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COUNSEL TO GREAT COMPANIES

Labor & Employment Law Breakfast Seminar

November 16, 2016 – Bellevue, Washington

November 17, 2016 – Seattle, Washington

Presented by:

Linda Walton, Partner

Stephanie Holstein, Associate

Perkins Coie LLP

Agenda

- **Impacts of Election Day Results on Labor & Employment Law**
- **Federal Law Updates**
 - DOL Final Overtime Exemption Rule Goes into Effect December 1, 2016
 - EEOC Issues Final Rules on Wellness Programs
 - EEOC Publishes Information on Leave and the ADA
 - DOJ and FTC Issue Antitrust Guidance for Human Resources Professionals
- **State and Local Law Updates**
 - Washington Passes Initiative 1433
 - Seattle Passes Secure Scheduling Ordinance

Agenda (contd.)

- **U.S. Supreme Court Decisions**
 - Right to Free Speech Protected for Mistaken Speech
 - Limitations Period for Constructive-Discharge Claim Begins Once Employee Resigns
- **Ninth Circuit Decision**
 - Class Action Waiver Illegal Under the NLRA
- **Washington Supreme Court Decisions**
 - Attorney-Client Privilege Does Not Extend to Post-Employment Communications with Former Employees
 - Staffing Directives for Safety Can Be Discriminatory
- **NLRB Trends**

Federal Election Results Will Likely Cause Shift in Labor & Employment Laws

Republican Administration and Congressional Majority

Nominations
&
Appointments

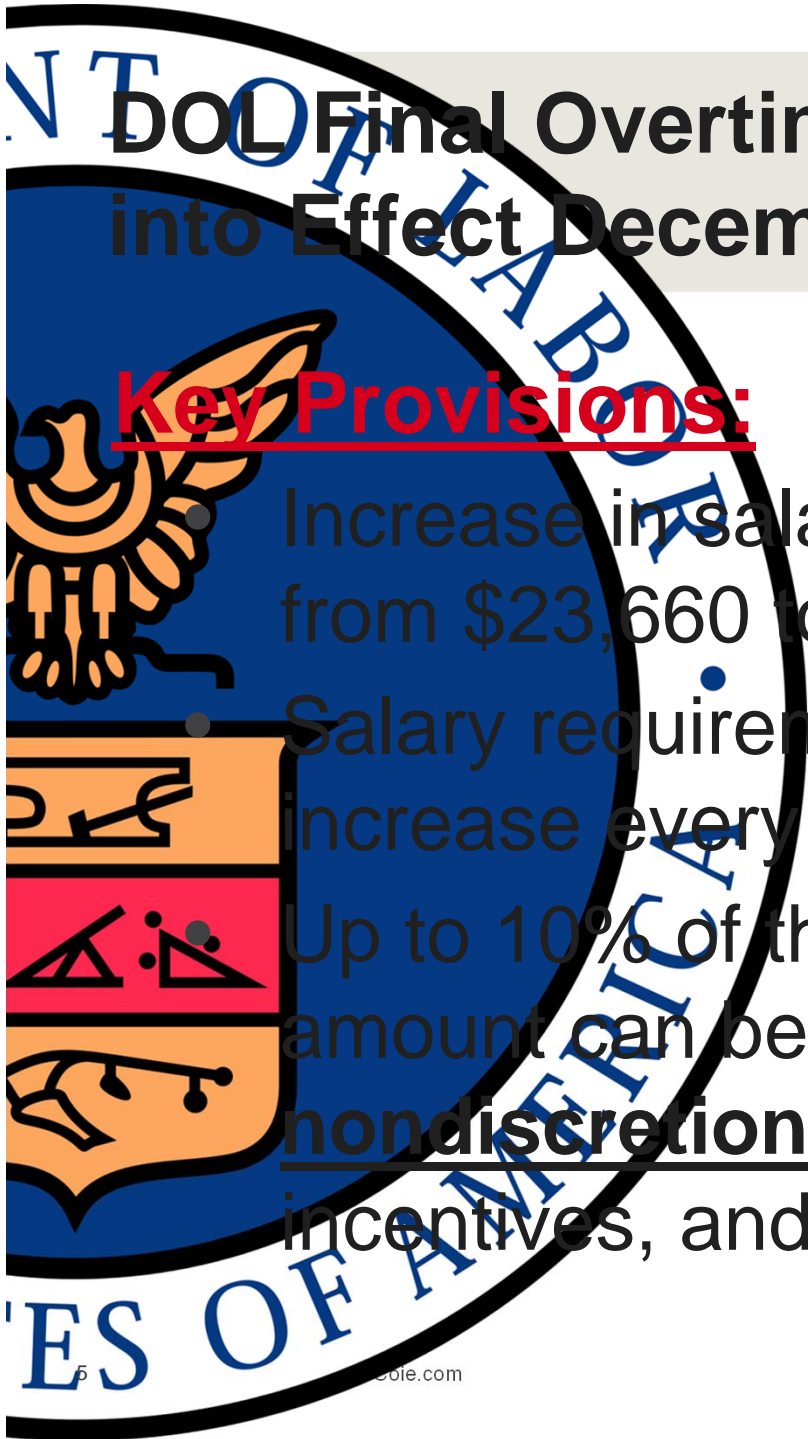
Changes to
Laws,
Regulations,
and Policies

Shift in Labor
&
Relations

DOL Final Overtime Exempt Rule Goes into Effect December 1, 2016

Key Provisions:

- Increase in salary requirement from \$23,660 to \$47,476
- Salary requirement will increase every three years
- Up to 10% of the salary amount can be satisfied by nondiscretionary bonuses, incentives, and commissions



Issues Final Rules on Wellness and the ADA and GINA

Key Provisions:

- Applies to programs requiring questions about disabilities or medical exams for rewards and penalties
- “Voluntary” and “Incentives”
- “Reasonably designed”
- Effective January 1, 2017





Establishes Information on Provided Leave and the ADA

Key Provisions:

- Offer leave as an accommodation
- Modify restrictive leave policies
- Engage in an interactive process
- Avoid “100 percent healed” policies





DOJ and FTC Issue Antitrust Guidance for Resources Professionals

Key Provisions:

- Criminal prosecution of anticompetitive agreements:
 - No-poaching
 - Wage-fixing
 - Exchanging sensitive information
 - Need not be written



Washington Passes Initiative 1433 Minimum Wage

- Increases the minimum wage to \$13.50 by January 1, 2020
 - 2017: \$11.00
 - 2018: \$11.50
 - 2019: \$12.00
 - 2020: \$13.50
- No tip credit
- Applies to employees who are 18 years of age and older



Washington Passes Initiative 1433 Paid Sick Leave

- Effective January 1, 2018
- 1 hour of paid sick leave for every 40 hours worked
- Employees may use paid sick leave when absent due to:
 - Employee's illness, injury, medical treatment
 - Need to care for an ill or injured family member
 - Closure of employee's place of business or child's school due to closure for health-related reason
 - Circumstances qualifying for domestic violence leave



Seattle Secure Scheduling Ordinance

Key Provisions:

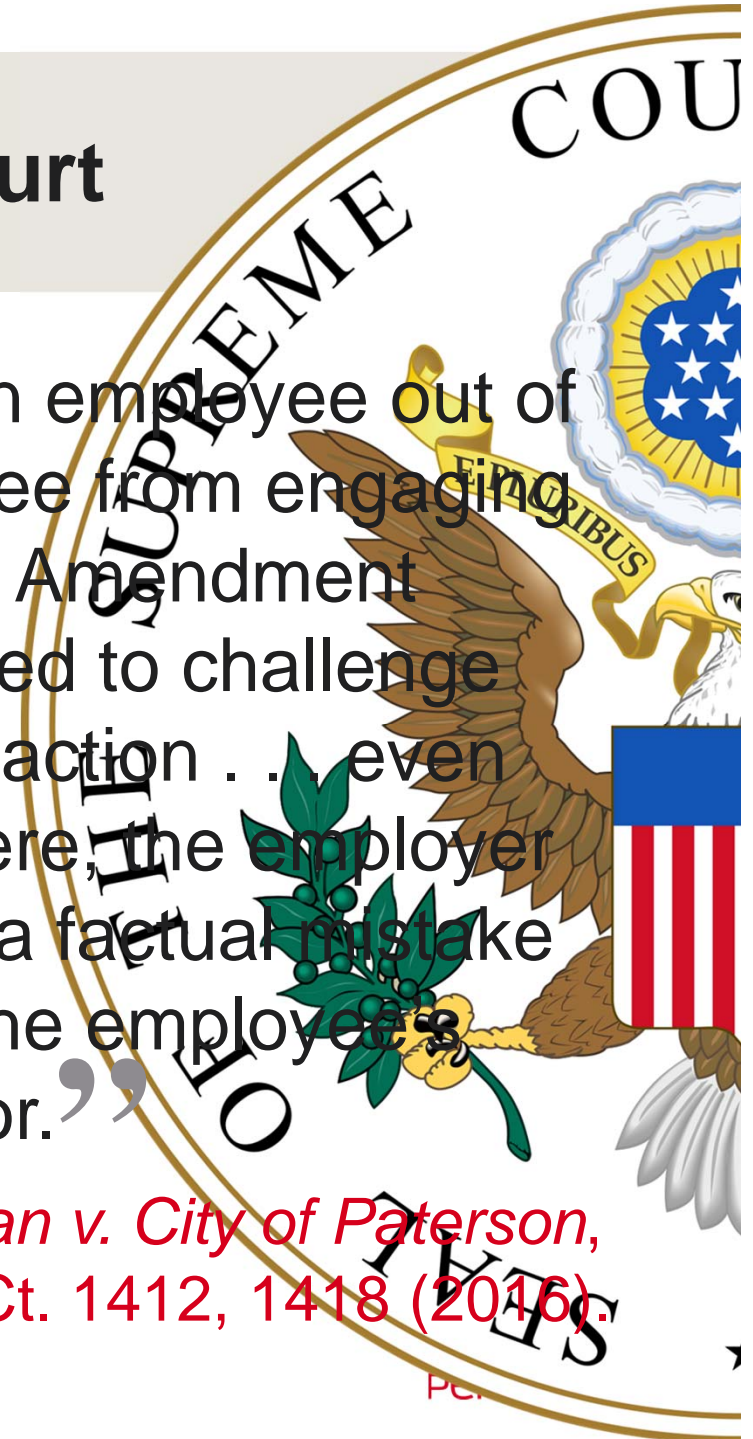
- Retail and food services; > 500 employees
- Scheduling rights for workers
- Cannot be waived
- Recordkeeping and posting required
- Financial penalties
- Effective July 1, 2017



United States Supreme Court

“When an employer demotes an employee out of a desire to prevent the employee from engaging in political activity that the First Amendment protects, the employee is entitled to challenge that unlawful action . . . even if, as here, the employer makes a factual mistake about the employee’s behavior.”

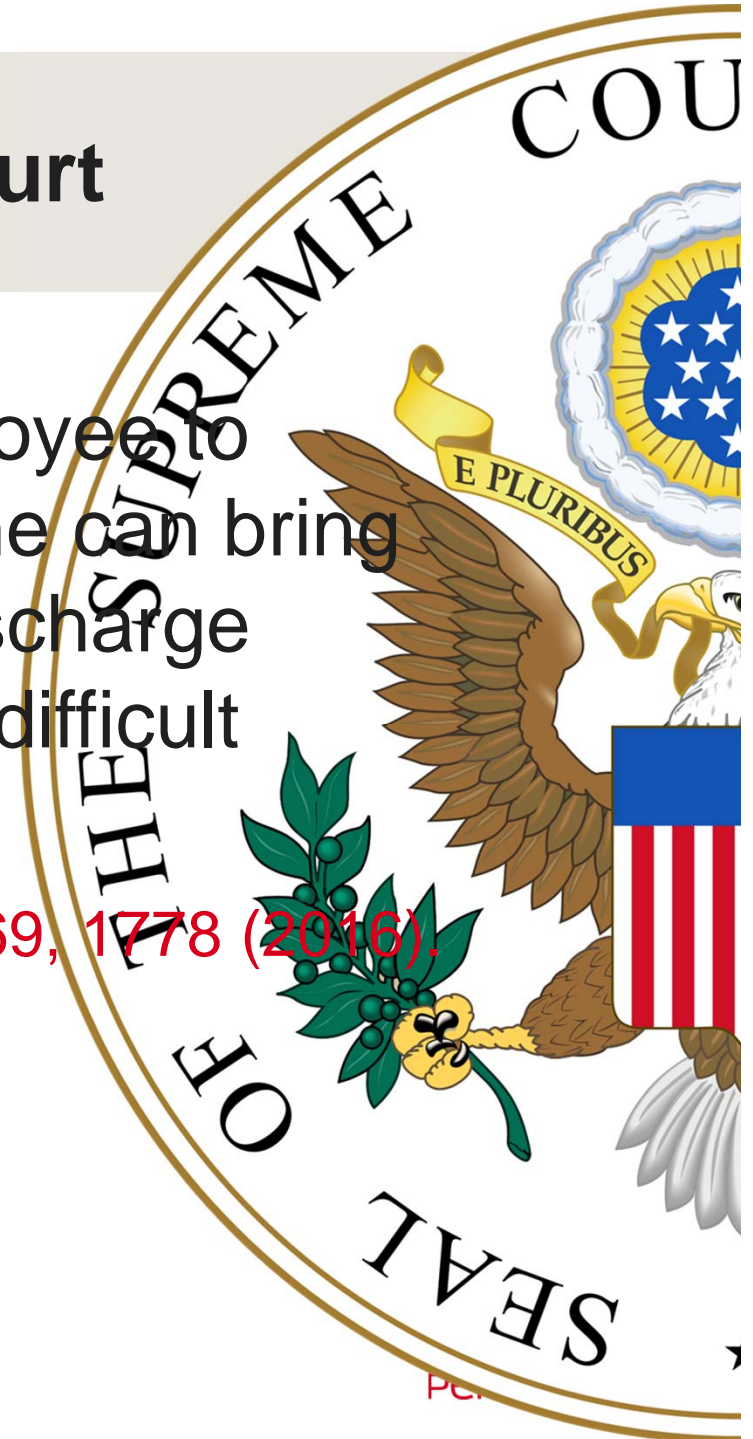
Heffernan v. City of Paterson,
136 S. Ct. 1412, 1418 (2016).



United States Supreme Court

“Moreover, forcing an employee to lodge a complaint before he can bring a claim for constructive discharge places that employee in a difficult situation.”

Green v. Brennan, 136 S. Ct. 1769, 1778 (2016).



Ninth Circuit Court of Appeals

“The NLRA establishes a core right to concerted activity. Irrespective of the forum in which disputes are resolved, employees must be able to act in the forum together.”

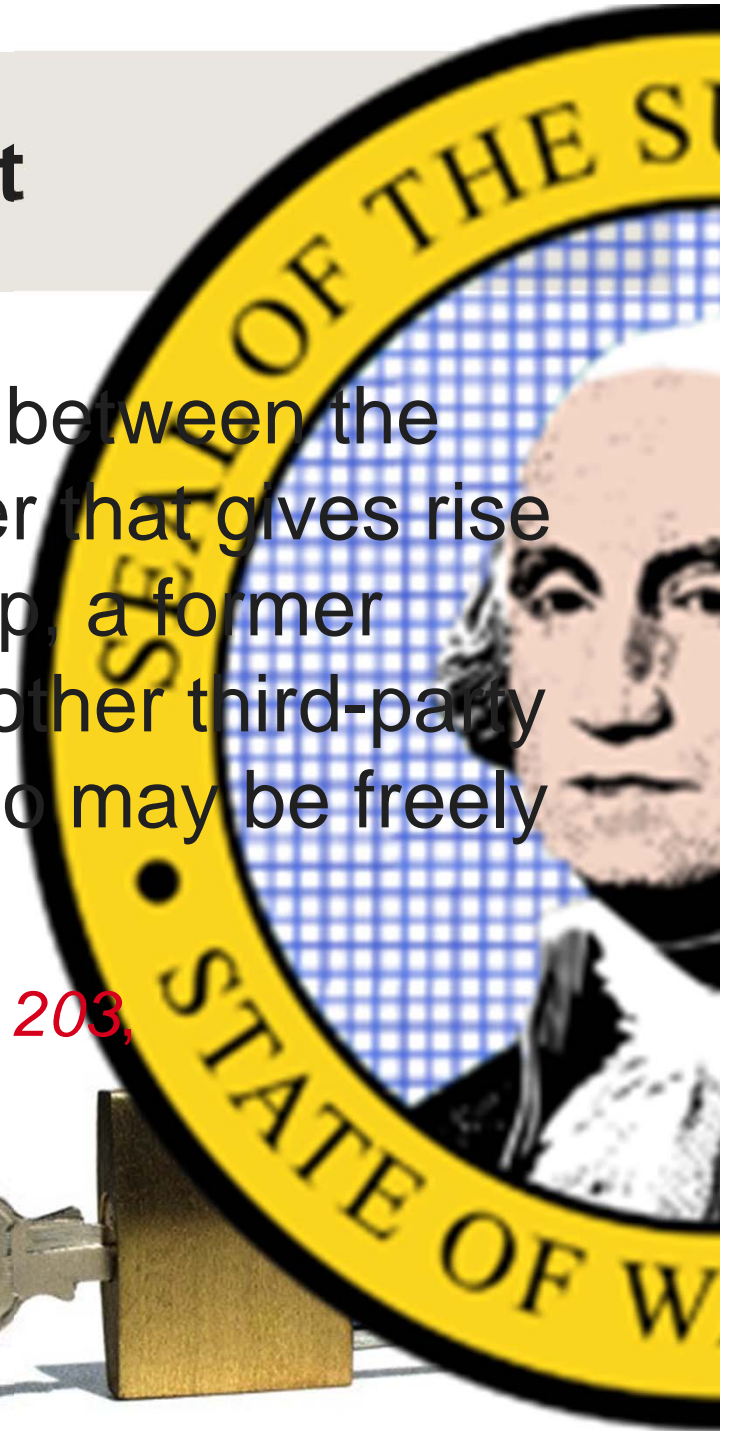
Morris v. Ernst & Young, LLP, 834 F.3d 975, 989 (9th Cir. 2016).



Washington Supreme Court

“Without an ongoing obligation between the former employee and employer that gives rise to a principal-agent relationship, a former employee is no different from other third-party fact witnesses to a lawsuit, who may be freely interviewed by either party.”

Newman v. Highland School Dist. No. 203,
381 P.3d 1188 (Wash. 2016).

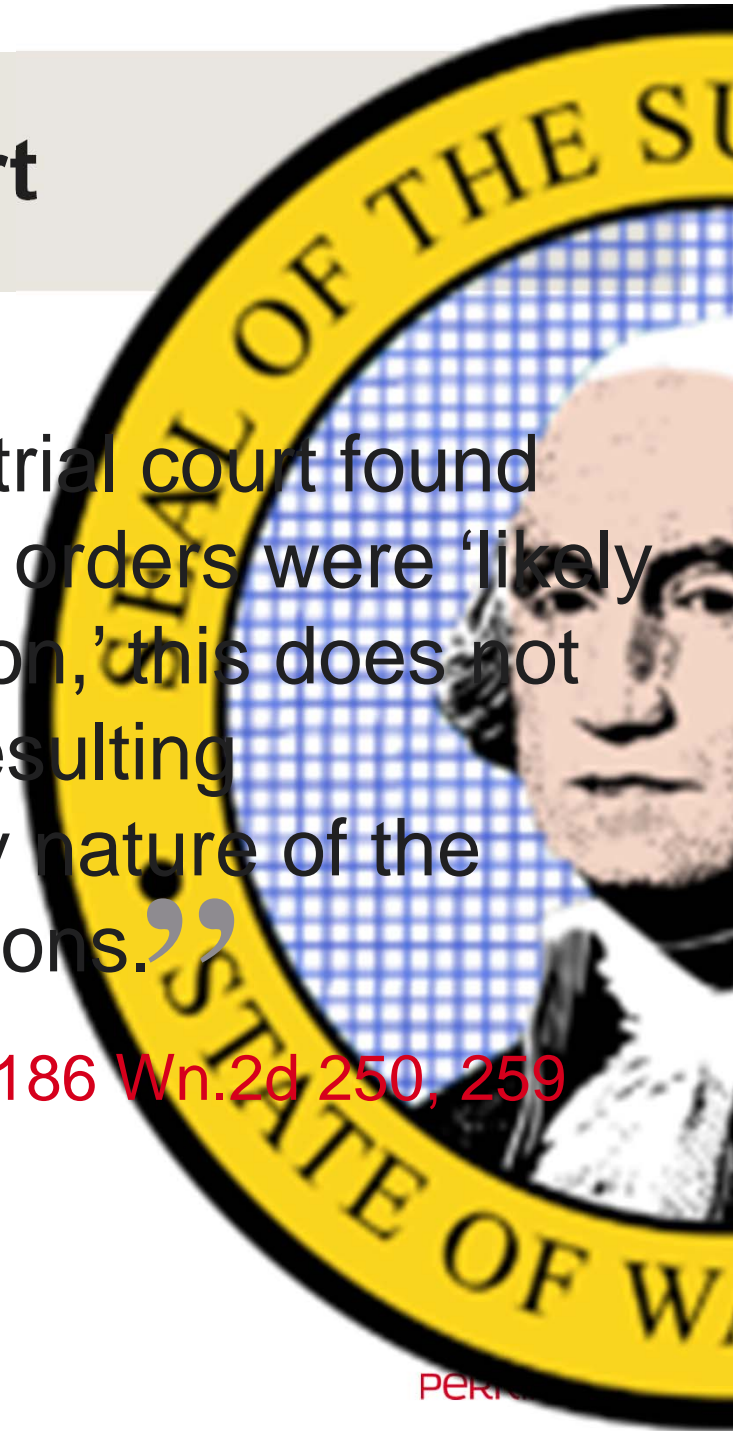


Washington Supreme Court



“Although the trial court found these staffing orders were ‘likely an overreaction,’ this does not change the resulting discriminatory nature of the staffing decisions.”

Blackburn v. State, 186 Wn.2d 250, 259 (2016).



National Labor Relations Board



Recent Trends:

- Handbook rules found overbroad
- Definition of joint employers expanded
- Definition of supervisor narrowed



Questions

