2026 Legal Update



PRESENTED BY

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PRESENTED FOR

45th Annual Civil Service Conference

Foster Garvey



About Foster Garvey

- Full-service law firm with approximately 150 attorneys across offices in Seattle, Portland, Spokane, Washington, D.C., New York and Tulsa
- Over a century of service supporting public agencies, institutions and mission-driven organizations
- Collaborative, multidisciplinary teams that help clients manage day-to-day issues and long-term planning
- Decades of experience in labor, employment & immigration law, focused on negotiations, workplace policies, investigations, regulatory compliance and more
- Counsel to public employers of all kinds on collective bargaining, investigations and other labor and employment issues

Opening Thoughts



This presentation provides an overview of legal updates from the past year

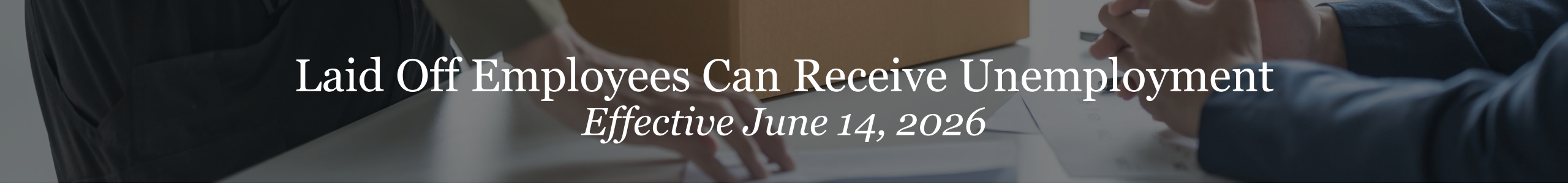


If you have specific questions about the application of these legal changes to your situation, please consult with your attorney



Kelly M. Woodward
Counsel

Washington State Law Updates



Laid Off Employees Can Receive Unemployment

Effective June 14, 2026

RCW 50.20.055 now allows employees who voluntarily accept a layoff to qualify for unemployment benefits

- Separating employer must have announced its intent to reduce workforce by layoff or reduction in force (RIF)
- Employees must have been offered ability to be included in the layoff or RIF
- Employee must have volunteered
- Employer must have terminated employment as a result of the layoff or RIF

No Microchipping Allowed

Effective June 30, 2026

No Microchipping Employees (RCW 49.44.235)

- Employers may not request, require or coerce any employee to get a microchip implant for any reason
- Excludes medical devices used solely to diagnose, treat or monitor a health condition



Washington Immigrant Worker Protection Act

Effective October 1, 2026

- Notice to affected employee(s) and authorized representatives within five business days of receiving federal agency notice of inspection for Form I-9 and related employee records
  - Must include copy of federal notice and additional information, including contact information for a statewide organization that provides information and advocacy about immigrant/refugee rights
  - Must be posted in the workplace and provided directly to employee through primary method of employee communication
  - Safe harbor model notices provided by Attorney General (https://www.atg.wa.gov/IWPA)

Washington Immigrant Worker Protection Act
Effective October 1, 2026 (continued)

- Direct notice to employee and authorized representatives must occur within five business days of receiving *results* of inspection, including a copy of any federal agency notice and information about obligations of employer, employee and requirements for correction of deficiencies in language usually used to communicate with employee
- Required employment poster (https://www.atg.wa.gov/IWPA)



2027 Washington Minimum Wage Increases

Effective January 1, 2027

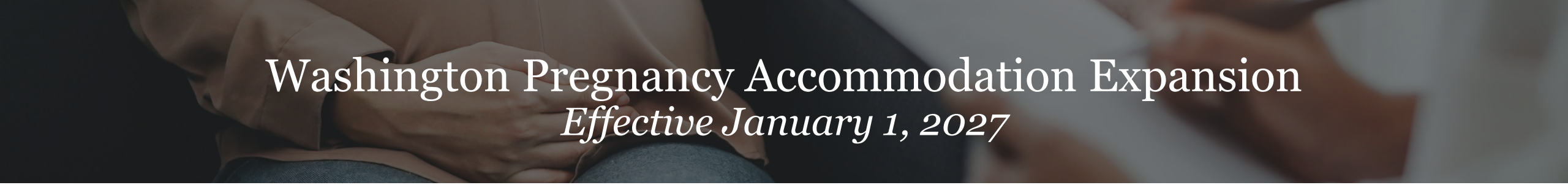
- January 1, 2027: $17.73 per hour (with higher rates in Seattle, SeaTac, Tukwila, Renton, Bellingham, Everett, Burien and unincorporated King County)
- Overtime exempt minimum will be $92,196.00 per year if 51+ employees, $82,976.40 if smaller
- Computer professionals: $62.06 per hour
- Noncompete minimum for 1st half of 2027: $131,326.59 for employees, $328,316.49 for independent contractors; thereafter irrelevant due to new law effective June 30, 2027

Washington PFML Applies to Smaller Employers

Effective January 1, 2027; January 1, 2028

Paid Family Medical Leave (PFML) Amendments (ESSHB 1213)

- Protections under the PFML will be phased in for employees of smaller employers over the next three years
  - 15 or more employees on January 1, 2027
  - 8 or more employees on January 1, 2028
- For purposes of determining employer size, employees out on leave or other absences are counted if they are reasonably expected to return to employment



Washington Pregnancy Accommodation Expansion

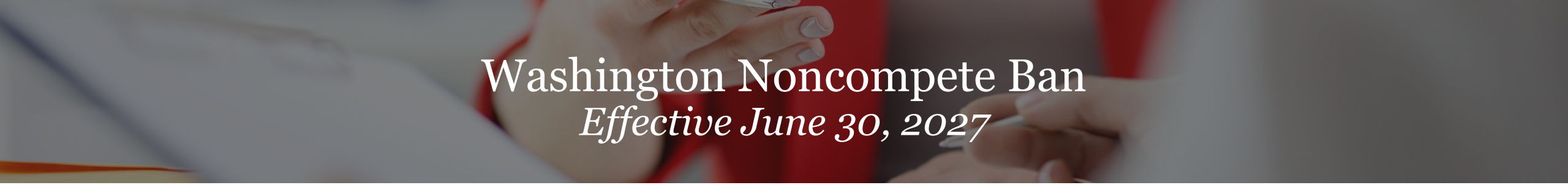
Effective January 1, 2027

- State pregnancy accommodation expands:
  - Reasonable accommodation to include scheduling flexibility for postpartum visits (current law only requires flexibility for prenatal visits)
  - Lactation breaks and associated travel time must be paid, for up to two years after the birth of the child
    - These breaks are in addition to regular meal and rest breaks required under state law
    - Employees cannot be required to use leave



Washington Pregnancy Accommodation
Reminders

- Medical certification cannot be requested for:
  - Limits on lifting over 17 pounds
  - Modification of no food or drink policies
  - Request for provided seating or the ability to sit more frequently
  - More frequent, longer or flexible restroom breaks
  - Request for break time for lactation
- Under federal PWFA, reasonable pregnancy accommodation can include temporary removal of essential function

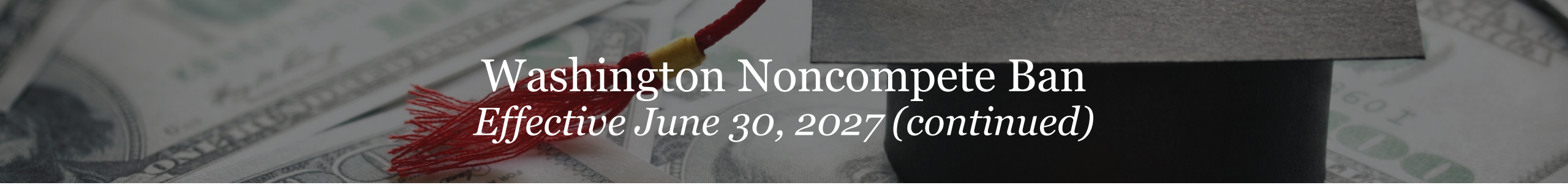


Washington Noncompete Ban

Effective June 30, 2027

Almost all noncompetition agreements with employees and contractors will be void.

- Will void nearly all noncompetition agreements for Washington-based workers
- Employers may not enforce, attempt to enforce, threaten enforcement or represent that a worker is subject to a noncompetition agreement (regardless of when signed)
- Expanded definition of agreements that constitute noncompete agreements
- *Any provision* that limits a worker's ability to work, including:
  - Requiring compensation or benefit repayment, forfeiture or "stay or pay" arrangements tied to post-employment work



Washington Noncompete Ban
Effective June 30, 2027 (continued)

Educational Expense Repayment Exception

- A written agreement to repay out-of-pocket educational expenses is allowed if:
  - Expires within 18 months of employment start date
  - Required repayment is pro rata for only the remaining portion of the 18-month period
  - Repayment is waived if separation from employment is based on "good cause“

Washington Noncompete Ban
Effective June 30, 2027 (continued)

- Repayment of educational expenses must be waived if separation from employment is based on "good cause"
  - Good cause as defined for unemployment:
    - Illness or disability
    - Death, illness or disability of a family member
    - Relocation for employment of a spouse or domestic partner or of minor child
    - Protection from domestic violence
    - Reduction in compensation or hours by 25% or more
    - Material change in worksite
    - Worksite safety deterioration
    - Change in work violates religious or moral beliefs
    - Significant shift change
    - And more



Washington Noncompete Ban

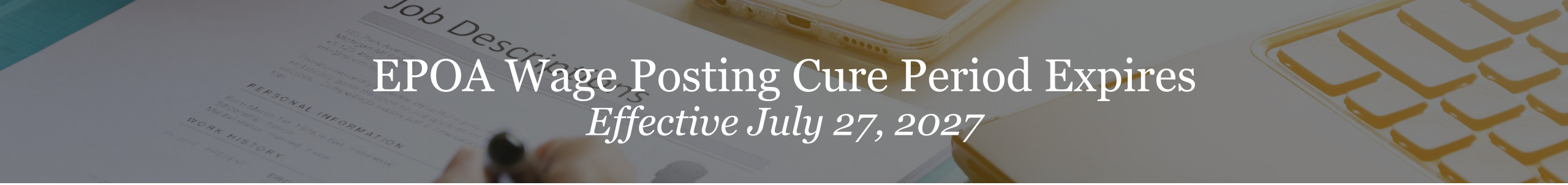
Deadlines: June 30, 2027 & October 1, 2027

Employer Obligations

- **By June 30, 2027**: Employers may not offer or seek to enforce any prohibited noncompetition agreement
- **By October 1, 2027**: Notify current and former workers with prohibited agreements that are still in effect that their noncompetition agreements are unenforceable

Compliance & Penalties

- Liability even if the employer does not sue to enforce; merely attempting to enforce, offering or threatening to enforce, or representing that a worker is subject to a noncompetition agreement, is a violation
- Liability for the greater of actual damages or **$5,000**, plus attorney fees and costs



EPOA Wage Posting Cure Period Expires

Effective July 27, 2027

Wage Posting Requirements, Cure Periods and Penalties/Damages Under the Equal Pay & Opportunities Act (EPOA) (SSB 5408)

- Since July 27, 2025, the law provided employers five business days to correct deficient postings upon receiving notice, including contacting third-party posting platforms. If corrected within five business days, no penalties or damages are levied
- After July 27, 2027, the cure provision no longer applies



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Police/Fire Related Updates



Police & Fire Updates

- **Federal**: No major new federal employment-law change specific to police and fire this year.
- **Hiring**: A new Washington law expands eligibility for certain law enforcement positions to applicants legally authorized to work in the U.S.; corrections officers and prosecutor's office employees must be citizens or legally authorized to work.
- **On duty**: Washington law generally bars LEOs from wearing face coverings that hide their identity when interacting with the public, with exceptions (e.g., medical masks, religious coverings and protective helmets).
- **Leadership**: New eligibility and certification standards for police chiefs and town marshals are in effect. The portions covering elected sheriffs were struck down in court, and the state plans to appeal.
- **Bottom line**: These changes touch hiring, uniforms and appointments at once, and some are still being litigated. Ask: "Which of our checklists and policies still reflect last year's law?"



Police & Fire Cases of Note
Earl v. Campbell (Washington Supreme Court, Sept. 3, 2026)

- **Background**:
  - Individual was fatally shot by a police officer while two officers attempted to execute an arrest warrant for a passenger in her car
  - Her mother sued the officer and the City (negligence and vicarious liability), then sought to add a negligent retention claim against the City based on prior domestic violence allegations against the second officer
  - Court of Appeals barred the claim because the City conceded the officer was acting within their scope of employment; Supreme Court reversed
- **Key Holdings**:
  - Negligent retention and vicarious liability are separate, analytically distinct causes of action that may be pleaded and maintained together
  - A scope-of-employment inquiry is not part of Washington's negligent retention analysis
  - Court of Appeals decisions implying an "outside the scope" requirement are disavowed and overruled
- **Upshot**:
  - Conceding officer was acting within scope of employment no longer shields law enforcement agencies and municipalities from direct negligent retention claims, increasing exposure
  - An officer's prior misconduct history (e.g., domestic violence allegations) can independently support a negligent retention claim against the employer



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Federal Developments



Pregnancy Accommodation
Active Federal Enforcement

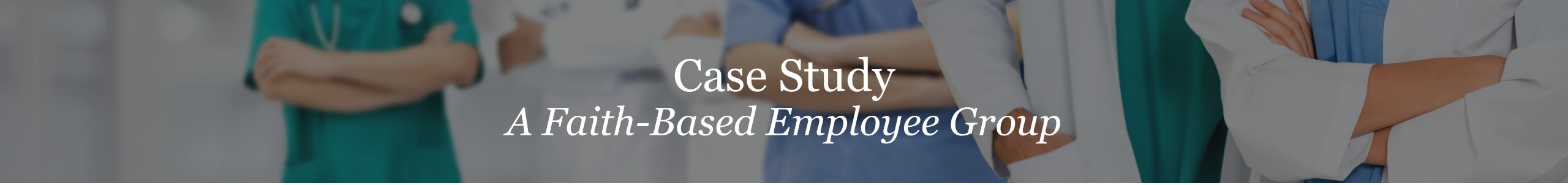
- **What's Happening**: The EEOC is actively suing employers over pregnancy issues – denied water, seating, restroom breaks or time off for prenatal appointments
- In one recent case, a hotel was sued after managers allegedly cut a pregnant employee's hours, demoted her and then fired her
- The federal pregnancy accommodation rule is being revised, with the current EEOC advocating for exclusion of abortion-related treatment as an accommodation related to pregnancy – but the basic duty to accommodate has not changed
- **Best Practices**: Simple requests like water access, breaks and sitting should not require unreasonable documentation like a doctor's note; employers should avoid pushing employees onto leave when another solution works
- **Bottom Line**: Every pregnancy-related request is an accommodation request, even when no one uses that word. The question to ask is not "Can we say no?" but "What would it take to say yes?"



Employee Groups & Affinity Events

"Open to All"

- **What's Happening**: Federal agencies now treat employer-supported groups, events or programs limited to one race, sex or other protected group as potential discrimination
- In one recent case, the federal government sued an employer that held a paid, women-only networking retreat that male employees were not invited to. The case is still pending
- **Why It Matters**: The risk is higher if you receive federal grants, because federal guidance links these practices to grant funding
- **Best Practices**: Review your employee groups, events and mentoring programs. Keep participation open to any interested employee, especially when paid time, travel or access to leaders is involved
- **Bottom Line**: Good intentions don't decide legality; structure does. Ask: "Could any interested employee take part?" With federal guidance and Washington law both in play, the answer is rarely as simple as it looks



Case Study
A Faith-Based Employee Group

- **What Was Reported**: A public hospital employee in Oregon alleged that her Christian employee group was told to drop prayer and Bible study, become “interfaith” and go without resources that other religious groups received
- After the employee’s lawyers sent a demand letter, the hospital approved the group as a Christian group. The dispute has reportedly been mostly resolved
- **Why It Matters**: The rules cut both ways. Treating one religious group differently from others can lead to a claim, and so can limiting membership by a protected trait. Public employers also have First Amendment free-exercise, establishment and free speech obligations
- **Best Practices**: Use written, neutral criteria for all groups. Apply the same timeline, resources and visibility to every group, respond to requests promptly, and document your reasons
- **Bottom Line**: Consistency is your best protection. Ask: “Would we have made the same decision for any other group?” Religious questions in this area almost always have more than one legal dimension



Religious Accommodation
A Higher Bar to Say "No"

- **What's Happening**: The EEOC has made religious discrimination a top priority and is filing more lawsuits in this area
- To deny a religious accommodation, an employer must show a real, substantial burden. "Inconvenient" is not enough
- In one recent case, a store was sued for allegedly demoting a manager after he asked for time off to observe his Sabbath
- **Best Practices**: Talk with the employee, explore options such as shift swaps or schedule changes, and document the conversation. Be especially careful before taking away an accommodation already in place, and handle complaints about faith-based workplace speech carefully
- **Bottom Line**: The bar for saying no is high, and taking back an existing accommodation carries more risk than most expect. Before any denial, ask: "Can we show a real, substantial burden, on paper?"



Other Federal Shifts to Watch

- **What's Happening**: The EEOC has withdrawn some long-standing guidance and proposed ending certain workforce demographic reports. Current reporting obligations still apply until a final rule says otherwise
- The EEOC is stepping back from cases about neutral policies that produce uneven results ("disparate impact") and plans to withdraw federal guidelines on validating hiring tests. Washington law and private lawsuits still cover these issues
- The NLRB now has a majority expected to reverse recent decisions under prior administrations. It does not cover public employers directly, but watch for ripple effects
- The U.S. Dept. of Labor has proposed new rules on independent contractors and joint employment under wage-and-hour and family leave laws, which do apply to public employers
- **Bottom Line**: Federal priorities change; the underlying laws don't. A shift in federal enforcement is not a chance in your obligations under Washington law or your exposure to private lawsuits

Questions?

Thank you.



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