
Is Your Employee Handbook Ready for Prime Time?

April 21, 2015

Foster Pepper
Seattle, Washington

Presented by:

FOSTER PEPPER

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FOSTER PEPPER

Presentation

FOSTER PEPPER



Is Your Employee
Handbook Ready
for Prime Time?

Is Your Employee Handbook Ready for Prime Time?

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Please Fill Out Evaluation Forms



Today's Program

- Handbook analysis and common questions (Steve Peltin)
- Hot issues – 1 (Steve Peltin)
 - Independent contractors / interns/ temps
 - Drug policies
 - FMLA / leave of absence
 - Romance in the workplace

Today's Program

- Hot Issues – 2 (Steve DiJulio)
 - Special considerations for public entities
 - Social media policies
- Hot issues – 3 (Alicia Feichtmeir)
 - Local regulations
 - Changing technologies
 - Marriage equality

Today's Program

- Hot Issues – 4 (Scott Galloway)
 - Employee benefits plans
 - Summary plan descriptions

Handbook analysis and common questions

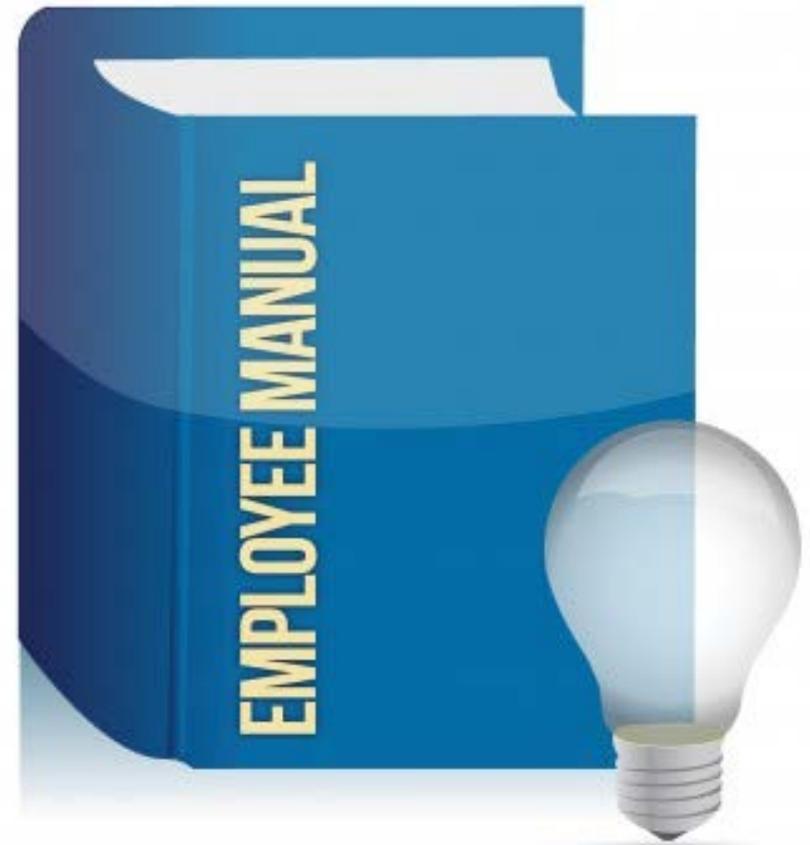
What Is A Handbook?

- Compilation of personnel policies
- Perhaps separate handbooks
 - Procedures/processes
 - Safety
 - Benefits
 - Payroll



Purpose

- Communicate rules
- Legal compliance
- Save time
- Promote consistency
- Further company culture
- Litigation defense



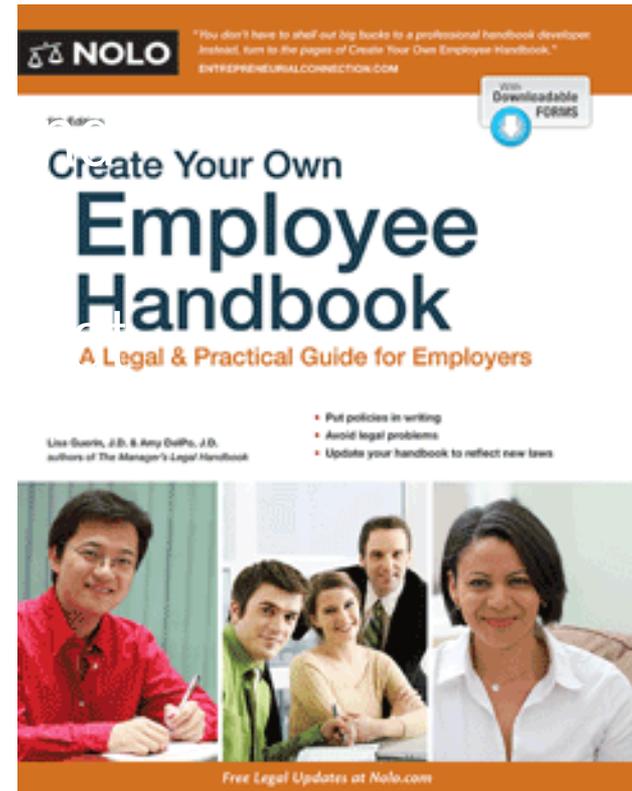
Creation And Updating

- Who needs and when?
- When update
 - Significant workplace changes or updates in policy
 - Significant legal changes
 - Periodically – every 3 years or so



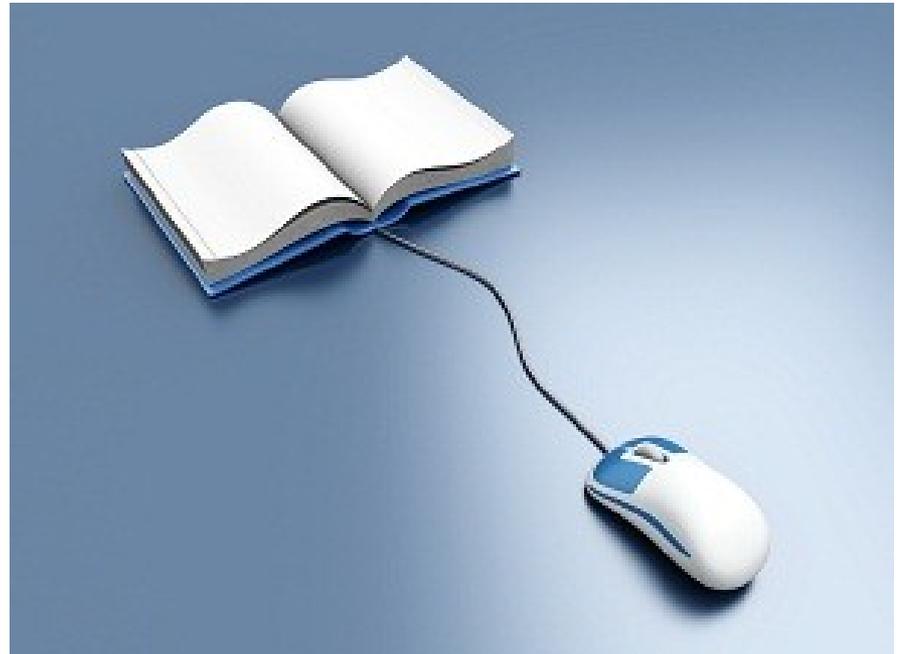
Template Handbooks

- May be helpful starting point
- Ensure applicability
- Trim the fat
- Legal review



Digital Handbooks

- Electronic signature
- Record of when read and “signed”
- Reconstructing policies at points in time
- Changes



Litigation Tool

- Support at-will employment
- Show fairness / no discrimination
- Defend harassment claims (complaint process)
- Show company culture of fairness but adherence to rules
- Show that issue is important



Litigation Risk

- Undermine at-will employment
- Reveal failure to follow rules
- Suggest arbitrary and discriminatory treatment of employees
- Undermine company culture



Hot issues – 1

Steve Peltin

Independent Contractor/Interns/Agency Temps

- Limit employee handbooks to employees
- Separate documents for others in the workplace



Drug Policies

- Impact of medical marijuana and recreational marijuana
- Employers can forbid as before; drug testing allowed
- Leave no uncertainty about medical or legalized recreational marijuana
 - Refer to marijuana or controlled substances (not “illegal drugs”)
 - Avoid references to “legally prescribed” drugs
 - Careful with “under the influence” or “impairment”



FMLA And Leaves Of Absence

- Longest and most complex policies
- FMLA requires clear policies
- [Website article](#)
- Watch for same sex marriage changes



The
Family
and
Medical
Leave
Act

Romance In The Workplace

- Worries about sexual harassment
- Would require disclosure to management – “love contract”
- Controversial



Hot issues – 2

Steve DiJulio

Labor Relations

- Policy of asking employees not to discuss the subject of an employee complaint during course of an investigation may violate employees' section 7 rights.



Banner Estrella Medical Center, 358 NLRB No. 93 (2012). See, *Washington State Patrol*, Decision 11775-A (PSRA, 2014), employer commits ULP by interfering with union conduct of “parallel investigations,” which chilled union activity in representing fellow employees.

Labor Relations

- The employer has burden to show “**legitimate business justification**” to justify prohibition on discussion during ongoing investigation.



Banner Estrella Medical Center

Labor Relations

- To interfere with employee rights, an employee must reasonably perceive the employer's statement as a threat of reprisal or force, or a promise of benefit, associated with an employee's union activity.
 - *Kennewick School District*, Decision 5632-A (PECB, 1996).
- The standard is not that the employer intended to interfere.
 - *City of Tacoma*, Decision 6793-A.
- The standard is based on the employee's reasonable perception. The burden of proof is a preponderance of the evidence.
 - *Pasco Housing Authority*, Decision 5927-A.

Washington State Patrol, Decision 11775-A (PSRA, 2014)



Labor Relations

- An employer may interfere with employee rights by making statements, through written communication, or by actions.
 - *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A, *aff'd*, 98 Wn. App. 809.
- Even if non-coercive in tone, a communication may be unlawful if it has the effect of undermining a union.
 - *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004), *citing City of Seattle*, Decision 3566-A (PECB, 1991).

Spokane County, Decision 12216 (PECB, 2014)



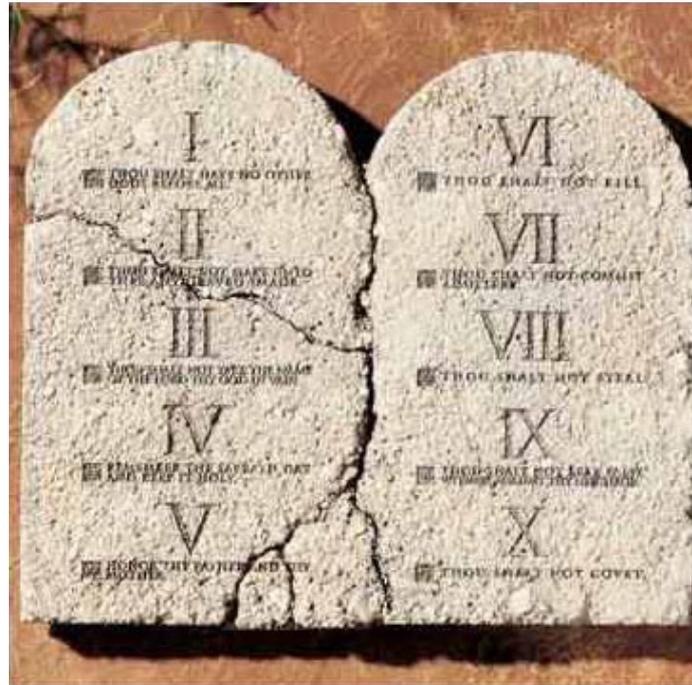
Labor Relations

- NLRB
- Report of the General Counsel
- Memorandum GC 15-04 (March 18, 2015)



Labor Relations

- Under the Board's decision in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), the mere maintenance of a work rule may violate Section 8(a)(1) of the Act if the rule has a chilling effect on employees' Section 7 activity.
- Memorandum, at 3



Labor Relations

- Improper Policy: Do not discuss "customer or employee information" outside of work, including "phone numbers [and] addresses."
- Lawful Policy: Do not disclose confidential financial data, or other non-public proprietary company information. Do not share confidential information regarding business partners, vendors or customers.



Labor Relations

- Improper Policy: [B]e respectful to the company, other employees, customers, partners, and competitors.
- Lawful Policy: Each employee is expected to work in a cooperative manner with management/supervision, coworkers, customers and vendors.



Labor Relations

- Improper Policy: Do not make "insulting, embarrassing, hurtful or abusive comments about other company employees online," and "avoid the use of offensive, derogatory, or prejudicial comments."
- Lawful Policy: [T]hreatening, intimidating, coercing, or otherwise interfering with the job performance of fellow employees or visitors.



Labor Relations

- Settlement with Wendy's



Labor Relations

- Improper policy: False accusations against the Company and/or against another employee or customer.
- “. . . an accusation against an employer does not lose the protection of Section 7 merely because it is false, as opposed to being recklessly or knowingly false.”



Hot Issues – 3

Alicia Feichtmeir

Incorporating Local Regulations

- Paid Sick and Safe Time
 - [Seattle](#)
 - [SeaTac \(Hospitality/Transportation Employers Only\)](#)
- Minimum Wage Requirements



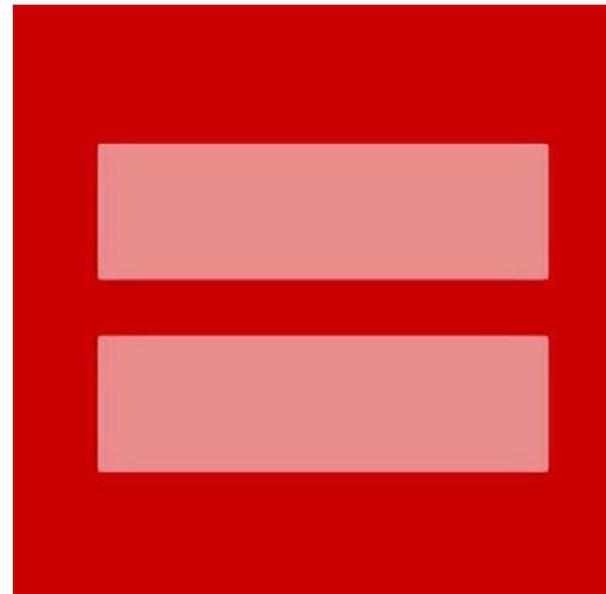
Addressing Changing Technology

- Computer/Internet Policies
- Social Media Policies
- Phones/Handheld Device Policies
- Bring Your Own Device (BYOD) Policies



Adjusting Policies for Marriage Equality

- Marriage Equality Law In Effect - December 2012
- Handbook Policy Impact

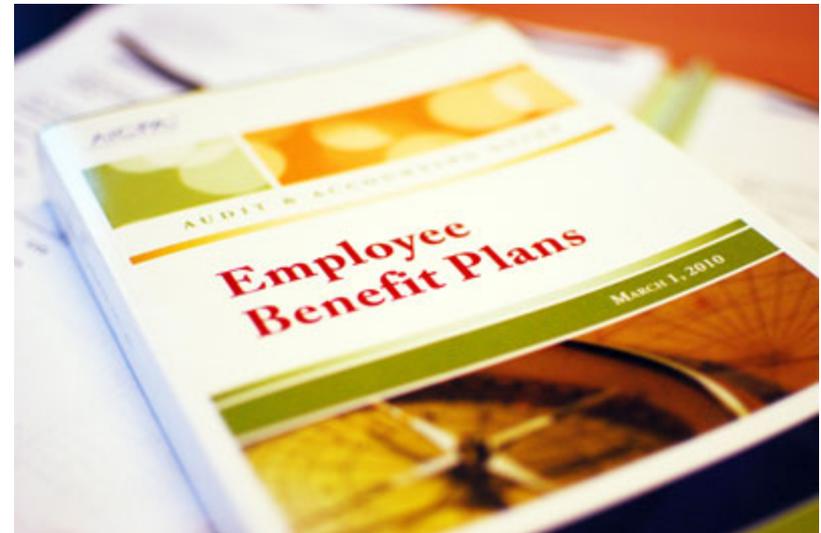


Hot Issues – 4

Scott Galloway

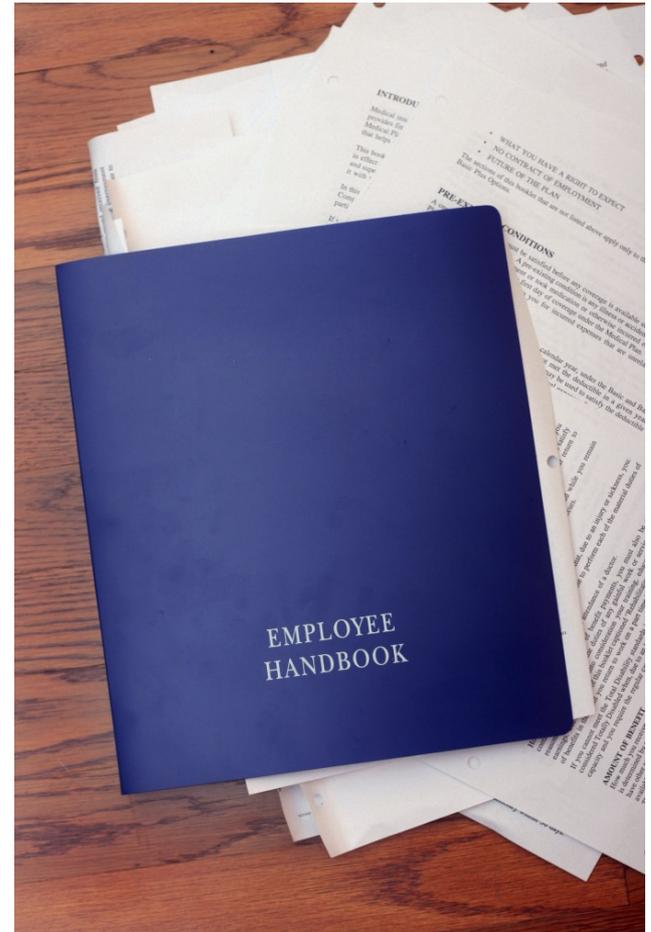
Communications for Employee Benefit Plan

- Scope
- Goals of communication for Employee Benefit Plans
 - HR goals
 - Legal compliance goals



Description of Employee Benefit Plans in Handbook

- Satisfies HR goals
- Presents legal risks
 - Complicated legal requirements
 - Content
 - Updates
 - Two documents versus one document



ERISA Requirements for Summary Plan Descriptions

- Description of plan terms
- Claims procedures
- Updates
- Effect of documents produced by third parties



ERISA

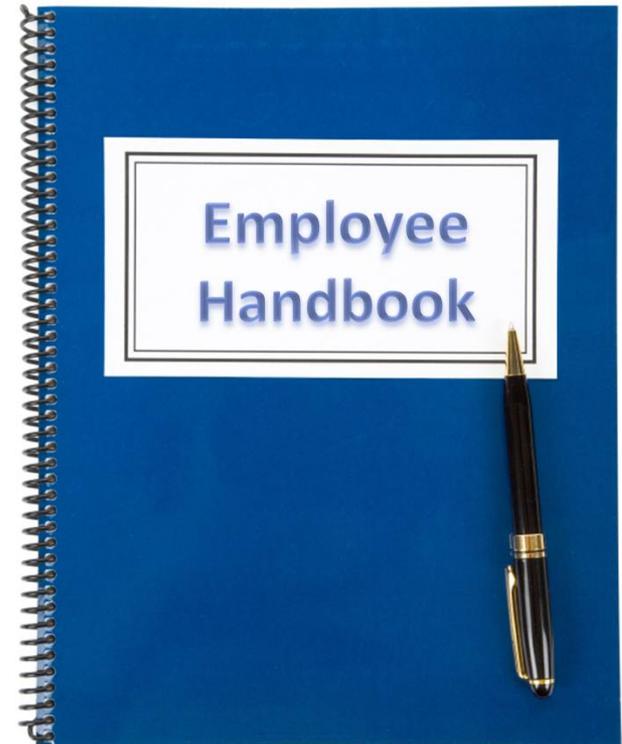
Suggested Best Practices

- Separate documents
- Handbook disclosure
 - List plans
 - Describe benefits generally
 - Note existence of separate summary plan descriptions
 - Full disclaimers



Suggested Best Practices (continued)

- Summary plan descriptions
 - One document for each plan
 - Date and appropriate disclaimers



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Speaker Bios

FOSTER PEPPER

Steven R. Peltin

MEMBER



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SERVICES

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PRACTICE OVERVIEW

Steve chairs the firm's Employment & Labor practice. 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 was settled favorably.
- Won summary judgment on discrimination / harassment claim for financial services company.
- 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.
- 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.

Steven R. Peltin **MEMBER**

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- 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 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 on policies such as travel pay, use of cell phones and blogging.
- Management training on employment law topics, including avoiding harassment and discrimination, performance management and hiring.

RECOGNITION

- *The Best Lawyers in America*®
 - + Labor Law – Management, 2012-2015
 - + Litigation – Labor & Employment, 2013-2015
- 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
 - + Executive Committee
- University Preparatory Academy
 - + Board of Directors, 2011-2012
 - + Chair of Personnel Committee, 2011-2012
- Foster Pepper Pro Bono
 - + Featured in the 2013 Pro Bono Annual Report
 - + Featured in the 2012 Pro Bono Annual Report

QUOTED

- [“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 MEMBERSEATTLE T 206.447.6215 F 206.749.2094 pelts@foster.com**PUBLICATIONS**

Steve Peltin is a frequent contributor to Foster Pepper's [Washington Workplace Law](#) blog.

- “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
- [“Hidden Threats – There are steps you can take to prevent violence in the workplace,”](#) Co-author, *Washington CEO* magazine
- “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
- “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

- Upcoming: [Association of Washington Housing Authorities Spring Meeting](#), Speaker, April 2015
- [“Privacy in the Workplace: Managing Employees in the Digital Age,”](#) Moderator, Foster Pepper Client Briefing, November 2014
- “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

Steven R. Peltin **MEMBER**

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- “[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
- “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
- “Email and the Internet – Legal Challenges for Employers,” Speaker, PUD and Municipal Attorneys Association

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

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 Litigation & Dispute Resolution
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 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.

REPRESENTATIVE WORK

- *Brower v. State/Football Northwest*, 137 Wn.2d 44 (1998) (Successful defense of public-private stadium project and legislative referendum)
- *Central Puget Sound Regional Transit Authority v. Miller*, 156 Wn.2d 403 (2006) (successful defense of Sound Transit eminent domain action)
- *HTK v. Seattle Popular Monorail*, 155 Wn.2d 612 (2005) (successful defense of municipal condemnation authority)
- *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)
- *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)
- *Barnier v. City of Kent*, 44 Wn. App. 868 (1986) (Defense of development assessment process)
- *Tiffany Family Trust v. City of Kent*, 155 Wash.2d 225 (2005) (successful defense of assessments and rejection of civil rights claims)
- *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)
- *Jensen v. Torr*, 44 Wn. App. 207 (1986) (Defense of government permit process and immunity of government officials)
- *Prater v. City of Kent*, 40 Wn. App. 639 (1985) (Defense of claims of discrimination in employment)

- *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774 (2001) (amicus for Fire Commissioners Association regarding public duty doctrine)
- *Little Deli Marts, Inc. v. City of Kent*, 108 Wn. App. 1, 32 P.3d 286 (2001); 107 Wash. App. 1011 (2001) rev. denied 145 Wn.2d 1030 (2002) (successful defense of local improvement district process)
- *City of Seattle v. Auto Sheet Metal Workers Local*, 38727 Wn. App. 669, 620 P.2d 119 (1980) (Defense of City charter and personnel system reorganization)
- *Leonard v. Civil Service Commission of City of Seattle*, 25 Wn. App. 699, 611 P.2d 1290 (1980) (Judicial review of administrative proceedings)
- *Silver Firs Town Homes, Inc. v. Silver Lake Water Dist.*, 103 Wn. App. 411, 12 P.3d 1022 (2000) rev. denied 143 Wn.2d 1013 (2001) (successful defense of connection charges)
- *Petersen v. City of Seattle*, 21 Wn. App. 108, 583 P.2d 1259 (1978) (Constitutionality of reckless driving laws upheld)
- *City of Seattle v. Platt*, 19 Wn. App. 904, 578 P.2d 873 (1978) (Prosecution and public record defense in criminal proceedings)
- *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, 2012-2015
- Best in the Business: Leading Lawyers in the Puget Sound Region, *Seattle Business* magazine, Appellate Practice, 2013
- Washington Super Lawyers list, 2002-2014
- 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 Labor and Employment Law Sections, Member
- Washington State Bar Association
 - + Environmental and Land Use Law and Administrative Law Sections, Member
 - + Amicus Brief Committee, Member
- Foster Pepper Pro Bono
 - + Featured in 2009 Pro Bono Annual Report
- King County Bar Association, Trustee, 1986-1989
- South King County Bar Association, Trustee, 1986-1988
- South King County Legal Clinic
 - + 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

PUBLICATIONS

- Foster Pepper [Local Open Government](#) Blog
 - + Steve DiJulio is a contributor to Foster Pepper's Local Open Government Blog.
- [“Washington Initiative I-517 Impacts Retailers, Public Facility Access and Local Government Elections,”](#) Co-author, Foster Pepper News Alert, September 2013
- [“U.S. Supreme Court Decision Expands Scope of Takings Clause,”](#) Co-author, Foster Pepper News Alert, June 2013
- [“Court of Appeals Reaffirms Public Utility District Authority to Condemn State School Trust Lands,”](#) Co-author, Foster Pepper News Alert, May 2013
- [“Pollution Control Hearings Board Clarifies Use of Overriding Consideration of Public Interest Statute,”](#) Co-author, Foster Pepper News Alert, March 2013
- [“Curing a Violation of the Open Public Meetings Act?”](#) Co-Author, Advisor Column, Municipal Research and Services Center of Washington, March 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
- 2011 Washington Real Property Deskbook: Causes of Action, Taxation, Regulation, Editor
- [“Council Meeting Conduct and Citizen Rights under the First Amendment,”](#) Author, Municipal Research and Services Center of Washington, November 2009

PRESENTATIONS

- “Basic Training for New Commissioners and Staff; Annual Legal Update,” Presenter, Civil Service Conference, 1986-2014
- “Labor Relations and Public Record Disclosure,” Speaker, Washington State Office of the Attorney General CLE, December 2014
- “The Okanogan PUD Litigation: The Pitfalls of Life in One of Washington’s Great Scenic Locations and Condemnation of State Lands,” Speaker, PUD-Municipal Attorney Conference, June 2014
- “Infrastructure Development - Managing Property Acquisition and Procurement,” Speaker, Washington Public Utility District Association, Managers Committee Meeting, May 2014
- “Labor Relations and Public Record Disclosure,” Speaker, Washington Association of Public Records Officers Spring Training, May 2014
- “Litigating Open Government Cases: A Well-Stocked Tool-Kit for Public and Private Practitioners”
 - + Program Co-Chair and Speaker, February 2014
 - Legal Ethics: Managing Conflicts and Understanding Privileges; What To Do When The Client Does Not Disclose
 - Continue the Exchange of Ideas: Reception for Faculty and Attendees
- “Privilege and the PRA: Freedom Foundation v. Gregoire,” Speaker, Law Seminar International, One-Hour Expert Analysis, December 2013
- “Wage & Hour Compliance – Beyond the Basics (Part I),” Presenter, Foster Pepper Client Briefing, February 2013
- “LIDs: Nuts and Bolts,” Speaker, Washington State Association of Municipal Attorneys (WSAMA), May 2008
- “Newly Elected Officials Workshop,” Speaker, Association of Washington Cities, January 2008
- “Eminent Domain,” Speaker, Lorman Seminar, September 2006
- “Knowing the Legal Territory,” Association of Washington Cities, 1988-2006 (Newly Elected Officials Workshop)
- “Road and Access Law in Washington,” National Business Institute, 1999 and 2001
- “Inverse Condemnation Issues in the Direct Condemnation Setting,” Law Seminars International, December 2000; December 1999; December 1998
- “Washington State Association of Fire Chiefs,” Executive Officer Labor Relations Training Courses, 1998, 1993, 1992, 1989

P. Stephen DiJulio **MEMBER**

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- “The People's War: In the Trenches with Nuisances, NIMBYs, and Essential Public Facilities,” Washington State Bar Association, Environmental & Land Use Law Section, May 1997
- “The ABCs of LUDs,” Washington Public Utility Districts Association, July 1996, 1997

EXPERIENCE

- Foster Pepper PLLC
 - + 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

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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

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

– Foster Pepper Pro Bono

+ Featured in 2012 Foster Pepper Pro Bono Annual Report

+ Featured in 2011 Foster Pepper Pro Bono Annual Report

+ Featured in 2010 Foster Pepper Pro Bono Annual Report

QUOTED

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

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PUBLICATIONS

- Foster Pepper [Washington Workplace](#) Blog
 - + Alicia Feichtmeir is a contributor to Foster Pepper's Washington Workplace Law blog. Recent blog posts include:
 - [City Auditor Report: Seattle Sick and Safe Leave Compliance Leaves Room for Improvement - for Employers and Office of Civil Rights](#), October 2014
 - [Seattle \\$15 Minimum Wage Update: Referendum Efforts Rejected, and Airport Workers Get a Raise](#), July 2014
 - [Seattle Passes \\$15 Minimum Wage, Highest of Any Major U.S. City](#), June 2014
 - [The Minimum Wage Debate Rages in Seattle, Washington state, and the Nation](#), February 2014
 - [Will Seattle Really Have a \\$15 Minimum Wage?](#) December 2013
 - [Food for Thought: Wage Theft Protests Serve As Reminder of Importance of Wage & Hour Compliance](#), October 2013
 - [Revenge of the Intern: Wage and Hour Class Actions Keep Employers on Their Toes](#), May 2013
 - [Access Denied: Legislation Prevents Employers from Demanding Employees' Social Media Passwords](#), April 2012
 - [Preventing and Addressing Workplace Bullying](#), March 2012
 - [Washington State Supreme Court Orders Disclosure of Investigative Reports Alleging Police Misconduct](#), September 2011
 - [Check Your Files: U.S. Supreme Court Narrows FOIA Exemption for Internal Personnel Rules](#), 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

- "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
 - + Associate, 2010-Present
 - + 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

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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



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- Sports Law
- Tax

PRACTICE OVERVIEW

Scott is of counsel and focuses his practice on ERISA, employee benefits, executive compensation, fiduciary, and investment law. He has substantial experience with respect to investment of pension and retirement assets. Scott advises large and small employers with respect to the tax, Title I, Title IV, labor, ADEA and securities law issues involving pension, profit-sharing, 401(k), stock bonus, stock option, deferred compensation, and medical and other welfare benefit plans, as well as executive compensation planning.

Scott has an interest in legal issues affecting recording artists and the music industry, including advising recording artists, labels, and public relations firms with respect to contractual and development matters.

ACTIVITIES

- National Association of Stock Plan Professionals
- American Bar Association
 - + Taxation Section, Employee Benefits Committee, Member
 - + Labor and Employment Section, Member
 - + Corporation, Banking and Business Law Section, Member
- East King County Soccer Referees Association

PUBLICATIONS

- “Court of Appeals Decision Puts Private Equity Funds at Risk for ERISA Title IV Liability of Portfolio Companies,” Author, Foster Pepper News, August 2013
- “Employers, Have You Prepared Your Retirement Plan Fee Disclosures?” Author, Foster Pepper News, August 2012
- “Employee Benefits Law,” Contributing Author, S. Sacher et al. ed., 1991
- “Scienter As an Essential Element in an SEC Suit for Injunctive Relief,” Author, Note, 8 U. Tol. L. Rev. 817, 1977

J. Scott Galloway **OF COUNSEL**

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PRESENTATIONS

- “Tribal Employee Benefit Plans,” Speaker, Tribal Employment Rights & Law: Sovereignty, Jurisdiction and Best Practices, July 2014
- “Improving Tribal Pension and Employee Benefit Plans,” Speaker, Tribal Economic Development, Foster Pepper PLLC, February 2013
- “Tribal Retirement Plans Forum Webinar: IRS Requests Comments on Sovereignty over Retirement Plans,” Co-Presenter, January 2012
- “Tribal Retirement Plans Forum - Action Plan for Maintaining Compliance and Risk Management,” Presenter, July 2011
- “Executive Compensation Legal Considerations,” Panelist, 2009 Bankers Briefing, May 2009

EXPERIENCE

- Foster Pepper PLLC
 - + Of Counsel, 2003-Present
 - + Member, 1996-2002
 - + Of Counsel, 1995-1996
- Johnson & Gibbs, P.C. (Dallas, TX), Shareholder, 1988-1995
- Kimberly-Clark Corporation (Dallas, TX), Associate Counsel, Corporate Affairs, 1985-1989
- Seyfarth, Shaw, Fairweather & Geraldson (Chicago, IL), Associate, 1982-1984
- Department of Labor, Office of the Solicitor (Washington, D.C.), Attorney, 1979-1982

BAR ADMISSIONS

- Washington, 1996
- Illinois, 1982
- Ohio, 1978

EDUCATION

- LL.M., New York University, 1979
- J.D., University of Toledo, 1978
 - + University of Toledo Law Review, Executive Editor, 1977-1978
- A.B., University of Notre Dame, 1974

Additional Materials

FOSTER PEPPER



No Foolin' - Seattle Minimum Wage Ordinance Takes Effect April 1

Posted by [Alicia Feichtmeir](#) on April 1, 2015

April 1 is implementation day for Seattle's new Minimum Wage Ordinance. Starting April 1, large businesses with over 500 employees must pay workers wages of at least \$11 per hour. Smaller businesses with 500 or fewer employees must pay either a flat hourly wage of \$11, or a wage of \$10 per hour with an additional \$1 per hour in compensation comprised of tips or payments made to a qualifying medical-benefits plan.

The City of Seattle's [Office of Labor Standards](#), a new division within the [Seattle Office for Civil Rights](#), has released the [Final Administrative Rules](#) for the new Ordinance, along with detailed set of [Frequently Asked Questions](#).

If you have questions regarding compliance with Seattle's Minimum Wage Ordinance, or any other wage and hour question, please contact Foster Pepper's [Employment & Labor](#) group.



Is BYOD Right For Your Workplace?

Posted by [Steve Peltin](#) on September 9, 2013

Twenty-four hour, world-wide instant access to personal email, contacts, calendar, and bank account information? Using a small device like a mobile smart phone? No big deal in 2013. Many employers supply workers with these devices to create constant connectivity to the work environment.

An increasing number of employers have instituted a “bring your own device” (BYOD) policy. Those employers encourage employees to use their own devices—such as tablets, smart phones, and laptops—to perform work. Employees can connect their personal equipment to company servers from anywhere in the world, allowing immediate communication and access to business information at any time.

Of course, a BYOD culture is not right for every employer. Cost-savings and employee flexibility may be outweighed by business concerns, such as regulatory compliance and trade secret and data protection risks.

While many employers have policies that focus on the appropriate use of corporate data on company-issued devices, existing policies may not effectively address the blurring of lines between company and personal equipment used for work purposes. Employers should consider implementing a personal device/BYOD policy – whether or not they encourage employees to BYOD – to ensure that employees understand the rules when it comes to using personal devices on the job. Important considerations include:

- **Regulatory coverage.** If the employer operates in a highly regulated industry (such as banking or health care), BYOD may not be appropriate or may even be prohibited.
- **Scope.** The BYOD policy presumably would apply to working and nonworking hours, and on and off company premises, but the policy must specify.
- **Compliance.** The policy should determine how the company plans to track hours worked for hourly workers, and remind employees of the need to comply with harassment and discrimination policies.
- **Acceptable Use.** The employer should specify who is allowed to use the device, for what purposes, and in what manner. The policy also should address permitted configurations, downloads, and storage of business email/attachments/documents.
- **Expectation of Privacy.** Presumably the company controls and owns all information on the device that is created or accessed in connection with work. If so, the employer must decide how to monitor, search, and control the device without unduly intruding into purely personal information.
- **Security Requirements.** The employer needs to determine requirements for password protection, encryption, updating of software, and the use of remote lock and wipe functionality.

- Storage. The policy should specify how data is stored on the device, how the data is backed up to company servers, and how the employer will map the data created, accessed or stored on the device.
- Regulations for Security Breach. The employer should identify the notification protocol in the instance of potential data loss or damage.
- Separation. The policy should establish a process for protection of company data at termination of employment.
- Litigation Hold. When required to preserve electronic documents in the course of a lawsuit, the employer will need to determine how to capture communications and data on personal devices.

Developing an effective BYOD policy requires collaboration among various groups, including HR, IT and business units. An effective policy will address employer needs, likely employee use patterns, and steps to protect company data. If employers believe BYOD is appropriate, they should implement a policy, communicate the policy to employees, and train and enforce compliance with the policy.

If you have questions about BYOD policies in the workplace, please contact the [Employment and Labor](#) group at Foster Pepper.



Fired Because Of Facebook: NLRB General Counsel Addresses Offensive Facebook Posts In The Context Of Protected Activity

Posted by [Foster Pepper](#) on August 31, 2011

Three recent [National Labor Relations Board](#) (NLRB) memoranda concluded that employees posting complaints about their jobs on social media websites may not be protected from disciplinary action even if their complaints are job-related. In each of the three cases, the NLRB Division of Advice recommended dismissal of the claims that employers violated the NLRA when they disciplined or discharged employees for [Facebook activity](#).

In the first case, an employee was disciplined for profanely criticizing local management on his Facebook page. The remarks were visible only to his Facebook friends, some of whom were co-workers. Although two co-workers posted notes of support, the [Division of Advice found](#) that no evidence of protected concerted activity, as the Facebook posts were essentially a personal gripe made only on his own behalf. The employee had not included any language suggesting that his co-workers initiate or participate in group action; instead, the employee expressed his frustration over a single incident with a particular manager.

Likewise, the [Division of Advice found](#) no evidence of protected concerted activity where an employee in a mental health institution engaged in a Facebook conversation with a set of friends about the facility's clients. Her employer learned of the Facebook conversation when it was reported by a former patient, and the employer fired the employee. None of the employee's co-workers were Facebook friends, and the employee admitted she had never discussed her Facebook posts with co-workers. Therefore the employee had not engaged in protected concerted activity because she was not seeking to "induce or prepare for group action," and because her Facebook posts did not mention any terms and conditions of employment.

In a third case, the [Division of Advice concluded](#) that a bartender had not engaged in protected concerted activity when he complained about his employer's tip pooling policy on Facebook. Even though the bartender's complaint centered on his terms of employment, he did not direct his Facebook post to co-workers or discuss the post with them. In short, he was simply complaining and was not seeking to induce collective action.

Finally, the General Counsel also [released a report](#) summarizing the outcomes and reasoning behind more than a dozen cases in the past year involving employees' use of social media and employer social media policies. In each of the three memoranda and the vast majority of the social media cases, the General Counsel used similar legal standards, including:

- When an employee "acting with or the authority of" coworkers (a) "seeks to initiate, induce or prepare for group action," or (b) "brings truly group complaints to the attention of management," that employee's action is protected.
- When the employee's activities are "the logical outgrowth of concerns expressed by the employees collectively," the employee's activities are protected.

- When the employee is engaged in activity "solely by and on behalf of the employee himself," the employee's activity is unprotected.
- When the employee's comments are "mere griping," as opposed to "group action," the employee's comments are unprotected.

While not comprehensive, these guidelines will assist employers considering disciplining or terminating employees for offensive social media posts. Employers should consult competent employment counsel for additional guidance during the disciplinary process.

For more information on social media guidelines, compliance, and resulting employee discipline, please contact Foster Pepper's [Employment and Labor](#) practice group.



Interns & Volunteers: Do We Really Have to Pay Them?

Posted by [Steve Peltin](#) on July 15, 2011

Now that summer is here, many workplaces find new faces in the hallways: students eager for work experience. Some are willing to donate their time to gain practical experience, others wish to support a worthy organization, and still others are focused on adding to their resume. But can the organization accept the efforts of these students without paying them?

Do we have to pay our summer interns?

As a general rule, the organization must pay all persons it “employs,” which is broadly defined to mean “suffer or permit to work.”

Nonprofits and public sector organizations usually are permitted to offer unpaid internships, even if the intern provides services of value to the organization.

The situation with for-profit entities is different. The company first must determine whether the intern is participating in a training program (and therefore not entitled to compensation) or is simply “employed.” Before permitting unpaid interns or trainees, the US Department of Labor requires the company to meet the following criteria:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If the company fails to satisfy any one of these requirements, the worker is considered an employee and [must be paid](#) at least [minimum wage](#).

Do we have to pay our volunteers?

Nonprofit and public sector organizations may have volunteers as long as the volunteers are not employees of the organization and give time and services gratuitously. There can't be any pressure or coercion to donate time, and all services must be free and voluntary.

For-profit companies cannot have volunteers. Companies must pay at least minimum wage to anyone who is permitted to work.

The US Department of Labor has offered guidance on volunteers, and the Washington Department of Labor & Industries has even more complete [information](#).

Can we encourage our employees to volunteer their time, either to our organization or to other organizations?

It depends. Of course all volunteers must give their time freely, and they can't be coerced or forced to participate.

A non-profit employer need not pay employees for volunteer activities so long as the volunteers perform duties that are not similar to their paid job and the employer doesn't control the activity. However, if the employer requires or controls the volunteer work, and the activities benefit the employer, the employer may need to pay for time spent on the activities. Also, if employees on their own volition perform volunteer activities that are related to their job, and the employer knew or should have known that the employees would be participating, the employer may be required to pay for the time. For example, a charity can't require or allow a bookkeeper to voluntarily process payroll, if that is the kind of work that he completes in his paid position. However, if the bookkeeper decides on his own to hand out t-shirts at the annual 5K race, he probably would not have to be paid.

According to the Department of Labor, public sector employees can't volunteer to do work that is similar to their paid job within the same jurisdiction where they work, although they may volunteer to do similar work in different jurisdictions or different kinds of work in the same jurisdiction. For example, a bus driver for the Auburn public schools could not volunteer to drive an extra shift at her elementary school for no pay. However, she could donate her time to drive for a class trip in the SeaTac schools. Or, if the driver prefers to spend her free time closer to home, the Auburn schools would not be obligated to pay her for volunteering to help restore a playground.

Private sector employees can volunteer in nonprofit and public sector in jobs that are similar to the work that they are paid to do in the business world. For-profit companies can never have volunteers doing company work without pay.

Can we give our unpaid interns and volunteers gift cards or stipends?

Yes. Volunteers and unpaid interns for nonprofit or public sector organizations can receive stipends or other nominal fees or gifts, as long as the gifts are not tied to productivity. Monthly or yearly stipends are fine, too, as are reimbursements for expenses.

However there is a limit. If volunteers are paid more than a reimbursement for expenses, reasonable benefits or a nominal fee, the nonprofit might start to establish an employment relationship with the volunteer that would be subject to minimum wage requirements. The Department of Labor has defined "nominal fee" as 20% or less of what an employee doing the same work would make. For example, a custodian who serves as a coach for the varsity track team can receive a stipend for his work without losing volunteer status, as long as the stipend is 20% or less of what the school [would have to pay an employee to do the same work](#). Note also that employers also may need to withhold taxes for stipends that exceed \$600.

If you have questions about paying interns or volunteers, please contact our [Employment and Labor attorneys](#).