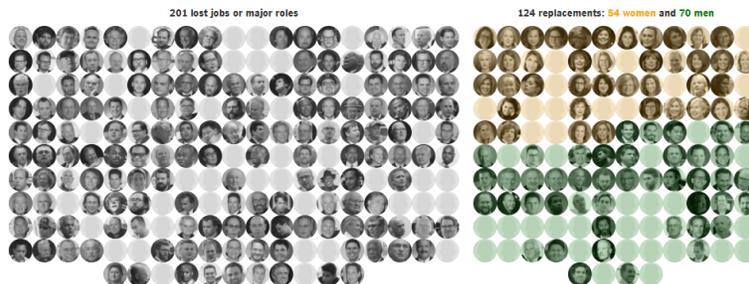
Originally published September 28, 2018 at 5:43 pm | Updated September 29, 2018 at 1:22 pm

The response reflects a nearly yearlong trend, since the #MeToo movement started trending, with an estimated 20 percent increase in calls, according to KCSARC.

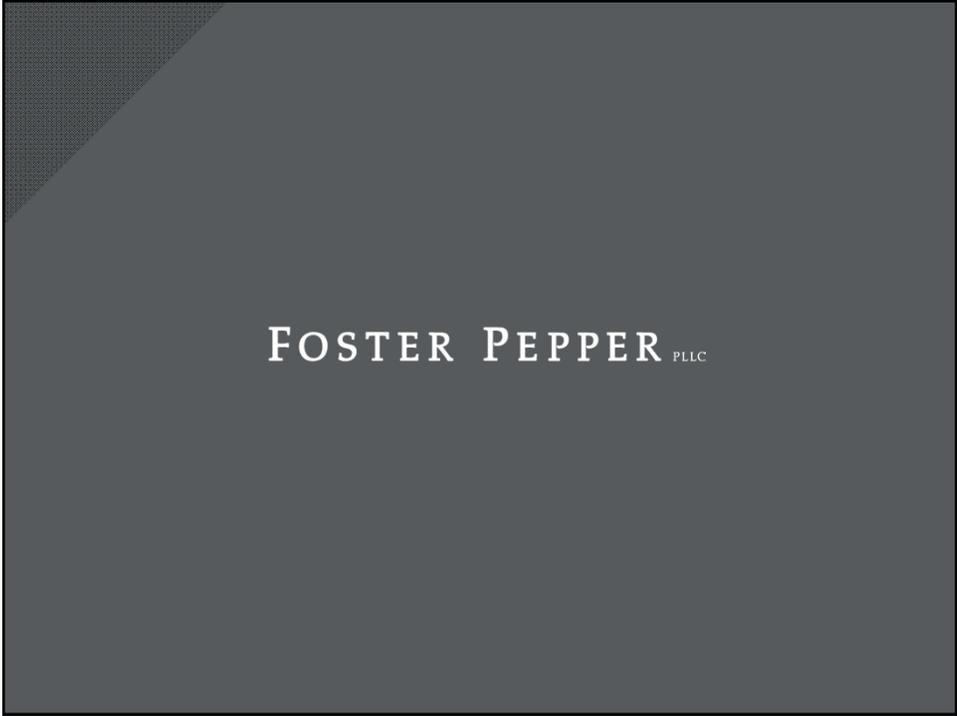


#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women.

By AUDREY CARLSEN, MAYA SALAM, CLAREL CAIN MILLER, DENISE LI, ASH NGU, JUSAL K. PATEL and EASON WINTER. UPDATED Oct. 20, 2018



Significant leadership positions or major contracts, and whose ousters were publicly covered in news reports (*New York Times*)

The logo features a dark gray square with a thin black border. The top-left corner of the square is cut off by a diagonal line, creating a triangular section filled with a fine, light gray dot pattern. The text "FOSTER PEPPER" is centered in the square in a white, serif font, with "PLLC" in a smaller font size to the right.

FOSTER PEPPER^{PLLC}

FOSTER PEPPER



Speaker Bios

Steven R. Peltin

MEMBER



SEATTLE

T 206.447.6215

F 206.749.2094

steve.peltin@foster.com

SERVICES

Business (Chair)

Employment & Labor
(Chair)

Financial Institutions

Litigation & Dispute
Resolution

Nonprofit & Tax-Exempt
Organizations

PRACTICE OVERVIEW

Steve chairs the firm's Business and Employment & Labor practices. His work covers the gamut of employment and labor law. His advice practice is dedicated to helping employers solve problems such as employee discipline and discharge, leaves of absence, discrimination and harassment claims, and threats of employee violence. Steve enhances employee handbooks and prepares and negotiates employment, confidentiality and non-compete agreements. He also counsels executives and professionals on employment and separation agreements, and assists with corporate transactions such as purchases and sales of businesses.

Steve has extensive litigation experience and represents public and private employers in lawsuits claiming discrimination, harassment, wrongful discharge and violations of wage and hour, employee benefits, trade secrets and non-compete obligations. He also appears before local, state and federal administrative agencies and arbitrators in employment and labor matters.

REPRESENTATIVE WORK - Cases

- Won jury trial for an employer accused of age discrimination by laid-off union employee.
- Prevailed in hearing before the U.S. Department of Labor brought by a union business agent who claimed that the company conspired with the union to discharge him.
- Co-counsel in class action claiming pay for commuting in company vehicle; certification defeated and individual claim resolved promptly.
- Co-counsel for large employers in two U.S. Department of Labor collective actions claiming that employees worked off the clock; summary judgment obtained in one case, and the other settled favorably.
- Won summary judgment on discrimination / harassment claims for financial services companies.
- Obtained temporary restraining orders in two cases where employees refused to return computerized documents and information.
- Won summary judgment on sex bias claim by male employee of performing arts client.

Steven R. Peltin MEMBER

SEATTLE T 206.447.6215 F 206.749.2094 steve.peltin@foster.com

- Convinced OSHA that a safety whistleblower on a construction site was not subject to a hostile work environment.
- Obtained anti-harassment orders against former employees. Defended company in ERISA cases brought by former executive seeking payments under a Supplemental Executive Retirement Plan and by pension funds seeking payment of withdrawal liability.

REPRESENTATIVE WORK – Transactions

- Employment and labor counsel in sales of business, including due diligence drafting of purchase agreement language, preparation of offer letters, executive employment agreements and employee communications.
- Assistance to client in reductions in force.
- Counseling of clients facing threat of workplace violence.
- Creation of documentation for background investigations, hiring, leaves of absence, requests for disability accommodation, last chance agreement and severance agreements.
- Preparation of policies such as travel pay, use of cell phones and social media.
- Management training on employment law topics, including avoiding harassment and discrimination, performance management and hiring.

RECOGNITION

- *The Best Lawyers in America*®
 - + Labor Law – Management, 2012-2019
 - + Litigation – Labor & Employment, 2013-2019
- Best in the Business: Leading Lawyers in the Puget Sound Region, *Seattle Business* magazine
 - + Labor – Management, 2013
 - + Litigation – Labor & Employment, 2013

ACTIVITIES

- Seattle Theatre Group
 - + Board of Directors
- University Preparatory Academy
 - + Board of Directors, 2011-2012
 - + Chair of Personnel Committee, 2011-2012

QUOTED

- [“Overseeing the CEO: Part 5 in a Series,”](#) Quoted in CUToday.info, September 2017
- [“Court Overturns Loan Officer Overtime Ruling in ‘Win’ for MBA,”](#) Quoted in *Reverse Mortgage Daily*, July 2013
- [“‘In Person’ Feature - Best Practices for Employers to Comply with the City of Seattle’s Paid Sick and Safe Time Ordinance,”](#) Interviewed in *Puget Sound Business Journal* - November 2012
- [“It’s Not Just Paid Time Off – It’s the Law: Attorneys explain what Seattle’s new sick leave ordinance means for employers,”](#) Quoted in *Puget Sound Business Journal* - September 2011
- “Your Office Away from the Office,” Quoted in *Utah CEO Magazine*
- “Keeping violent employees out of the workplace,” Quoted in *Risk Management* magazine
- “10 Considerations in Developing Telecommuting Policies and Agreements,” Quoted in HR.COM

Steven R. Peltin MEMBER

SEATTLE T 206.447.6215 F 206.749.2094 steve.peltin@foster.com**PUBLICATIONS**

- [“NLRB Permits Employers to Impose Stricter Workplace Rules,”](#) Co-author, Foster Pepper News Alert, August 2018
- [“U.S. Department of Labor Issues New Guidelines for For-Profit Corporate Internship Programs,”](#) Co-author, Foster Pepper News Alert, February 2018
- [“Family and Medical Leave Guide for Washington Employers,”](#) Author, July 2017
- [“Department of Labor Targets Use of Independent Contractors,”](#) Author, Foster Pepper News Alert, July 2015
- [“NLRB: Employers Cannot Ban Employees from Using Company’s Email System for Union-Related Communications,”](#) Co-Author, Foster Pepper News Alert, December 2014
- [“Paralegal Students Must Be Paid for Practical Job Experience at Law Firms,”](#) Author, Foster Pepper News Alert, December 2014
- [“Washington Supreme Court Recognizes Joint Employer Liability Under the Washington Minimum Wage Act,”](#) Author, Foster Pepper News Alert, August 2014
- [“Seattle Police Officer Claims Hostile Working Environment After Refusing to Hand Out Doritos at Marijuana Festival,”](#) Author, Foster Pepper News Alert, February 2014
- [“Are Payroll Debit Cards Right for Your Organization?”](#) Author, Foster Pepper News Alert, November 2013
- [“Is BYOD Right for Your Workplace?”](#) Author, Foster Pepper News Alert, September 2013
- [“Employers Should Confront Threats of Workplace Violence,”](#) Author, Foster Pepper News Alert, August 2013
- [“Many Employers Out of Compliance with Seattle Sick and Safe Leave Ordinance,”](#) Author, Foster Pepper News Alert, July 2013
- [“New Decision Continues Uncertainty Over Exempt Status of Mortgage Loan Officers,”](#) Author, Foster Pepper News Alert, July 2013
- [“The Seattle Office for Civil Rights Clarifies its Interpretation of ‘Occasional Employee,’”](#) Author, Foster Pepper News Alert, November 2012
- [“#1 Again: Washington State Raises Minimum Wage for 2013,”](#) Author, Foster Pepper News Alert, November 2012
- [“Employee or Independent Contractor? Washington Supreme Court Changes the Rules – Part Two,”](#) Author, Foster Pepper News Alert, July 2012
- [“Employee or Independent Contractor? Washington Supreme Court Changes the Rules,”](#) Author, Foster Pepper News Alert, July 2012
- “Effective Negotiation of Executive Employment Agreements,” Author, *Inside the Minds: Negotiating and Employment Agreements, Leading Lawyers on Constructing Effective Employment Contracts*, 2012 Edition
- “Employers: Beware of High School Diploma Requirements,” Author, *WIB HR & Training Digest*, February 2012
- [“Can’t I Require a Job Applicant to Have a High School Diploma?”](#) Author, Foster Pepper News Alert, January 2012
- [“Hidden Threats – There are steps you can take to prevent violence in the workplace,”](#) Co-author, *Washington CEO* magazine
- [“Interns & Volunteers: Do We Really Have to Pay Them?”](#) Author, Foster Pepper News Alert, July 2011
- [“Letting Someone Else Dig for the Dirt: Hiring Vendors to Assist in Social Media Searches,”](#) Author, Foster Pepper News Alert, July 2011
- [“Some Things Don’t Have to Be in Writing: Supreme Court Protects Employees Against Retaliation After Making Verbal Complaints of Wage and Hour Violations,”](#) Author, Foster Pepper News Alert, March 2011
- [“Unsafe at Any Speed: Unauthorized Passengers in Employer-Owned Vehicles May Sue Employer for Driver’s Negligence,”](#) Author, Foster Pepper News Alert, February 2011
- “Bad Acts: Smaller Employers Should Confront Threats of On-The-Job Physical Assaults,” Author, *Washington Journal*
- “Telecommuting: Legal and Management Risks For Employers,” Author, *Corporate Counsel Magazine*
- “Reducing Telecommuting Management Risks,” Author, *National Underwriter* magazine

Steven R. Peltin MEMBER

SEATTLE T 206.447.6215 F 206.749.2094 steve.peltin@foster.com

- “How To Reduce Workplace Violence,” Author, *National Underwriter* magazine
- “50-State Survey of Employment Libel and Privacy Law, Washington Chapter,” Author, Media Law & Resource Center
- “Hiring Employees: Disability Questions and Medical Exams,” Author, *Realty & Building*

PRESENTATIONS

- [“Interviewing and Hiring,”](#) Speaker, 21st Annual Labor & Employment Law Conference, The Seminar Group, August 2018
- “Top New Employment Law Developments Affecting Washington Housing Authorities,” Speaker, Association of Washington Housing Authorities, May 2018
- [“Is Your Workplace Ready for Washington State’s New Employment Laws?”](#) Speaker, Foster Pepper Client Briefing, May 2018
- [“Symposium on Current Issues in Credit Union Board Governance,”](#) Speaker, Foster Pepper Client Briefing, September 2017
- [“Seattle Ordinances Affecting Employers – Hear From the City,”](#) Co-Speaker, Foster Pepper Client Briefing, May 2017
- “Reasonably Accommodating Employees with Disabilities: Fulfilling Legal Duties and Addressing Management Challenges,” Speaker, International Association of Venue Managers Region Conference, May 2017
- [“Top 3 Employment Law Issues That Should Keep You Up at Night,”](#) Speaker, Northwest Credit Union Association, MAXX Annual Convention, October 2016
- [“Politics and the Workplace,”](#) Speaker, Foster Pepper Client Briefing, October 2016
- “Employment Law Considerations for New U.S. Employers,” Speaker, Chinese Chamber of Commerce of Washington State, October 2016
- [“Evaluating Potential Employee Violence: Protecting the Employer and Co-Workers,”](#) Speaker, Lorman Education Services, September 2016
- “Bullying and Violence in the Workplace: Legal and Practical Considerations,” Speaker, Washington Housing Authorities Accounting Professionals Conference, September 2016
- [“FMLA and Leave Law Update,”](#) Speaker, 19th Annual Labor & Employment Law Conference, The Seminar Group, August 2016
- [“Legalization of Marijuana: Impact on the Washington Workplace,”](#) Speaker, Foster Pepper Client Briefing, June 2016
- “Bullying and Violence in the Workplace: Legal and Practical Considerations,” Speaker, Association of Washington Housing Authorities, April 2016
- [“My Ex-Employee Did WHAT? – Preventing and Addressing Post-Employment Misconduct,”](#) Moderator and Speaker, Foster Pepper Client Briefing, October 2015
- [“Top Emerging Issues in Employment and Labor Law,”](#) Speaker, 2015 WHAAP Annual Conference, October 2015
- [“Employee Handbooks: 2015 and Beyond,”](#) Speaker, American Public Power Association, September 2015
- [“FMLA and Leave Law Update,”](#) Speaker, 18th Annual Labor & Employment Law, The Seminar Group, August 2015
- [“Top 3 Employment Law Issues for 2015 That Should Keep You Up at Night,”](#) Speaker, Foster Pepper’s 10th Annual Bankers Briefing, May 2015
- [“Thriving Through Legal Resilience,”](#) Speaker, Washington State Nonprofit Conference, May 2015
- [“Association of Washington Housing Authorities Spring Meeting,”](#) Speaker, April 2015
- [“Is Your Employee Handbook Ready for Prime Time?”](#) Speaker, Foster Pepper Client Briefing, April 2015
- [“Privacy in the Workplace: Managing Employees in the Digital Age,”](#) Moderator and Speaker, Foster Pepper Client Briefing, November 2014

Steven R. Peltin MEMBER

SEATTLE T 206.447.6215 F 206.749.2094 steve.peltin@foster.com

- "The Alphabet Soup of Federal Employment Law," Speaker, Tribal Employment Rights & Law: Sovereignty, Jurisdiction and Best Practices, July 2014
- "[Social Media and the Workplace - Protecting the Hospital in the Digital Age](#)," Speaker, Washington State Hospital Association's NW Council's Hot Topics Meeting, June 2014
- "Filling the Empty Chairs: Legal and Effective Hiring," Presenter, Northwest Marine Trade Association - Professional Development Series
- "What You Should Know About Executive Director Employment Agreements," Speaker, Association of Washington Housing Authorities
- "[Bullying and Violence in the Workplace: Prevention and Intervention Strategies](#)," Speaker, Foster Pepper Client Briefing, March 2014
- "Legalization of Marijuana - The Impact on Washington Employers"
 - + Speaker, South King County Human Resources Association December Meeting, 2013
 - + Speaker, Employee Assistance Professionals Association Pacific Northwest Chapter November Meeting, 2013
- "[Employment Discrimination Law – Hear From The Agencies](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "[Managing Employee Performance While Reducing Legal Risks](#)," Speaker, Northwest Marine Trade Associations
- "[Wage & Hour Compliance – Beyond the Basics \(Part I\)](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "[Wage & Hour Compliance – Beyond the Basics \(Part II\)](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "[Filling the Empty Chairs: Legal and Effective Hiring](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "Out of Sight But Not Out of Mind: Untangling Leave of Absence Requirements," Speaker, 14th, 15th and 16th Annual Labor & Employment Law Seminar, The Seminar Group
- "Understanding Seattle Paid Sick and Safe Time"
 - + Speaker, Washington Trucking Associations
 - + Speaker, Northwest Marine Trade Association
- "[Seattle Paid Sick and Safe Time: Practical Guidance Employers Need to Know](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "Legal Issues for Startups: Employment Law," Speaker, SURF Incubator
- "Employment Law Challenges for Public Employers and Current Developments under the Public Employees Collective Bargaining Act," Speaker, 2012 Association of Washington Housing Authorities (AWHA) Meeting
- "[Reasonably Accommodating Employees with Disabilities](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "High-Stakes Employment and IP Protections: Protect your Company from Increasing Employment Risks and Shield Your Valuable Intellectual Property," Speaker, Foster Pepper and Washington State Chapter of ACC America
- "[Conducting Effective Workplace Investigations](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "Managing the Process of Labor Negotiations," Speaker, Washington Fire Commissioners Association 63rd Annual Conference
- "[Out of Sight but Not Out of Mind: Untangling Employer Obligations under FMLA and Other Leave Statutes](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "[Social Media in the Workplace](#)," Speaker/Moderator, Foster Pepper Client Briefing
- "Payroll Management," Speaker, Lorman Educational Services
- "Time Off: State and Federal Laws on Employee Leave, Vacations and Holidays," Speaker, Lorman Educational Services
- "Recent Developments under the Family and Medical Leave Act," Speaker, National Council of State Housing Agencies
- "10 Scary Issues You Need to Know About Your Employees," Speaker, ASTRA Women's Business Alliance
- "New Developments in Employment Law," Speaker, Seattle CFO Arts Roundtable
- "Best Practice in FMLA Administration," Speaker, Council on Education in Management

Steven R. Peltin MEMBER

SEATTLE T 206.447.6215 F 206.749.2094 steve.peltin@foster.com

- “Conducting Effective Investigations Into Employee Complaints,” Speaker, PUD and Municipal Attorneys Association
- “Cyberstalking: The Washington Employer’s Perspective,” Speaker, King County Bar Association
- “Workplace Investigations,” Speaker, Council on Education in Management

EXPERIENCE

- Foster Pepper PLLC, Member, 2010-Present
- K&L Gates LLP (formerly Preston Gates & Ellis, LLP), Partner, 1998-2010
- Georgia-Pacific Corporation, Senior Counsel, 1996-1998
- Altheimer & Gray (Chicago, IL), Associate and Partner, 1986-1996
- Isham Lincoln & Beale (Chicago, IL), Associate, 1983-1986
- U.S. District Court for the Western District of Wisconsin, Law clerk for the Hon. John C. Shabaz, 1982-1983

BAR ADMISSIONS

- Washington, 1999
- Illinois, 1983 (Inactive)

EDUCATION

- J.D., Cornell Law School (*cum laude*), 1983
- B.A., University of Wisconsin-Madison (with distinction), 1978
 - + Phi Beta Kappa



P. Stephen DiJulio

MEMBER

SEATTLE

T 206.447.8971

F 206.749.1927

steve.dijulio@foster.com

SERVICES

Municipal Government
 Construction
 Employment & Labor
 Environmental & Natural Resources
 Environmental Litigation
 Infrastructure
 Land Use, Planning & Zoning
 Litigation & Dispute Resolution
 Ports
 Real Estate
 Right-of-Way (Chair)
 School Districts
 Sports Law
 Transportation
 Wine, Beer & Spirits

PRACTICE OVERVIEW

Steve's practice focuses on litigation involving state and local governments; civil service and public employment; and, land use and environmental law. His particular experience includes representation of jurisdictions on eminent domain, utilities (water, wastewater, storm water, solid waste systems), local improvement districts, facility siting and contractor litigation.

Steve serves as Chair of the firm's Executive Committee and in that capacity as the Managing Member (or "Managing Partner") of the firm.

SELECTED REPRESENTATIVE WORK

- *Brower v. State/Football Northwest*, 137 Wn.2d 44 (1998) (Successful defense of Seattle Seahawk stadium project and legislative referendum)
- *Washington Securities v. Horse Heaven Heights*, 132 Wn. App. 188, 149 P.3d 379 (2006), rev. denied, 158 Wn. 2d 1023 (successful prosecution of quiet title action for rail right of way)
- *Central Puget Sound Regional Transit Authority v. Miller*, 156 Wn.2d 403 (2006) (successful defense of Sound Transit eminent domain action)
- *City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 188 P.3d 533 (2008); 170 Wn.2d 1, 239 P.3d 589 (2010) (successful defense of water fluoridation program)
- *HTK v. Seattle Popular Monorail*, 155 Wn.2d 612 (2005) (successful defense of municipal condemnation authority)
- *Public Utility District No. 1 of Okanogan County v. State of Washington, Peter Goldmark*, 174 Wn. App 793, 301 P.3d 472 (2013); 182 Wn.2d 519; 342 P.3d 308 (2015) (successful prosecution of utility corridor acquisition)
- *Servais v. Port of Bellingham*, 127 Wn.2d 820 (1995) (amicus for Washington Public Ports Association in defense of protected public records)
- *Klickitat Citizens v. Klickitat County*, 122 Wn.2d 619 (1993) (Defense of comprehensive plan and environmental impact statement for regional landfill)
- *Rabanco v. King County*, 125 Wn. App. 794 (2005) (successful defense of county solid waste management authority)

P. Stephen DiJulio MEMBER

SEATTLE T 206.447.8971 F 206.749.1927 steve.dijulio@foster.com

- *Wong, et al. v. City of Long Beach*, 119 Wn. App. (2004) rev. denied 152 Wn.2d 1015 (2004) (successful defense of city trail project)
- *Washington Waste Systems, Inc. v. Clark County*, 115 Wn.2d 74 (1990) (Defense of multi-million dollar government contract procurement)
- *Grant County Fire District No. 5 v. Moses Lake*, Supreme Court, 150 Wn.2d 791 (2004) (Court reconsiders and unanimously reverses earlier ruling; affirms city annexation authority)
- *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774 (2001) (amicus for Fire Commissioners Association regarding public duty doctrine)
- *City of Seattle v. Shepherd*, 93 Wn.2d 861, 613 P.2d 1158 (1980) (upholding crime victims' rights to recovery of stolen property)

RECOGNITION

- *The Best Lawyers in America*® Appellate Practice, 2012-2019
- Best in the Business: Leading Lawyers in the Puget Sound Region, *Seattle Business* magazine, Appellate Practice, 2013
- Washington Super Lawyers list, 2002-2018
- 2010 Top Lawyer, *Seattle Metropolitan* magazine
- Martindale-Hubbell AV rating

ACTIVITIES

- Municipal League, Board of Trustees, 2010-2013
- Washington State Association of Municipal Attorneys
- International Municipal Lawyers Association
- American Bar Association, State and Local Government Law and Employment Law Sections, Member
- Washington State Bar Association
 - + Environmental and Land Use Law and Administrative Law Sections, Member
- King County Bar Association
 - + Foundation Trustee, 1986-1989, 2018-Present
- South King County Bar Association, Trustee, 1986-1988
- South King County Legal Clinic
 - + Founder and Attorney Coordinator, 1985-1986
 - + Volunteer, 1978-1989
- University of Washington
 - + Lecturer, Evans Graduate School of Public Affairs

QUOTED

- “[Breaking Down Freedom of Information Laws](#),” The Willis Report, FOX Business News, July 2010

SELECTED PUBLICATIONS

- Foster Pepper [Local Open Government](#) Blog
 - + Steve DiJulio is a contributor to Foster Pepper's Local Open Government Blog.
- Washington Real Property Deskbook: Causes of Action, Taxation, Regulation, Chapter Editor (WSBA)

P. Stephen DiJulio MEMBER

SEATTLE T 206.447.8971 F 206.749.1927 steve.dijulio@foster.com

- Washington Public Records Act Deskbook, Chapter 14, Attorney Client Privilege, Co-Author (WSBA)
- Washington Administrative Law Handbook, Chapter 14, Judicial Review of Administrative Proceedings, Author (Butterworth)
- [“Washington Supreme Court Levels the Playing Field in Real Estate and Land Use Litigation,”](#) Co-author, Foster Pepper News Alert, June 2015
- [“U.S. Supreme Court Decision Expands Scope of Takings Clause,”](#) Co-author, Foster Pepper News Alert, June 2013
- “A Blessing on Your Meeting?” Co-Author, MRSC In Focus: Council/Commission Advisor, April 2012
- [“Giving for the City: Constitutional Limits on Municipal Economic Development Programs,”](#) Cityvision Magazine, March/April 2012
- “Council Meeting Conduct and Citizen Rights under the First Amendment,” Author, Municipal Research and Services Center of Washington, November 2009

EXPERIENCE

- Foster Pepper PLLC
 - + Chair, Executive Committee, 2017-Present
 - + Member, 1990-Present
 - + Associate, 1986-1990
- City of Kent, City Attorney, 1982-1986
- City of Seattle, Assistant City Attorney, 1977-1982

BAR ADMISSIONS

- Washington, 1976
- U.S. District Court
 - + Eastern Division of Washington, 1993
 - + Western Division of Washington, 1976
- 9th Circuit U.S. Court of Appeals, 1980
- Supreme Court, State of Washington, 1976

EDUCATION

- J.D., Seattle University, 1976
- B.A., University of Washington (Oval Club Scholastic Honorary), 1973

Alicia M. Feichtmeir

MEMBER



SEATTLE

T 206.447.8929

F 206.749.2003

alicia.feichtmeir@foster.com

SERVICES

Litigation & Dispute Resolution

Emerging Companies & Venture Capital

Employment & Labor

Media, Entertainment & Games

Nonprofit & Tax-Exempt Organizations

Ports

Privacy, Cybersecurity & Data Protection

Retail & Consumer Products

Transportation

PRACTICE OVERVIEW

Alicia's litigation practice focuses on resolution of civil cases, including employment, commercial litigation, environmental and regulatory disputes. She counsels clients on all aspects of the litigation process, including case strategy, risk evaluation, discovery and trial planning.

In her employment practice, Alicia advises public and private employers on compliance with various federal, state and local employment laws including wage-and-hour, leave and anti-discrimination regulations. She has defended employers in agency and court proceedings involving harassment and discrimination, whistleblower actions, wrongful discharge, trade secret misappropriation and unemployment claims. She regularly assists employers in drafting and revising employee handbooks, management policies, and employment agreements, including talent and production agreements for local and national film projects.

RECOGNITION

– Rising Star, Washington Super Lawyers list, 2014-2018

ACTIVITIES

– ArtsWest Gallery and Playhouse, Board Intern, 2014-Present

– ArtsFund Associates Program, 2012-Present

– Federal Bar Association of the Western District of Washington, Website/Communications Committee Co-Chair, 2011-2013

– Solid Ground Family Assistance Program, Advisory Board Member, 2009-2011

QUOTED

– “Are WYLD Members Too Green for Pro Bono?” Three young lawyer volunteers are proving otherwise DeNovo, Washington State Bar Association, August 2011

Alicia M. Feichtmeir MEMBER

SEATTLE T 206.447.8929 F 206.749.2003 alicia.feichtmeir@foster.com

PUBLICATIONS

- [“U.S. Department of Labor Issues New Guidelines for For-Profit Corporate Internship Programs,”](#) Co-author, Foster Pepper News Alert, February 2018
- [“Seattle City Council Passes Secure Scheduling Ordinance,”](#) Author, Foster Pepper News Alert, September 2016
- [“Agency ‘Final Rule’ Roundup,”](#) Author, Foster Pepper News Alert, May 2016
- [“Defend Trade Secrets Act \(DTSA\) Signed Into Law: Federal Law Offers Greater Protections and New Obligations for Employers,”](#) Author, Foster Pepper News Alert, May 2016
- [“No Foolin’ – Seattle Minimum Wage Ordinance Takes Effect April 1,”](#) Author, Foster Pepper News Alert, April 2015
- [“Proposed Administrative Rules Released for Seattle Minimum Wage Ordinance,”](#) Author, Foster Pepper News Alert, February 2015
- [“City Auditor Report: Seattle Sick and Safe Leave Compliance Leaves Room for Improvement – For Employers and Office of Civil Rights,”](#) Author, Foster Pepper News Alert, October 2014
- [“Seattle \\$15 Minimum Wage Update: Referendum Efforts Rejected, and Airport Workers Get a Raise,”](#) Author, Foster Pepper News Alert, July 2014
- [“Seattle Passes \\$15 Minimum Wage, Highest of Any Major U.S. City,”](#) Author, Foster Pepper News Alert, June 2014
- [“The Minimum Wage Debate Rages in Seattle, Washington State, and the Nation,”](#) Author, Foster Pepper News Alert, February 2014
- [“Will Seattle Really Have a \\$15 Minimum Wage?”](#) Author, Foster Pepper News Alert, December 2013
- [“Food for Thought: Wage Theft Protests Serve as Reminder of Importance of Wage & Hour Compliance,”](#) Author, Foster Pepper News Alert, October 2013
- [“Revenge of the Intern: Wage and Hour Class Actions Keep Employers on Their Toes,”](#) Author, Foster Pepper News Alert, May 2013
- [“Access Denied: Legislation Prevents Employers from Demanding Employees’ Social Media Passwords,”](#) Author, Foster Pepper News Alert, April 2012
- [“Preventing and Addressing Workplace Bullying,”](#) Author, Foster Pepper News Alert, March 2012
- [“Check Your Files: U.S. Supreme Court Narrows FOIA Exemption for Internal Personnel Rules,”](#) Author, Foster Pepper News Alert, March 2011
- [“Give Moms a Break: Anticipating Final Regulations on Break Time for Nursing Mothers,”](#) Author, Foster Pepper News Alert, March 2011
- [“Airing Dirty Laundry: Addressing Repeated, Frivolous Public Records Requests by Public Employees,”](#) Author, Foster Pepper News Alert, March 2011
- “Judicial Candidates Pledge Ethical Campaigns,” Foster Pepper News Alert, May 2010
- “Advocating for the Native American Child: Comprehensive Overview of the Indian Child Welfare Act,” Chapter Contributor, Native American Practice Group and CASA CLE Manual, November 2008

PRESENTATIONS

- [“Seattle Ordinances Affecting Employers – Hear From the City,”](#) Co-Speaker, Foster Pepper Client Briefing, May 2017
- [“Give Us A Break! Navigating Employment Issues in the Trucking Industry,”](#) Speaker, Washington Trucking Associations, February 2017
- [“Politics and the Workplace,”](#) Speaker, Foster Pepper Client Briefing, October 2016
- [“Legalization of Marijuana: Impact on the Washington Workplace,”](#) Speaker, Foster Pepper Client Briefing, June 2016
- [“Is Your Employee Handbook Ready for Prime Time?”](#) Speaker, Foster Pepper Client Briefing, April 2015

Alicia M. Feichtmeir MEMBER

SEATTLE T 206.447.8929 F 206.749.2003 alicia.feichtmeir@foster.com

- “[Privacy in the Workplace: Managing Employees in the Digital Age](#),” Presenter, Foster Pepper Client Briefing, November 2014
- “[Bullying and Violence in the Workplace: Prevention and Intervention Strategies](#),” Presenter, Foster Pepper Client Briefing, March 2014
- “[Employment Discrimination Law – Hear from the Agencies](#),” Presenter, Foster Pepper Client Briefing, September 2013
- “[Wage & Hour Compliance – Beyond the Basics \(Part II\)](#),” Presenter, Foster Pepper Client Briefing, May 2013
- “Intellectual Property Ownership and Public Employment,” Co-presenter, Association of Washington Cities, 33rd Annual AWC Labor Relations Institute, May 2013
- “[Wage & Hour Compliance – Beyond the Basics \(Part I\)](#),” Presenter, Foster Pepper Client Briefing, February 2013
- “Mandatory/Permissive Bargaining and Public Records/Information Disclosure,” Presenter, Managing the Process of Labor Relations, October 2011

EXPERIENCE

- Foster Pepper PLLC
 - + Member, 2017-Present
 - + Associate, 2010-2016
 - + Summer Associate, 2008
- Solid Ground (Fremont Public Association), Legal Intern, 2007-2008
- Immigrant Families Advocacy Project, University of Washington School of Law, Volunteer Advocate, 2007-2009
- Seattle Art Museum, Community Campaign Coordinator, 2005-2006
- Seattle Children's Museum, Group Sales Manager, 2003-2005

BAR ADMISSIONS

- Washington, 2009
- U.S. District Court
 - + Eastern District of Washington, 2011
 - + Western District of Washington, 2011
- 9th Circuit U.S. Court of Appeals, 2012

EDUCATION

- J.D., University of Washington School of Law, 2009
 - + *Washington Law Review*, Articles Editor
 - + Law Women's Caucus, Alumnae Event Chair
- B.A., Wesleyan University, 2003



Roger Nyhus
President & CEO
Nyhus Communications

Roger has advised numerous business and government leaders around the world since founding his firm in 1994. He excels at strategic public relations, public affairs and advocacy for innovative organizations and their leaders.

Roger has a proven ability to anticipate changing business or political situations make a rapid and accurate assessment of the opportunity and respond with creative communications solutions. He is excellent at managing crisis communications with an exceptional ability to proactively reach diverse and complex audiences. Roger thrives in high-pressure, dynamic situations.

Roger's career spans senior leadership roles in both business and government. He was the longest-serving communications director for Washington Gov. Gary Locke, the nation's first Chinese-American governor. In that role, he served as chief communications strategist for the governor and his cabinet agencies. Roger led a successful branding effort for the governor, repositioning him as a strong statewide leader in tough economic times.

He developed a highly successful branding and public relations effort supporting the state's winning bid for development of Boeing's newest airplane, the 787. Prior to joining the Governor's Office, Roger advised Seattle Mayor Paul Schell during the last six months of his term.

Previously, Roger was a member of the executive team and director of corporate communications at Teledesic, a high-profile technology startup funded by telecommunications pioneer Craig McCaw, Microsoft co-founder Bill Gates, The Boeing Company, Motorola and

Saudi Prince Alwaleed Bin Talal. Roger was responsible for Teledesic's global branding, public relations and marketing communications program, with emphasis on Europe, Asia and Africa.

Prior to his public relations career, Roger was a general assignment and political reporter for The Associated Press in Seattle; Olympia, Wash.; and Juneau, Alaska.

Heidi de Laubenfels
Chief Operating Officer
Nyhus Communications

Heidi is an expert communicator, leader, strategist and journalist who is passionate about helping organizations achieve their full potential. More than two decades in various roles in news media and in corporate leadership honed her ability to articulate purpose and vision, engage and inspire teams, and reach key stakeholders with compelling communications.

As Nyhus' chief operating officer, Heidi is responsible for business excellence, team leadership and superior client service. Working closely with Nyhus CEO Roger Nyhus, Heidi runs the day-to-day operations of the firm.

Prior to joining Nyhus, Heidi served as vice president of communications and external relations at McKinstry, a national, Seattle-based facilities and energy-efficiency company, where she led brand stewardship, internal and external communications, marketing, and philanthropic and community-engagement efforts.

Prior to joining McKinstry, Heidi was deputy managing editor for strategy and product development at The Seattle Times. In that capacity, Heidi was based in the newsroom and led interdisciplinary teams to inspire change and develop strategic business initiatives, new products, and marketing and communications projects. Prior to that role, Heidi managed The Times newsroom's visual and technical functions, including photo, design, graphics and news technology.