



Updates in Labor & Employment Law

2014 Perkins Coie Employment Law Workshop

June 3, 2014

Presented by

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The Washington Law Against Discrimination and Religion: *Two Recent Washington Supreme Court Cases*



Kumar v. Gate Gourmet (5 – 4 decision)

Decided May 22, 2014

The Majority

- Washington Law Against Discrimination (WLAD) implies a requirement to reasonably accommodate religious practices.
- Revives plaintiffs' suit against Gate Gourmet based on meals the employer served to employees with dietary restrictions based on religious beliefs.

The logo for Gategourmet features a stylized green 'G' icon followed by the text 'Gategourmet' in a black sans-serif font.

Kumar v. Gate Gourmet Chief Justice Madsen's Dissent



V



Who has the power?



Kumar v. Gate Gourmet, cont.

Take Aways

- Employers should assess policies and practices to ensure protection against suits for failure to accommodate religious practices
- Employers can defeat a claim for failure to accommodate by showing that a reasonable accommodation was offered or (b) accommodation would be an undue hardship

Ockletree v. Franciscan Health System

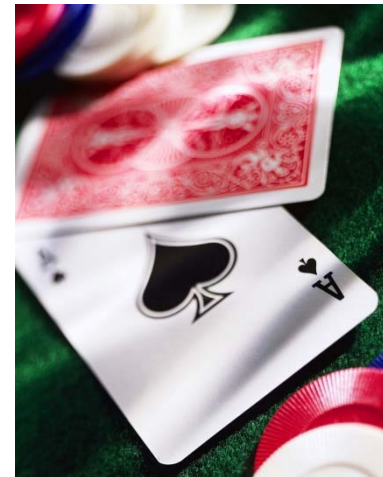
February 6, 2014

- WLAD's definition of "employer" to exclude religious employers not facially unconstitutional under the Washington Constitution
- But, the religious exemption applies only if an employee's job responsibilities relate to the organization's religious practices



Jumamil v. Lakeside Casino, LLC

Division II Court of Appeals, March 4, 2014



PERC v. City of Vancouver

Division II Court of Appeals, March 25, 2014

Candidate not selected for motorcycle unit based in part on animus of member of hiring panel = ULP



Miller v. Paul M. Wolff Co.

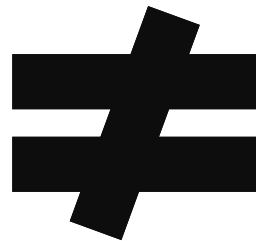
Division I Court of Appeals, March 10, 2014

Procuring Cause Doctrine

“When a party is employed to procure a purchaser . . . to whom a sale is eventually made, he is entitled to a commission . . . he was the procuring cause of the sale.”

Kirby v. Department of Employment Security
Division I Court of Appeals, March 10, 2014

Good faith error in judgment



Misconduct



Escriba v. Foster Poultry Farms, Inc.
Ninth Circuit, February 25, 2014

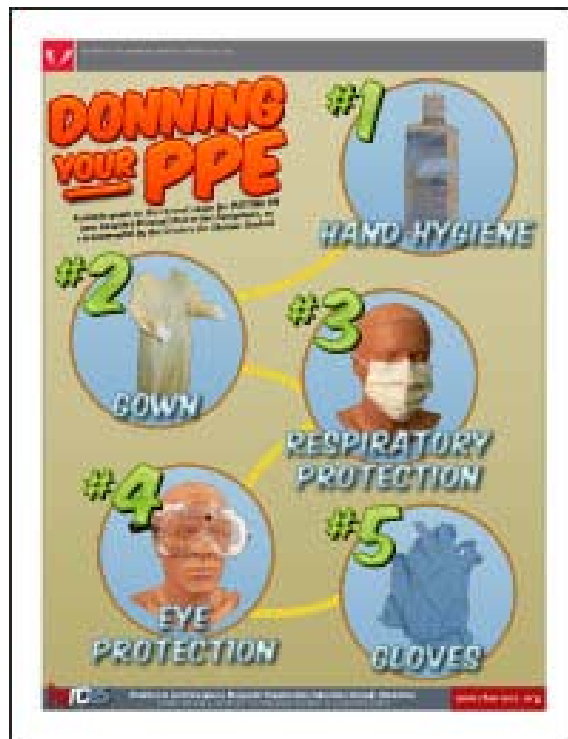


No FMLA violation when
employee elects not to
take leave



Sandifer v. United States Steel Corp. U.S. Supreme Court, January 27, 2014

No Pay for Donning and Doffing Protective Clothing



Enforcement of Forum-Selection Clauses



Atlantic Marine Construction Co., Inc. v. U.S.
District Court for the Western District of Texas

Unanimous Decision of the Supreme Court
December 2013

- Absent exceptional circumstances, a forum-selection clause should be given controlling weight.
- The choice-of-law rules of the state in which the suit is filed will not follow the case if transferred pursuant to a forum-selection clause.



Mandatory Versus Permissive Clauses

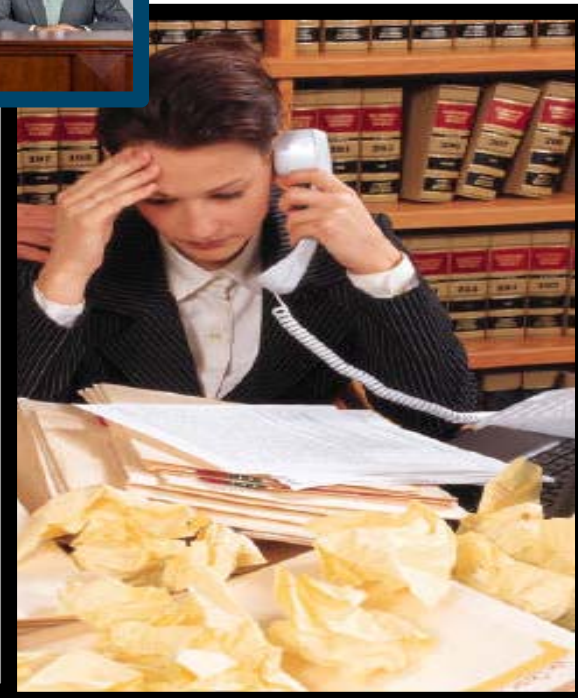
RELCO Locomotives, Inc. v. AllRail, Inc., No. 4:13-cv-00394, 2014 WL 1047153 (S.D. Iowa Mar. 5, 2014)



“Model Social Media Policy?” What Model Social Media Policy?



NLRB Judge to NLRB General Counsel: “It’s Just Your Opinion.”



NLRB ALJ to NLRB GC: “It’s Just Your Opinion”

by the General Counsel to be unlawful. The Respondent also cites a General Counsel Operations Management Memorandum, OM-12-59 (May 30, 2012), which is a report from the then Acting General regarding his review of several social media rules cases that had been filed. One of the cases considered in OM 12-59 involved a social media policy that included the following:

When the company wishes to communicate publicly---whether to the marketplace or to the general public---it has a well-established means to do so. Only those officially designated by [Employer] have the authorization to speak on behalf of the company through such media. We recognize the increasing prevalence of Social Media in everyone's daily lives. Whether or not you choose to create or participate in them is your decision. You are accountable for any publication or posting if you identify yourself, or you are easily identifiable, as working for or representing [Employer].

You need to be familiar with all [Employer] policies involving confidential or proprietary information or information found in this Employee Handbook and others available on Starbase. Any comments directly or indirectly relating to [Employer] must include the following disclaimer: 'The postings on this site are my own and do not represent [Employer's] positions, strategies or opinions.' [OM 12-59 at 16.]

With regard to this provision, the General Counsel's office:

concluded that the requirement that employees must expressly state that their postings are "my own and do not represent [Employer's] positions, strategies or opinions" is not unlawful. An employer has a legitimate need for a disclaimer to protect itself from unauthorized postings made to promote its product or services, and this requirement would not unduly burden employees in the exercise of their Section 7 right to discuss working conditions.

This conclusion amounts to an opinion from an office of the General Counsel and is without precedential value. Such memoranda have weight only to the extent that the reasoning is persuasive, and in my view, it is not persuasive to the extent such a disclaimer would apply to every online communication by an employee which concerns work-related information and as to which the employee is identifiable as an employee for the Employer. Such a burdensome and overreaching disclaimer requirement significantly misconceives and underestimates the ubiquitous role of online communications in communications generally, and in Section 7 activity specifically. I do not accept its reasoning, for all the reasons set forth above.

Accordingly, I conclude that the Kroger's rule would reasonably chill employees from engaging in Section 7 activity, through the burdens it places on employees engaged in Section 7 activity online. I find the Respondent's disclaimer provision violates Section 8(a)(1) of the Act.

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Where's the Pea?



The Minimum Wage



The Minimum Wage in Washington

SeaTac

- \$15/hour minimum wage took effect January 1, 2014
- King County Superior Court: Doesn't apply to SeaTac Airport
- Class action complaint filed in King County Superior Court by employee of Extra Car



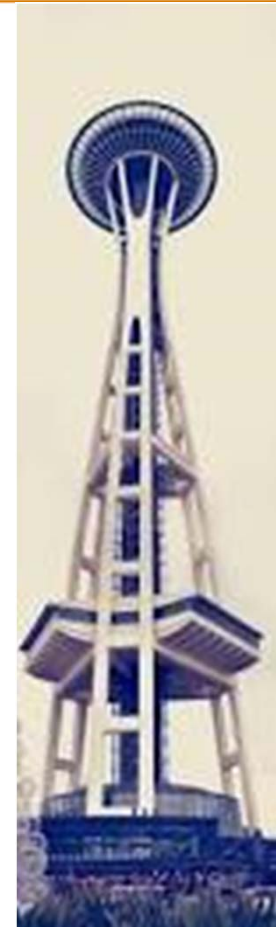
Seattle \$15/Hour Minimum Wage:

- April 1, 2015 Effective Date
- Phased-in Approach
- Four Tiers of Compensation

Minimum Wage Tiers	Employer Type	\$15/hr Transition Period
A	Larger businesses (>500 employees nationwide)	2 years (2017)
B	Larger (>500 employees nationwide) businesses providing "Silver" standard or better health care	3 years (2018)
C	Smaller businesses	4 years (2019)
D	Smaller businesses providing Silver level health care or minimum tip compensation	6 years (2021)

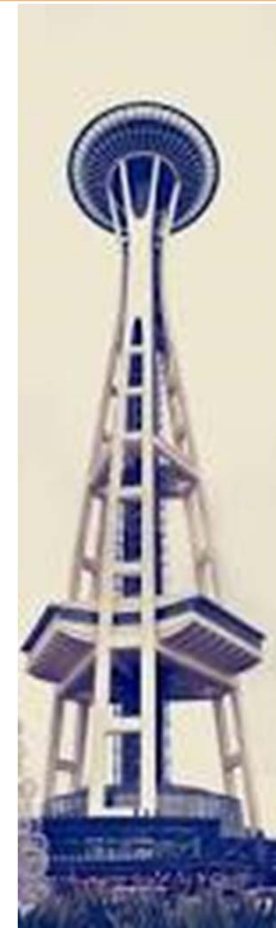
Seattle Minimum Wage: Key Provisions

- Employees Outside of Seattle Counted in Determination of Size of Employer
- Integrated Enterprise Considered a Single Employer
- Franchisees Treated As Employers of >500 Employees If Associated with Franchisor with >500 Employees



Seattle Minimum Wage: Key Provisions (cont'd)

- “Wages” include Commissions, Piece-rate, and Bonuses
- Smaller Businesses: **“Hourly Minimum Compensation”** May Include Tips and \$\$ Paid toward an Individual Employee’s “Silver or Higher Level” Medical Benefits Plan
- Larger Businesses: **Effective January 1, 2016** **“Hourly Minimum Wage”** May Include \$\$ Paid toward an Individual Employee’s “Silver or Higher Level” Medical Benefits Plan



\$15 and Beyond

Washington State Minimum Wage: Projected Wage Schedule (2.40% CPI estimated)		Employers > 500 employees		Employers ≤ 500 employees		
		Minimum wage (Tier A)	Minimum wage w/ health care (Tier B)	Guaranteed minimum compensation (Tier C)	<i>Maximum allowable non-wage compensation</i>	Minimum wage (Tier D)
Year	State Wage	-	-	-		-
2015	\$9.54	11.00	11.00	11.00	1.00	10.00
2016	\$9.77	13.00	12.50	12.00	1.50	10.50
2017	\$10.01	15.00	13.50	13.00	2.00	11.00
2018	\$10.25	15.36	15.00	14.00	2.50	11.50
2019	\$10.49	15.73	15.73	15.00	3.00	12.00
2020	\$10.75	16.11	16.11	15.75	2.25	13.50
2021	\$11.00	16.49	16.49	16.49	1.49	15.00
2022	\$11.26	16.89	16.89	16.89	1.14	15.75
2023	\$11.53	17.29	17.29	17.29	0.79	16.50
2024	\$11.80	17.70	17.70	17.70	0.45	17.25
2025	\$12.08	18.13	18.13	18.13	0.00	18.13

The Minimum Wage in Washington, cont.

Washington State

- State minimum wage highest in country: \$9.32/hour
- Governor Inslee supports further increase

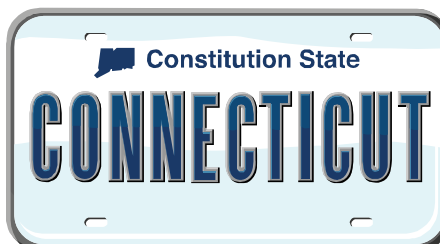


The Minimum Wage Around the Country

- President Obama supports raising the federal minimum wage to \$10.10/hour

- States that are on their way:

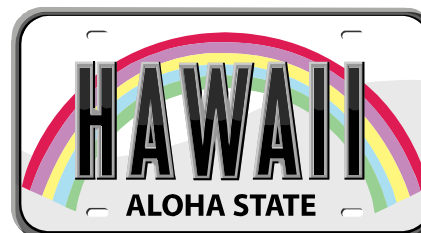
- Connecticut



- Maryland



- Hawaii



Questions?

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