



COUNSEL TO GREAT COMPANIES

# 2017 Labor and Employment Law Update

**June 13, 2017 – Labor & Employment Law Workshop**

**Bellevue, Washington**

Char Eberhardt, Partner  
Cate DeJulio, Associate

# Agenda

- Federal regulatory update
- State & local updates
- Federal court decisions
- Washington court decisions
- What's next?

# EEOC Strategic Enforcement Plan

Identifies **six** areas of priority for enforcement

Addresses **two** emerging issues:

- Complex employment relationships in the “gig” economy.
- Discrimination against those who are Muslim or Sikh, or persons of Arab, Middle Eastern or South Asian descent.



# New EEO-1 Report

- Report employment data categorized by race/ethnicity, gender, and job category.
- New requirement—aggregate compensation data for employees by gender, race, and ethnicity across pay bands.
- Changes effective **March 2018**.



# New EEOC Guidance re: National Origin Discrimination

National origin discrimination makes up approximately **10%** of EEOC charges.



## Guidance specifically addresses:

- Human trafficking.
- Intersectional discrimination (i.e., discrimination based on a combination of protected characteristics that are inseparable).

# Executive Order 13768

- Directs ICE to hire **10,000** new immigration officers.
- Prepare for more frequent audits and inspections.
- Consider enrolling in E-Verify.



# DOL Update – Overtime Exemptions

- Major change to salary basis test.
- Nationwide injunction.
- Trump Administration reconsidering.



# DOL About-Face

- Independent contractors.
- Joint employment.
- Persuader rule.
- Return of opinion letters?





# NLRB – The Pendulum Swings

- Board changes.
- *Which precedents will flip?*
- What's next?
  - Quickie elections
  - *D.L. Horton*



# Unions and the Gig Economy

- Seattle ordinance allows for-hire drivers to collectively bargain.
- Federal court injunction.



# Washington – Initiative 1433

## Two primary components:

- Raises the statewide minimum wage.
- Requires employers to provide employees with paid sick leave.



# Washington – Minimum Wage

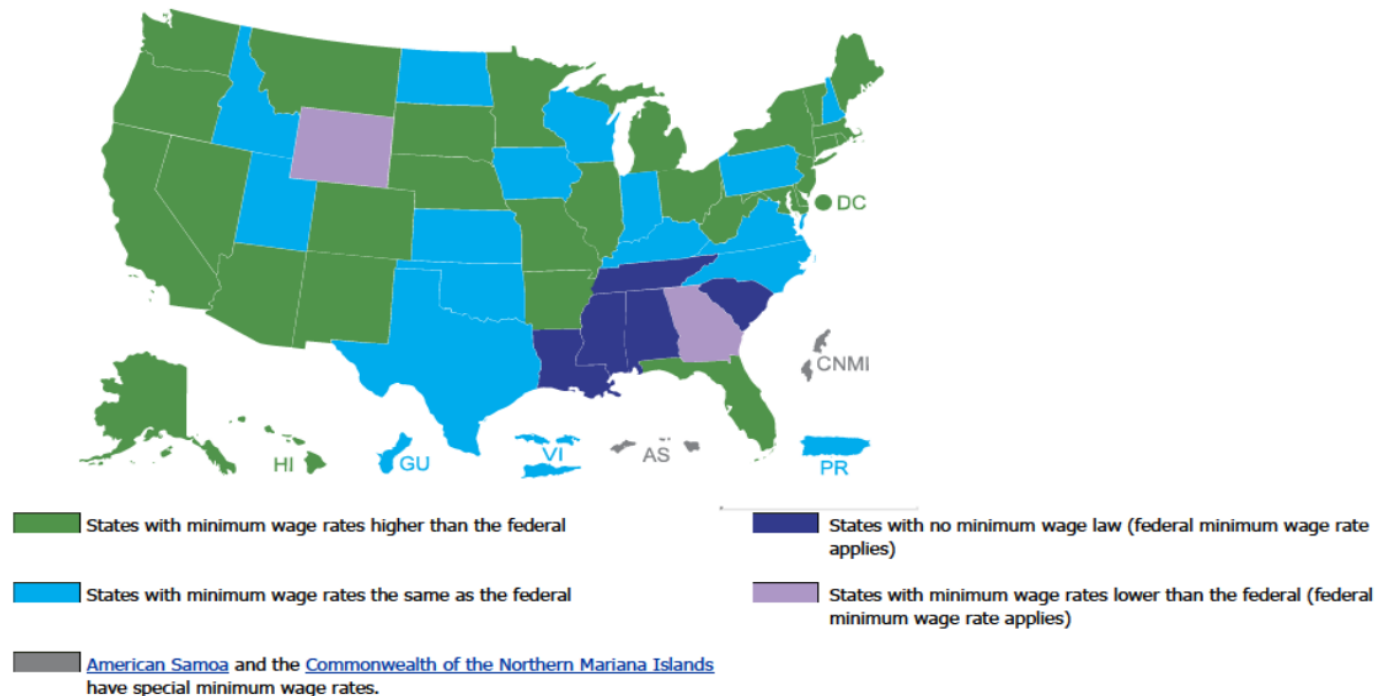
- Statewide minimum wage increase to \$11 in **2017**.
- Annual increases over the next four years.



# State Laws – Minimum Wage

## Minimum Wage Laws in the States - January 1, 2017

Where federal and state law have different minimum wage rates, the higher standard applies.



**Minimum Wage and Overtime Premium Pay Standards Applicable to  
Nonsupervisory NONFARM *Private Sector* Employment  
Under State and Federal Laws**

**January 1, 2017**

Source: U.S. Department of Labor, Wage & Hour Division

# Seattle – Minimum Wage

Minimum wage will gradually increase to \$15/hour

**Large employers**

(501+ employees)

**Small employers**

(500 or fewer employees)



# Washington – Paid Sick Leave

Starting in **2018**, employers are required to provide paid sick leave.

- Accrual:  
1 hour for every 40 worked
- Use after 90 days
- 40 hours roll over



# Washington – Paid Sick Leave (Continued)

- Employees *entitled* to use paid sick leave under three circumstances.
- Employers *may allow* paid sick leave to be used for other purposes.





# Seattle – Secure Scheduling

- Secure Scheduling Ordinance goes into effect **July 1, 2017**.
- Enforced by Office of Labor Standards.
- Strict recordkeeping requirements.
- “Soft launch” for first 6 months.



# Case Law Developments

- Supreme Court
- Ninth Circuit
- Washington Supreme Court
- Washington Court of Appeals



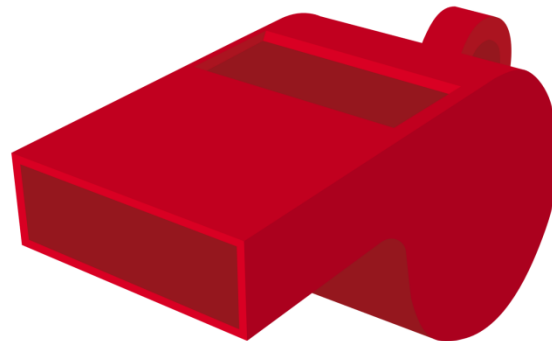
## Ninth Circuit – *Zetwick v. County of Yolo*

- County correctional officer alleged that county sheriff created sexually hostile work environment.
- Held that court must look at ***totality of the circumstances*** to determine whether a reasonable person would find that conduct created a hostile environment.



# Ninth Circuit – *Somers v. Digital Realty Trust Inc.*

- Employee made internal reports of possible securities law violations.
- Employee was a “whistleblower” entitled to the protections of Section 21F of the Securities Exchange Act.



## Ninth Circuit – *Rizo v. Yovino*

- Held that prior salary information can be a “factor other than sex” for purposes of an affirmative defense to the Equal Pay Act.
- Ninth Circuit recently accepted briefing on a motion for reconsideration.



# Seventh Circuit – Sex Discrimination Includes Sexual Orientation Discrimination

In the  
United States Court of Appeals  
For the Seventh Circuit

No. 15-1720

KIMBERLY HIVELY,

*Plaintiff-Appellant,*

v.

IVY TECH COMMUNITY COLLEGE OF INDIANA,

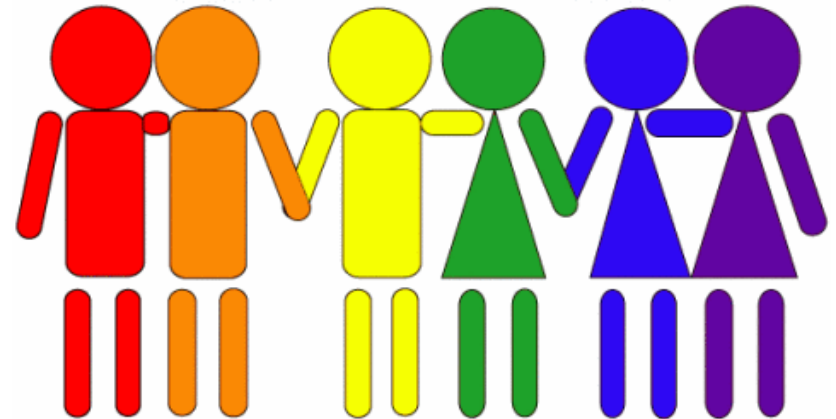
*Defendant-Appellee.*

Appeal from the United States District Court for the  
Northern District of Indiana, South Bend Division.  
No. 3:14-cv-1791 – Rudy Lozano, Judge.

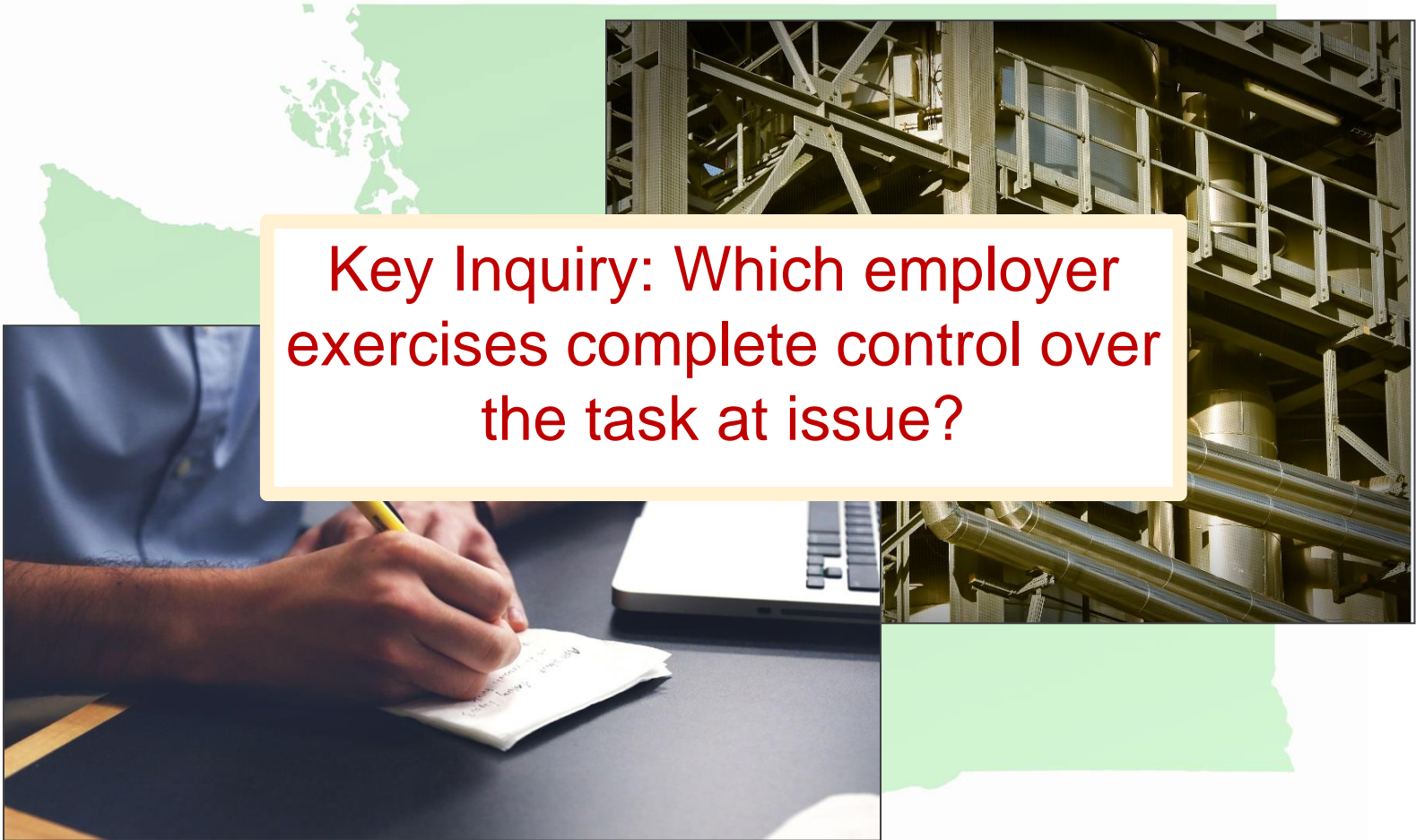
ARGUED NOVEMBER 30, 2016 – DECIDED APRIL 4, 2017

Before WOOD, *Chief Judge*, and BAUER, POSNER, FLAUM,  
EASTERBROOK, RIPPLE, KANNE, ROVNER, WILLIAMS, SYKES, and  
HAMILTON, *Circuit Judges*.

WOOD, *Chief Judge*. Title VII of the Civil Rights Act of 1964 makes it unlawful for employers subject to the Act to discriminate on the basis of a person's "race, color, religion, sex, or national origin ..." 42 U.S.C. § 2000e-2(a). For many years, the courts of appeals of this country understood the prohibition against sex discrimination to exclude discrimination on

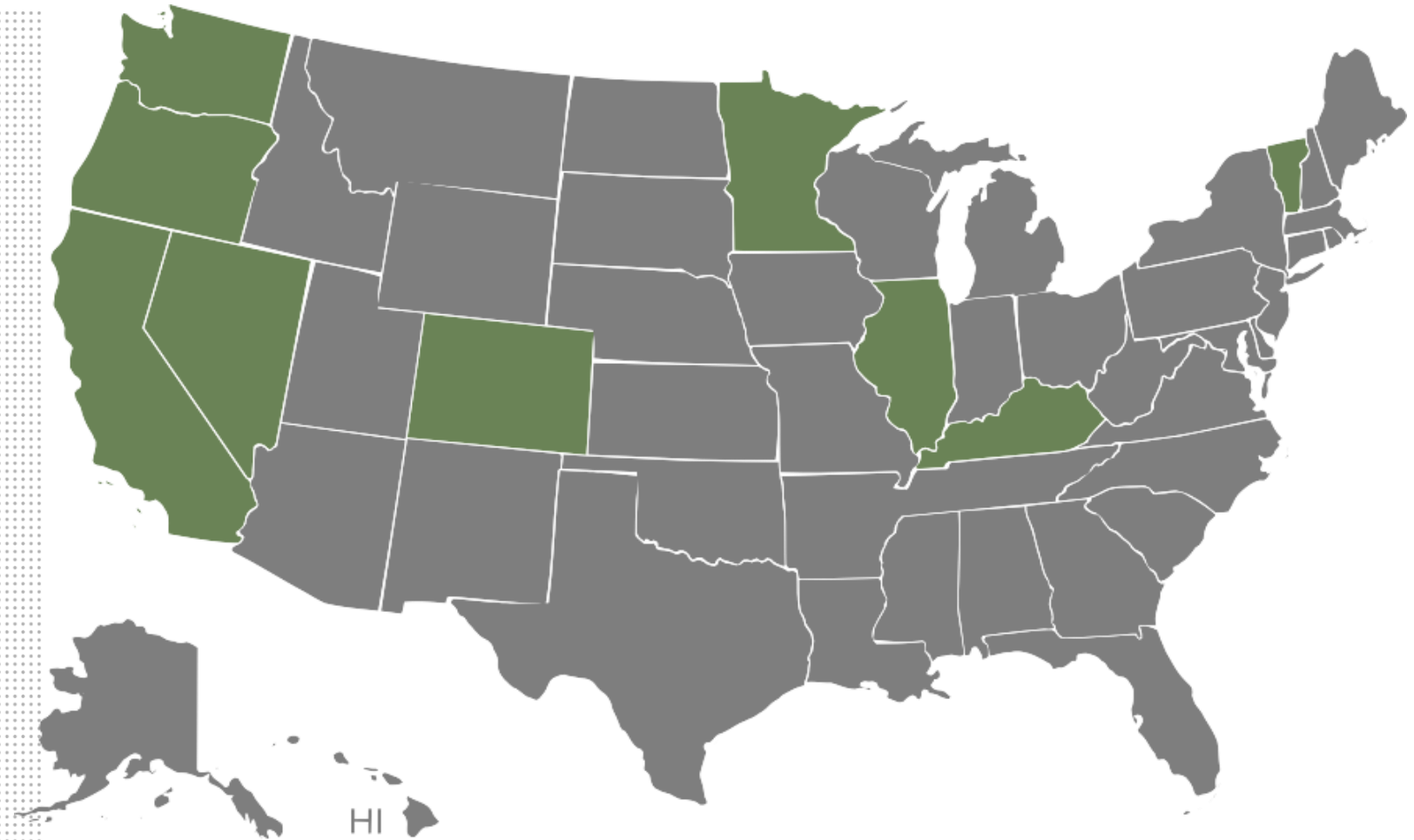


# Washington Supreme Court – Borrowed Servant Doctrine



**Key Inquiry: Which employer exercises complete control over the task at issue?**

# State Laws – Minimum Paid Rest Period Requirements



Source: U.S. Department of Labor, Wage & Hour Division



# Washington Supreme Court – Liability for Missed Meal Breaks

The Court **CERTIFIES** the following questions to the Washington Supreme Court:

1. Is an employer strictly liable under WAC 296-126-092?
2. If an employer is not strictly liable under WAC 296-126-092, does the employee carry the burden to prove that his employer did not permit the employee an opportunity to take a meaningful break as required by WAC 296-126-092?

# Washington Court of Appeals, Division 1 – *Hill v. Garda CL Northwest, Inc.*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LAWRENCE HILL, ADAM WISE, and )  
 ROBERT MILLER, on their own )  
 behalves and on behalf of all persons )  
 similarly situated, )  
 Respondents, )  
 v. )  
 GARDA CL NORTHWEST, INC., f/k/a )  
 AT SYSTEMS NORTHWEST, INC., a )  
 Washington corporation, )  
 Appellant. )

No. 74617-1-I  
 DIVISION ONE  
 PUBLISHED OPINION  
 FILED: March 27, 2017

FILED  
 COURT OF APPEALS DIV 1  
 STATE OF WASHINGTON  
 2017 MAR 27 AM 9:52

TRICKEY, A.C.J. — In this class action case, the Plaintiffs, nearly 500 employees of Garda CL Northwest, Inc. (Garda), an armored vehicle company, successfully sued Garda for denying them meal periods and rest breaks guaranteed under Washington’s Industrial Welfare Act, chapter 49.12 RCW, and Minimum Wage Act, chapter 49.46 RCW. The trial court awarded the Plaintiffs double damages, prejudgment interest, and attorney fees. Garda appeals the trial court’s certification of the class, denial of its motions for summary judgment, grant of the Plaintiffs’ partial summary judgment motion on liability, award of double damages, award of prejudgment interest, and use of a lodestar to multiply the Plaintiffs’ attorney fee award.



# Questions?

