PERKINSCOIE

COUNSEL TO GREAT COMPANIES

Labor & Employment Law Breakfast Seminar

November 14, 2017 – Bellevue, Washington

November 15, 2017 – Seattle, Washington

Presented by:

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Agenda

- **Federal Law Updates**
  - Status of DOL's Obama-era Overtime Exemption Rule
  - EEOC: Use of New EEO-1 Report Delayed
- **State and Local Law Updates**
  - Washington's Paid Sick Leave law (Initiative 1433)
  - Washington's Healthy Starts Act

Agenda (contd.)

- **Upcoming U.S. Supreme Court Cases**
  - Trio of Cases Addressing Class Action Waivers in Arbitration Agreements
  - *Janus v. American Federation of State, County and Municipal Employees Council 31, et al.*
- **Federal Court Decisions**
  - District Court holds that the side effects of prescribed narcotics require accommodation under the WLAD
  - Ninth Circuit says Washington school district can prohibit coaches' after-game prayers

Agenda (contd.)

- **Washington Supreme Court Decisions**
  - Court Places Heavier Burden on Employers Related to Missed Meal Periods
  - Court Clarifies *McDonnell Douglas* Framework Used for Discrimination Claims
  - Court Addresses Retaliation in Hiring
- **NLRB Updates**

Status of DOL's Obama-era Overtime ...tion Rule

...ranted summary judgment in favor of the ...g the DOL Overtime Final Rule:

...s Final Rule is not 'based on a permissible ...e FLSA]" because by "doubl[ing] the previous ...el" the regulation "eliminates a consideration of ...e performs 'bona fide executive, administrative, or ... duties."

... *of Labor*, No. 4:16-CV-731 (E.D. Tex. Aug. 31,

... 2017, the DOL asked the Fifth Circuit to ...ce its appeal while it promulgates a new rule.

EEOC: Use of New EEO-1 Report Delayed

- Use of revised EEO-1 report has been suspended indefinitely
- Revisions included new requests for data on wages and hours worked from employers with 100+ employees and from federal contractors with 50+ employees
- This year, covered employers do not have to report the wages and hours worked of employees, but are still required to comply with the original EEO-1 form's reporting requirements concerning sex, race, and ethnicity

Washington's Paid Sick Leave Law (Initiative 1433)

- Effective January 1, 2018
- Minimum wage will in
- Paid Sick Leave
  - ✓ 1 hour of paid sick leave
  - ✓ Unused paid sick leave the following year
- Washington Departme currently engaged in t
- Seattle, SeaTac, Taco paid sick leave ordina

Washington's Healthy Starts Act

- Became effective July 23, 2017
- Applies to employers wi
- Requires two categories
  1. Employer may not claim unc needed
     - *E.g., Longer bathroom brea*
  2. Employer may refuse if acc request medical documentat
     - *E.g., Job restructuring, sche*
- "Undue hardship" = actio expense"
- Sets forth 4 acts that are

Trio of Cases Addressing Class Acti
Waivers in Arbitration Agreemen

Nos. 16-285, 16-300, and 16-307

In the Supreme Court of the United States

EPIC SYSTEMS CORPORATION, PETITIONER
v.
JACOB LEWIS

ERNST & YOUNG LLP, ET AL., PETITIONERS
v.
STEPHEN MORRIS, ET AL.

NATIONAL LABOR RELATIONS BOARD, PETITIONER
v.
MURPHY OIL USA, INC., ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE FIFTH, SEVENTH, AND NINTH CIRCUITS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS IN NOS. 16-285 AND 16-300 AND SUPPORTING RESPONDENTS IN NO. 16-307

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Janus v. American Federation of State, C and Municipal Employees Council 31

No. 16-___

IN THE
Supreme Court of the United States

MARK JANUS,
Petitioner,
v.
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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This case presents the same question presented in *Friedrichs*: should *Abood* be overruled and public-sector agency fee arrangements declared unconstitutional under the First Amendment?

District Court Says Side of Effects of Prescribed Narcotics Require Accommodation

"The Court again expresses its concern that the question of narcotics in the workplace should be approached carefully. In reaching the conclusions herein, the Court does not intend to hold that any use of prescription narcotics in the workplace is automatically protected. However, on these circumstances, the Court finds it appropriate to extend the WLAD's protection to Stewart's medication symptoms. To afford citizens with disabilities sufficient protection, circumstances like this must be appreciated."

Stewart v. Snohomish County PUD No. 1, C16-0020-JCC, 2017 WL 2665105 (W.D. Wash. June 21, 2017).

Ninth Circuit Says Washington School District can Prohibit Coaches' After-game Prayers

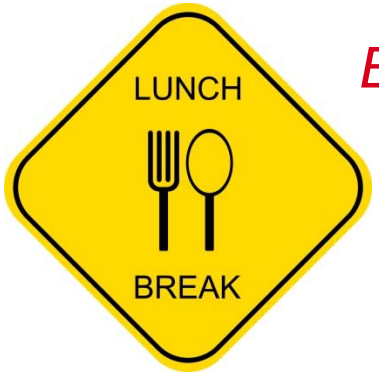
"As for the task at hand, we hold tha
spoke as a public employee wher
and prayed on the fifty-yard line
after games while in view of stu
parents. Kennedy therefore can
likelihood of success on the me
Amendment retaliation claim."

Kennedy v. Bremerton School District, 869 F.3d 813 (9th

Washington Supreme Court: Heavier Burden on Employers for Missed Meal Periods

> "[A]n employee asserting a me ak violation under WAC 296-12 can n his or her prima facie case b oviding evidence that he or she did eceiv timely meal break. The emp r may rebut this by showing that i no viol occurred or a valid waiver e "

Brady v. Autozone Stores, Inc., 18 576 (20



Washington Supreme Court Clarifies *McDonnell Douglas* Framework for Discrimination Claims

"We . . . clarify that the McDonnell Douglas f does not require a plaintiff to prove that she wa ced by a person outside her protected group to e n a prin facie case of discrimination."

"[The *McDonnell Douglas* framework] r es only plaintiff prove membership in a protec ass, termination from a job for which she w alified, ar the employer continued to seek candid or the position."

Mikkelsen v. Pub. Utility District No. 1 of Kittitas County, N 2017 WL 4682306 (Wash. Oct. 19, 2017).

Washington Supreme Court Addresses Retaliation in Hiring

"Does RCW 49.60.210(1) create a cause of action for job applicants who claim a prospective employer refused to hire them in retaliation for prior opposition to discrimination against a different employer?" Order Certifying Local Law

The answer is yes. In accordance with the plain language of the Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, retaliatory discrimination against job applicants by prospective employers is prohibited by RCW 49.60.210(1). Therefore, plaintiff Jin Zhu's claim that defendant North Central Educational Service District – ESD 171 (ESD 171) refused to hire him because of his opposition to his former employer's racial discrimination stated a valid cause of action.[1]

Zhu v. North Central Educational Service District ESD 171, Case No. 94
2017).

National Labor Relations

Recent Trends:

- First Republican majo since 2007
- Republican General C confirmed
- Proposed federal legi Local Businesses Act Board's definition of j

Questions