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  - Alicia Feichtmeir, Foster Pepper PLLC
  - Steve Peltin, Foster Pepper PLLC
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Agenda

Tuesday, May 14, 2013

8:00 – 8:10 am  Welcome and Introduction
                Steve Peltin | Foster Pepper PLLC

8:10 – 8:20 am  New Developments in Employment & Labor Law
                Alicia Feichtmeir | Foster Pepper PLLC

8:20 – 8:35 am  Minimum Wage | Best Practices for Timekeeping | Meal & Rest Periods
                Steve Peltin | Foster Pepper PLLC

8:35 – 9:15 am  Determining Compensable Time
                Janelle Milodragovich | Foster Pepper PLLC

9:15 – 9:30 am  Making Permissable Deductions from Pay | Payroll Errors | Internal Employment Audits
                Katie McCoy | Foster Pepper PLLC
Agenda

Tuesday, May 14, 2013

10:30 – 10:40 am  Welcome and Introduction  
Steve Peltin | Foster Pepper PLLC

10:40 – 10:50 am  New Developments in Employment & Labor Law  
Alicia Feichtmeir | Foster Pepper PLLC

10:50 – 11:05 am  Minimum Wage | Best Practices for Timekeeping | Meal & Rest Periods  
Steve Peltin | Foster Pepper PLLC

11:05 – 11:45 am  Determining Compensable Time  
Janelle Milodragovich | Foster Pepper PLLC

11:45 am – 12:00 pm Making Permissable Deductions from Pay | Payroll Errors | Internal Employment Audits  
Katie McCoy | Foster Pepper PLLC
WAGE AND HOUR COMPLIANCE – BEYOND THE BASICS (Part II)

Presented by: Foster Pepper PLLC
Tuesday, May 14, 2013
Please Fill out Evaluation Forms
Today: Wage and Hour for Non-Exempt Employees
Why Important Today?

- Continue to apply outdated / complex laws
- All employers make mistakes
- Class actions / big dollars
- Discord, dissatisfaction, and union organizing
Today’s Program

- Addressing minimum wage issues
- Implementing best practices for timekeeping
- Establishing meal and rest breaks
- Determining compensable work, such as on-call, set-up and travel time
- Setting up lawful alternative schedules and comp time provisions
- Assuring permissible deductions during employment and at termination
- Correcting payroll errors
- Utilizing internal employment audits
New Developments in Employment and Labor Law
Social Media Privacy Legislation

- Prohibition on employers’ ability to demand access to employees’ social media
Social Media Privacy Legislation – Nationwide

- Legislation introduced or pending in at least 35 states
- Enacted in 2012: California, Delaware, Illinois, Maryland, Michigan
- Enacted in 2013: Arkansas, Utah, New Mexico
- New Jersey veto last week
  - Gov. Christie returned to legislature, concerned that language over-broad
Social Media Privacy Legislation - Washington

- SB 5211 passed by legislature April 27
- Governor to act by May 17
- Will add new section to Chapter 49.44 RCW
Employers may not:

- Ask for passwords
- Engage in “shoulder-surfing”
- Ask employees to change privacy settings
- Ask employees to add them as “friends”
Social Media Privacy Legislation - Washington, cont.

- Exceptions
  - Employer investigations based on (1) legal violations; or (2) suspicion of misappropriation by employees
  - Employer-supplied devices, intranets, employer social media

- Potential damages
  - Actual damages, $500 penalty, attorneys’ fees
Social Media Privacy Legislation – FINRA Concerns

- Securities/FINRA concerns
  - Concern employees could be using social networks for financial/investment advice, fraud, ponzi schemes

- Proposed solution
  - Carve out exemptions from social media privacy legislation to allow certain financial firms to look at employees’ social media
Social Media Legislation - Takeaways

- Legislation likely to pass in most states
- Prudent employers will not be impacted by the legislation
  - Engage an outside vendor to conduct social media searches on potential hires
- Check Washington Workplace Law for the latest on this issue
Sick & Safe Leave

- New FAQs issued from the City of Seattle Office for Civil Rights
- Washington State
  - Statewide legislation has not passed
  - Bill limiting Seattle leave laws to only Seattle-based employers has not passed
- Nationwide
  - Sick leave laws passed in Portland and NYC (effective 2014)
  - Bill blocked in Philadelphia
Family Medical Leave Act Turns 20

- **New regulations:** New regulations applying to military caregiver leave, qualifying exigency leave, and leave for airline flight crew employees
- **New forms and posters:** Check out the DOL website for the latest
- **New spin:** DOL statistics tout positive effect of FMLA in the workplace
- **New information:** Check out Washington Workplace Law blog for comprehensive coverage

★ HAPPY BIRTHDAY! ★
New Forms and Break Room Postings

- New I-9 form issued by USCIS (good for 3 years)
- New FMLA poster issued by DOL
Minimum Wage
Minimum Wage in Washington
Minimum Wage in Washington

- Now $9.19 per hour
- Increases every January based on CPI
- Does not include tips
- Subminimum wage (85%) for 14-15 year olds
- Other sub-minimums
- Post the notice!
Determining Hours Worked For Minimum Wage

- Compensable time same as for overtime
- Follow same rules as tracking for overtime
- Same opportunities for correction
- Less likely to create litigation
Best Practices
For Timekeeping
Employer Must Keep Accurate Time Records

- Starting point for audit and lawsuit
- Good timekeeping records and practices: defer to employer record of time worked
- Bad: more likely to accept employee’s account
Timekeeping Issues

- Records that must be kept
- Keep at least three years
Timekeeping Issues

- Fixed schedule: can show deviation
- Varying schedule: must show in/out
- Don’t forget rest and lunch breaks
- Approval/correction
- Rounding: can round to nearest quarter hour or less if system is neutral
- Software does automatically – if programmed right
Meal And Rest Periods

Rest Periods
Rest Periods

- Paid
- Schedule: 10+ minutes for every four hours worked, as close as possible to middle of shift
- Can’t require employees to work more than three hours without rest period
- “Mini-breaks” OK
- Can require employees to stay on premises or on call
- Minors get rest periods more often
Missed Rest Periods

- Can’t waive rest periods
- If work during all or part of rest period, get remainder within same four hours
- If don’t get entire period, remainder must be paid; can trigger overtime
- Nurses lawsuits
Meal Periods
Meal Periods

- 30+ minutes
- Provided between 2\textsuperscript{nd} and 5\textsuperscript{th} hour
- Additional meal period (5 hours after 1\textsuperscript{st} one) if working 3+ extra hours
- Usually unpaid
Meal Periods – Paid Or Unpaid?

- Paid if employee on duty; unpaid if completely free from duties
- Unpaid even if required to stay on premises
- Unpaid if keep page/cell phone on – so long as no obligation to respond or return to work
- If meal period interrupted, gets the rest of the 30 minutes, and all is paid
- Beware of overtime requirements
Meal Periods – Can Employee Waive?

- Yes, if employer agrees
- Employee can request meal period anyway
- Best to get in writing
Exceptions to Rest/Meal Period Requirements

- CBA in construction trades
- CBA for public employers
- Public employers’ grandfathered resolution or ordinance
- Variance from L&I
Determining Compensable Time
Determining Compensable Time

- Primary shift
- Preparatory and postliminary activities
- Donning and doffing
- Travel time
- Walking time
- Waiting or on-call time
What Is Compensable Time?

Compensable work includes activities that are:

- Primarily for the benefit of the employer
- “Suffered or permitted” by the employer

Work includes physical and mental exertion, but exertion is not always required
What Is Compensable Time?

- De Minimis doctrine
  - An employer may disregard “infrequent and insignificant” time beyond the scheduled working hours depending on the realities of the workplace

- Depends on:
  - Duration – a few seconds or minutes
  - Frequency of occurrence
  - Administrative difficulty of recording time
  - Aggregate amount of compensable time involved
Compensable Time – Preliminary/Postliminary

- Potential issues may include:
  - Working from home
  - Commuting and travel time
  - Donning/doffing
  - Security screening
  - Waiting and walking time
  - Start up and shut down of computers, equipment and tools
Compensable Time – Working From Home

- Home-based activities may be compensable
- Consider whether the activities:
  - Primarily benefit the employer?
  - Are integral and indispensable to principal activities?
  - Are undertaken with employer knowledge or approval?
- Consider whether activities are *de minimis*
Compensable Time – Commuting

- Commuting to and from work generally not compensable
Compensable Time – Commuting

- May be compensable time if it includes:
  - Commuting between job sites
  - Travel in company vehicles
  - Transporting equipment and co-workers
  - Discussion of work-related issues
Compensable Time – Preparation Time

- May be compensable time if it is:
  - Necessary for an employee to perform the job
  - Performed in readiness or completion of the job
  - Compensable if the employee does not control when and where he/she will perform the prep activities
Compensable Time – Donning & Doffing

CAUTION
PERSONAL PROTECTIVE EQUIPMENT REQUIRED BEYOND THIS POINT
Compensable Time – Donning & Doffing

- Pay employees if donning and doffing “unique gear” specific to the particular industry
Compensable Time – Donning & Doffing

- Donning and doffing “non-unique gear” such as hard hats, boots, goggles, and safety glasses is not compensable.
Compensable Time – Donning & Doffing
Compensable Time – Security Screening

- Time spent waiting for and walking through security checkpoints may be compensable
Compensable Time – Security Screening

- Considerations:
  - Required by employer?
  - Employer receives primary benefit?
  - Necessary for performance of the job?
Compensable Time – Waiting Time

- Employees are working if they are “engaged” to wait
Compensable Time – Waiting Time

- Employees are not working if they are “waiting to be engaged”
Compensable Time – Waiting Time

- Considerations:
  - Are employees completely free from duty and able to use time for their own purposes?
    - Excessive geographic restrictions
    - Fixed time limit for response
    - Frequency of calls
  - Do the activities fall inside or outside of the regular workday?
Compensable Time – Travel Time

- When active duties are performed during travel time, time is compensable
Compensable Time – Travel Time

- Travel time outside normal work hours spent as a passenger is not compensable unless work performed during that time.
Compensable Time – Travel Time

- Overnight travel: all time spent traveling during working hours corresponding to normal work hours must be counted as time worked
  - Includes travel on weekends and holidays when travel hours correspond to hours the employee would normally work on other days of the week
Compensable Time – Employee Discussions

- Discussions required for business operations are compensable
- May not be compensable if:
  - Personal
  - Short duration
Compensable Time – Computers, Equipment and Tools
Compensable Time – Training

- Generally, time spent attending training is compensable
- Time spent attending lectures, meetings or training is not compensable if:
  - Attendance is voluntary
  - The employee does not perform productive work during the training
  - The training occurs outside regular business hours
  - The training is not directly related to the employee’s current job
### Compensable Time – Union Exceptions

- Employers with bargaining units may exclude “time spent changing clothes or washing at the beginning or end of each workday” from compensable time.
- Must be expressly excluded or consistent past practice.
Lawful Alternatives – Comp Time

- Private employers: FLSA does not allow comp time
Public employers: FLSA and Washington law allow for “comp time”

- Employee must receive at least 1.5 hours of comp time for each hour of overtime worked
  - 4 hours OT = 6 hours comp time

- Must be at employee’s request and agreed to by the employee

- Employers may not impose comp time in lieu of OT wages

- Limits: 480 hours for emergency personnel engaged in seasonal activities, 240 hours for all others
Lawful Alternatives – Flexible Schedules

- Flexible schedule = alternative to 9-5, 40 hour workweek
- FLSA does not address flexible schedules
- Washington has no regulations on when and how workers are scheduled to work.
  - Not required to provide weekends and holidays off
  - Not required to provide notice prior to a schedule change
    (although best practice might dictate otherwise)
Making Permissible Deductions from Pay
Deducting from Employee Pay

- RCW 49.52.060 and WAC 296-126-028 (deductions from current employee wages)
- RCW 49.48.010 and WAC 296-126-025 (final employee wages and deductions)
- WAC 296-126-030 (correcting overpayments)
Deductions While Employed or Final Paycheck

These deductions *may reduce* the employee’s wage below the minimum wage:

- State and federal taxes
- Medical, surgical, or hospital care or service;
- To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding or child support

Never Allowed: Unemployment compensation
Permissible Deductions While Employed

Other deductions may be made if:

- Agreed upon by the employee in writing; and
- In advance
- For a lawful purpose
- For the benefit of the employee
Permissible Deductions from Final Paycheck

- These deductions may also be taken from a final paycheck:
  - Pension, medical dental or other benefit plans;
  - Payment to a creditor or third party for benefit of employee
- Require oral or written agreement in advance
- May reduce final pay below the minimum wage
More Final Pay Deductions

- Certain deductions permitted **only from final paycheck**
- May **not** reduced final pay check below minimum wage
- Must be an **oral or written agreement** with employee
  - Cash shortage in the till
  - Equipment breakage or loss
  - Bad checks/credit card purchases
  - Worker theft
  - Other agreed payments for the business’s benefit
Correcting Overpayments

- Overpayment must be **infrequent and inadvertent**
- Must be deducted within **90 days**
- May reduce the employee’s wages below minimum wage
- Regulation does not apply to public employers
Payroll Deductions – Common Problems
Correcting Payroll Errors

- Determine whether the problem is merely a payroll error, or a systemic problem
  - If payroll error, promptly pay the employee
- Systemic problems present two issues:
  - How to assure future compliance
  - Whether and how to address past exposure
Utilizing internal employment audits

- **Why** conduct internal wage & hour audits?
- **Scope** of the audit
- **Common issues** covered
- **Responding** to problems discovered during an audit
- **Best practices** following an audit
Alicia is an associate in the firm’s Litigation and Dispute Resolution group, where she focuses on resolution of civil cases, including employment disputes, commercial litigation, environmental, and regulatory issues. She counsels clients on all aspects of the litigation process, including case strategy, risk evaluation, discovery and trial planning.

Alicia’s Employment and Labor Relations practice includes defending managers in litigation involving discrimination, wrongful discharge, and unemployment claims. She has assisted employers with preventative work including employee handbooks and management policies.

**PROFESSIONAL/CIVIC ACTIVITIES**

- Federal Bar Association of the Western District of Washington, Website/Communications Committee Co-Chair, 2011-Present
- Solid Ground Family Assistance Program, Advisory Board Member, 2009-Present
- Foster Pepper Pro Bono
  - Featured in 2012 Foster Pepper Pro Bono Annual Report
  - Featured in 2010 Foster Pepper Pro Bono Annual Report

**NEWS**

- “Judicial Candidates Pledge Ethical Campaigns,” May 20, 2010

**PUBLICATIONS**

Alicia Feichtmeir is a contributor to two of Foster Pepper’s blogs:

- Local Open Government Blog - [www.localopengovernment.com](http://www.localopengovernment.com)

PRESENTATIONS

- “Wage & Hour Compliance – Beyond the Basics (Part I),” Presenter, Seattle, WA, February 2013
- “Mandatory/Permissive Bargaining” and “Public Records/Information Disclosure,” Speaker, Managing the Process of Labor Relations, Spokane, WA, October 2011

PROFESSIONAL BACKGROUND

- 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

ADMISSIONS

- Washington, 2009
- U.S. District Court
  - Western District of Washington, 2011
  - Eastern District of Washington, 2011

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
Steven R. Peltin

Member

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PRACTICES
Employment and Labor Relations (Chair)

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Emerging Companies and Venture Capital
Retail

PRACTICE OVERVIEW
Steve chairs the firm’s Employment and Labor Relations practice and his practice 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 experience in litigation 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 CASES
- Won a jury trial for an employer accused of age discrimination by laid-off union employee.
- Prevailed in a hearing before the United States 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 removed and refused to return computerized documents and information.
- Won summary judgment on sex bias claim by male employee of performing arts client.
Steven R. Peltin (continued)

- 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 case brought by former executive seeking payments under a Supplemental Executive Retirement Plan.

REPRESENTATIVE 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.

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

PROFESSIONAL/CIVIC 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 2012 Pro Bono Annual Report

PUBLICATIONS
Steve Peltin is a frequent contributor to Foster Pepper’s Washington Workplace Law blog. See the latest at www.washingtonworkplacelaw.com.
Steven R. Peltin (continued)

- “Employers: Beware of High School Diploma Requirements,” Author, WIB HR & Training Digest, February 2012
- “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
- “Workplace Sexual Harassment,” Author, Realty & Building
- “Department of Labor Expands FMLA Leave Rights for Non-traditional Families,” Author, K&L Gates Labor and Employment Alert

NEWS
- “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

PRESENTATIONS
- “Wage and Hour Compliance – Beyond the Basics (Part I),” Speaker/Moderator, Foster Pepper Client Briefing
Steven R. Peltin (continued)

- “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,” Presenter, SURF Incubator
- “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,” Panelist, 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,” Panelist, 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
- “FMLA and Leave Law,” Speaker, 14th Annual Labor & Employment Law Conference, The Seminar Group
- “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
- “When Hand Washing is Not Enough: Legal Challenges Presented By the Flu Pandemic,” Speaker, K&L Gates Breakfast briefing
- “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
“Blowing the Whistle: Policies & Procures under Sarbanes-Oxley,” Speaker, Preston Gates & Ellis LLP Breakfast Briefing
“Workplace Investigations,” Speaker, Council on Education in Management
“Email and the Internet – Legal Challenges for Employers,” Speaker, PUD and Municipal Attorneys Association
“Minimizing Risks When Upsizing, Downsizing, and Using Alternative Work Arrangements,” Speaker, Preston Gates & Ellis LLP Breakfast Briefing
“Negligent Hiring Liability, Pre-Hire Investigations and the Fair Credit Reporting Act,” Speaker, Preston Gates & Ellis LLP Breakfast Briefing

PROFESSIONAL BACKGROUND
- 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 Hon. John C. Shabaz, 1982-1983

ADMISSIONS
- Washington, 1999
- Illinois, 1983

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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PRACTICES
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Retail
Wineries, Breweries and Distilleries

PRACTICE OVERVIEW
Ms. Milodragovich advises and represents all types of employers in a broad range of labor and employment law matters, including union avoidance, wage and hour disputes, discrimination complaints, progressive discipline issues, and employee terminations. She represents corporations and small business in union negotiations, organizing campaigns, elections and labor arbitrations. Ms. Milodragovich’s practice also includes representing clients in unfair labor practice proceedings and 10j actions before the National Labor Relations Board and related administrative agencies.

In addition to her traditional labor experience, Ms. Milodragovich has significant experience defending employers of all sizes in employment litigation involving claims of disability and employment discrimination, wrongful termination, and wage and hour class actions. She has extensive California litigation experience, including representing employers in California state administrative proceedings. Ms. Milodragovich works closely with Human Resource professionals to ensure clients’ compliance with applicable state and federal labor laws, as well as other statutory and contractual obligations. She also serves as Publisher of Foster Pepper’s Washington Workplace Law blog: www.washingtonworkplacelaw.com.

In the area of intellectual property, Janelle focuses her practice on the defense of patent infringement claims and challenges to patent validity. Janelle’s experience includes the review of a diverse array of patents, including consumer products and HVAC system implementation. Her practice also includes trademark infringement litigation.

Prior to law school, Ms. Milodragovich worked as a Human Resources Generalist for a multi-state education company.

PROFESSIONAL/CIVIC ACTIVITIES
- American Bar Association
- King County Bar Association
- Washington State Bar Association
- California Bar Association
- Serbian Bar Association of America
Janelle Milodragovich (continued)

- Foster Pepper Pro Bono
  - Featured in 2012 Foster Pepper Pro Bono Annual Report

PUBLICATIONS

Janelle Milodragovich is a contributor to Foster Pepper's Washington Workplace Law blog. Check out the latest news in this fast-changing area at: www.washingtonworkplacelaw.com.

PRESENTATIONS

- "Wage & Hour Compliance – Beyond the Basics (Part I)," Presenter, Seattle, WA, February 2013
- "Filling the Empty Chairs: Legal and Effective Hiring," Presenter, Seattle, WA, October 2012
- "Coordination with and Management of Elected Officials," Co-Presenter, WAPELRA Fall Conference, September 2012
- "Employment Inquiries in the Age of Social Media," Speaker, 2012 Civil Service Conference, September 2012
- "The NLRB’s Expanding Agenda," Speaker, Employment Law Beyond the Basics, Spokane, WA, August 2012
- "Out of Sight, But Not Out of Mind: Untangling Employer Obligations Under FMLA and Other Statutes," Speaker, Seattle, WA, September 2011
- "Issues Arising From Off-Duty Use of Social Media," Speaker, Social Media in the Workplace, May 2011
- "Employment-Related Due Diligence For Transactional Attorneys," Speaker, WSBA YLD Summit, April 2011
PROFESSIONAL BACKGROUND

- Foster Pepper PLLC, Associate, 2010-Present
- Littler Mendelson, PC (San Francisco, CA), Associate, 2005-2010
- Office of the Washington State Attorney General, Ecology Division, Clerk, 2004
- Office of the Washington State Attorney General, UW Division, Clerk, June 2003-June 2004 and September – December 2004

ADMISSIONS

- Washington, 2010
- California, 2005
- Ninth Circuit Appellate Court
- U.S. District Court
  - Eastern District of Washington, 2012
  - Central District of California, 2009
  - Northern District of California, 2006

EDUCATION

- J.D., University of Washington School of Law, 2005
- B.A., Washington State University, 1999
  - Selected by Governor Gary Locke as first Student Regent, 1998-1999
  - WSU Commencement, Student Speaker, 1999
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PRACTICES
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Employment and Labor Relations

INDUSTRIES
Retail
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PRACTICE OVERVIEW
Katie’s practice focuses on litigation and dispute resolution, with an emphasis in commercial and employment litigation. She has broad experience litigating complex commercial disputes in state and federal courts and private arbitration, including contract claims, business torts, trademark and intellectual property claims, fraud claims, partnership disputes and shareholder derivative actions. Katie has significant trial experience in court and private arbitration.

In her employment practice, Katie has experience in both federal and state courts defending employers and managers in employment litigation involving claims for violation of federal and state anti-discrimination, disability, and family and medical leave laws, wrongful discharge in violation of public policy, and emotional distress claims. She also helps employers enforce non-competition agreements, protect trade secrets and other confidential business information, and prevent unfair competition through negotiation, temporary restraining orders, and other injunctive relief.

REPRESENTATIVE CASES
Commercial Litigation

- Represent Korean-based flat panel display manufacturer in price fixing claims brought by Washington State Attorney General’s Office. Obtained dismissal on personal jurisdiction grounds; appeal pending.
- Defend Northwest-based global retailer against former supplier’s breach of contract, fraud, CPA, and unjust enrichment claims. Fraud claims dismissed on summary judgment. Client deemed the prevailing party after 12-day trial in private arbitration, defeating plaintiff’s $23 million damage claim and obtaining attorneys’ fees and costs.
- Defend Northwest-based global retailer against claims brought by former supplier’s bank involving supplier’s sales contract and account. Dismissed on summary judgment in private arbitration, with attorneys’ fees and costs awarded.
- Defend Northwest-based global retailer against fraudulent inducement, breach of contract, and unjust enrichment claims brought by former tax vendor. All claims denied following 4-day trial in private arbitration.
Employment Disputes

- Defend public employer in damages phase of class action lawsuit involving claims for retirement benefits; case pending.
- Represent private employer in claims for breach of employment agreement, breach of fiduciary duty, and misappropriation of trade secrets against two former company executives. Obtained favorable settlement and entry of agreed court orders for injunctive relief enforcing non-competition agreement provisions.
- Represent banking company against former employee’s wrongful termination and emotional distress claims. Employee voluntarily dropped the lawsuit in response to a motion to dismiss.
- Defend local security company against former employee’s wrongful termination, gender discrimination, breach of contract and emotional distress claims. Wrongful termination claims dismissed on summary judgment; favorable settlement obtained for remaining claims.

Intellectual Property & Trademarks

- Represent online real estate brokerage in patent infringement claims in Eastern District of Texas; case pending.
- Defend mortgage company against trademark, breach of contract, false light and similar claims in federal court. Summary judgment dismissal of plaintiff’s trademark infringement and dilution, breach of contract, false light, and misappropriation of likeness claims.
- Defend online retailer against competitor’s claims for trademark infringement and imitation, unfair competition, and tort claims. Favorable and early settlement of all claims.

Injunctive Relief

- Defend City of Seattle in action for emergency injunctive relief brought by public defender agency seeking to prevent contract award to its competitor. Successfully defeated motion for temporary restraining order and preliminary injunction at trial court and affirmed on appeal.
- Obtain temporary restraining order against Snohomish County employer’s former employee who violated non-competition agreement and took trade secrets to direct competitor.
- Obtain temporary restraining order in Whatcom County against signature gatherers trespassing on client’s private property and harassing client’s customers.
- Negotiate with State agency to obtain redactions to private client’s confidential and proprietary bid proposal, which was sought by client’s direct competitor in a public records request; prevented need for emergency injunctive relief.
Constitutional Litigation


PROFESSIONAL/CIVIC ACTIVITIES

- Legal Voice
  - Board Member (current)
  - Auction Committee (current)

- Star Guild, Children's Hospital Guild Association, Board Member, 2006-2010

- Foster Pepper Pro Bono
  - Featured in 2011 Foster Pepper Pro Bono Annual Report
  - Featured in 2010 Foster Pepper Pro Bono Annual Report
  - Featured in 2009 Foster Pepper Pro Bono Annual Report
  - Featured in 2006 Foster Pepper Pro Bono Annual Report

- Washington State Bar Association

PUBLICATIONS

Katie Carder McCoy is a contributor to Foster Pepper's Washington Workplace Law blog. Check out the latest news in this fast-changing area at:

- “Experts give their solutions to difficult workplace problems,” What's Working in Human Resources, August 2012

PRESENTATIONS

- “Gathering Information and Avoiding Claims,” Speaker, Filling the Empty Chairs: Legal & Effective Hiring, Seattle, WA, October 2012

“Seattle Paid Sick and Safe Time: Practical Guidance Employers Need to Know,” Speaker, Seattle, WA, August 2012

“Disability Accommodation: Navigating the Interactive Process,” Speaker, Reasonably Accommodating Employees with Disabilities, Seattle, WA, June 2012


“Update on Developments in Employment Law,” Speaker, Social Media in the Workplace, Seattle, WA, May 2011

“Just Cause,” Speaker, Civil Service Conference, October 2010

“Compensation Issues under FLSA/Wage and Hour,” Speaker, Fundamentals of Employment Law, Seattle, WA, June 2010

**PROFESSIONAL BACKGROUND**

- Foster Pepper PLLC
  - Associate, 2006-Present
  - Summer Associate, 2005
- Lane County Legal Aid (Eugene, OR), Legal Extern, 2005
- Oregon Department of Justice, Trial Division (Salem, OR), Law Clerk, 2004-2005

**ADMISSIONS**

- Washington, 2006
- U.S. District Court
  - Eastern District of Washington, 2007
  - Western District of Washington, 2006
- U.S. Court of Appeals, Ninth Circuit, 2011
- U.S. Supreme Court, 2012

**EDUCATION**

- J.D., University of Oregon School of Law, 2006
  - University of Oregon President Dave Frohnmayer, Graduate Teaching Assistant, 2006
- B.A., University of Washington, 2003
Speaker Materials
Happy Birthday FMLA! Lots of Presents for Employers

Posted by Steve Peltin on April 05, 2013

Has it really been 20 years since President Clinton signed the law establishing the federal right to leaves of absence for many who work for larger employers? While many employees have appreciated the benefits of job-protected time away from work, HR managers and business owners have confronted complex amendments, regulations, rules, and scores of lawsuits. The DOL recently issued new regulations, forms and interpretations. Employers should take the time to update kitchen postings and ensure they understand current FMLA requirements.

The first 20 years: In earlier posts (first of a four-part series; second installment; third installment, and final installment), we outlined the traditional requirements of the FMLA and related Washington law. For more detail, we provided this comprehensive article which will be updated this summer. We more recently noted a link to new regulations expanding FMLA benefits for military caregivers.

New regulations: The US Department of Labor released 115 pages of new rules applying to military caregiver leave, qualifying exigency leave, and leave for airline flight crew employees. The DOL’s summary of the main provisions of the new rule can be found here.

New forms and posters: In case you missed it, a new poster should be adorning your workplace. A number of other FMLA forms are available on the DOL website. Check in periodically, since DOL may update the forms.

- Certification of Health Care Provider for Employee’s Serious Health Condition WH-380-E Form & Instruction
- Certification of Health Care Provider for Family Member’s Serious Health Condition WH-380-F Form & Instruction
- Notice of Eligibility and Rights & Responsibilities WH-381 Form & Instruction
- Designation Notice WH-382 Form & Instruction
- Certification of Qualifying Exigency For Military Family Leave WH-384 Form & Instruction
- Certification for Serious Injury or Illness of Covered Servicemember -- for Military Family Leave WH-385 Form & Instruction
- Certification for Serious Injury or Illness of a Veteran for Wage and Hour Division Military Caregiver Leave WH-385V Form & Instruction
**New spin:** On the eve of FMLA’s 20th birthday, the Department of Labor took the opportunity to trumpet the success of the FMLA, with statistics that seem at odds with our experience. Specifically, the DOL claims that:

- 91% of employers find that complying with the FMLA has had either a positive effect or no noticeable effect on absenteeism, turnover and morale.
- 85% of employers say that complying with the FMLA is very easy, somewhat easy, or has no noticeable effect.
- 24% of FMLA leave is intermittent leave, and fewer than 2% of employees who take intermittent leave do so a day or less at a time.
- Employee misuse of FMLA is rare.

Our experience is closer to the findings on a SHRM survey from 2007, which found more frequent problems with FMLA, particularly with intermittent leave and employee misuse of the law.

If you have questions about FMLA requirements, please contact the Employment and Labor Relations attorneys at Foster Pepper.

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