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  - Steven R. Peltin, Foster Pepper PLLC
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Presented by:

Foster Pepper
POLITICS AND THE WORKPLACE

October 11, 2016

What we’ll cover today

- Differences between public and private sectors
- Applicable federal, state and local regulations
- Employee political activity on and off the job
- Employer political activity
- Practical tips and useful policies
Why should employers care?

- “This election year is bringing greater political volatility to the workplace, with slightly more than one-quarter of respondents to a Society for Human Resource Management (SHRM) survey reporting tension, hostility or arguments among co-workers because of political affiliation.”

What happens when political discussions cross the line?

- Harassment and discrimination concerns
- Bullying/morale problems
- Lost productivity
- On/off duty issues
Do employees have a First Amendment right to “Free Speech”? 

- Applies to government action 
  - Private sector: no constitutionally protected right to “free speech” 
  - Public sector: applies in limited circumstances

First Amendment

- *Karl v. City of Mountlake Terrace*, 678 F.3d 1062 (9th Cir. 2012)
First Amendment

- *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013)

First Amendment

- *Moss v. City of Pembroke Pines*, 782 F.3d 613 (11th Cir. 2015)
First Amendment

- *Barry v. Moran*, 661 F.3d 696 (1st Cir. 2011)

What other laws apply to employees’ political activity in the workplace?

- Local
  - City of Seattle prohibits discrimination in employment on the basis of “political ideology”
What other laws apply to employees’ political activity in the workplace?

**State**
- Prohibits voter interference/intimidation
- Prohibits discrimination on the basis of employees’ political activities
- Confirms public employees’ right to private political expression
- Prohibits use of public resources for political purposes

**Federal**
- National Labor Relations Act
- Voter intimidation/coercion regulations
- First Amendment
- Hatch Act of 1939
Can an employer prohibit political campaigning and solicitation at work?

- **Private Sector:**
  - Can bar campaigning/solicitation of money or support during work time, using work supplies and in work spaces
  - Can prohibit communications/solicitations that disrupt operations or productivity or are violent/extreme
  - Must consider NLRA implications

- **Public Sector:**
  - Public employees cannot engage in solicitation or use public resources for political purposes
  - With three very narrow exceptions, public facilities may NOT be used to advocate a political campaign or any other ballot measure. The definition of “public facilities” is very broad, and encompasses anything paid for by or belonging to the public agency, including employees during working hours.
Can an employer prohibit political displays or paraphernalia at work?

- **Private Sector:**
  - Can restrict purely political displays/paraphernalia by policy, but application must be even-handed
  - Must consider NLRA implications and nexus of political advocacy with terms and conditions of employment

- **Public Sector:**
  - Agencies/local governments can set their own rules
  - Employees should be careful not to give members of the public the impression that employee’s view is favored by the public employer
Can an employer restrict employees’ off duty political activities?

- No – state laws protect employees’ ability to engage in political process outside of work

Does an employer have to provide employees time off to engage in the political process?

- Not in Washington
  - No special leave laws (e.g. voting)
  - Voting leave is not necessary due to WA vote by mail process
Can an employer require its employees to support the employer’s political views?

- Federal
  - FEC regulations
  - Prohibitions on political coercion
  - Impact of *Citizens United*

- Washington
  - Prohibits employers from discriminating/retaliating against an employee for failure to support a political position
  - Public employers cannot use staff time or resources on behalf of a particular political position
What happens when religion and politics intersect at the workplace?

- Title VII, WLAD, and local regulations address religious accommodation and prohibit religious discrimination
- Strong policies/careful training of managers to navigate these issues
- Employer religious/political views

Useful policies

- Anti-discrimination/anti-harassment
  - Non-solicitation
  - Social media
  - Political activity policy?
  - Be mindful of NLRA protections
Management best practices

- Update policies and provide refreshers during election season
- Train managers/supervisors to respond effectively to hot-button issues and complaints
- Consider the implications of any discipline that may be related to employee’s political activity
- Evaluate pros/cons of corporate political activity

Q&A discussion

- Q&A discussion with panel
Speaker Bios
Steven R. Peltin
MEMBER

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SERVICES
Business (Chair)
Employment & Labor (Chair)
Financial Institutions
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.
– 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, 2012-2017
  + Litigation – Labor & Employment, 2013-2017
– 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
– “Court Overturns Loan Officer Overtime Ruling in ‘Win’ for MBA,” Quoted in Reverse Mortgage Daily, July 2013
– “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
PUBLICATIONS

Steve Peltin is a frequent contributor to Foster Pepper’s Washington Workplace Law blog.

- “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
- “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

- “Bullying and Violence in the Workplace: Legal and Practical Considerations,” Speaker, Washington Housing Authorities Accounting Professionals Conference, September 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
- “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
- “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
“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
- “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
- “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

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
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)
− *Rabanco v. King County*, 125 Wn. App. 794 (2005) (successful defense of county solid waste management authority)
− *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)
− *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, 2012-2017
− Washington Super Lawyers list, 2002-2016
− 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
− 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

PUBLICATIONS
– Foster Pepper Local Open Government Blog
  + Steve DiJulio is a contributor to Foster Pepper’s Local Open Government Blog.
  – “U.S. Supreme Court Decision Expands Scope of Takings Clause,” Co-author, Foster Pepper News Alert, June 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
  – 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, 1986-2016
  – Bidding Public Works and Construction Contracts, Program Co-Chair, The Seminar Group
    + May 2016
    + March 2016
  – Elected Officials Essentials Live Webinar, Speaker, Association of Washington Cities, December 2015
  – “Managing the Record and the Okanogan PUD Litigation,” Speaker, PUD Municipal Attorney Conference, June 2015
  – “Is Your Employee Handbook Ready for Prime Time?” Speaker, Foster Pepper Client Briefing, April 2015
− “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
− “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
− “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
− “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

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

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

SERVICES
Litigation & Dispute Resolution
Emerging Companies & Venture Capital
Employment & Labor
Media, Entertainment & Games
Nonprofit & Tax-Exempt Organizations
Ports
Retail & Consumer Products
Transportation
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
    - 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

PRESENTATIONS
- “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,” 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
- “Wage & Hour Compliance – Beyond the Basics (Part I),” Presenter, Foster Pepper Client Briefing, February 2013
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

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