



2022 Employment Law Update

February 16, 2022 | Ben Eckhart, Attorney

Today's Agenda

- Employment Law Updates for:
 - COVID-19
 - Federal Law
 - Washington State
- Final thoughts



COVID-19 Vaccine Mandates

- Supreme Court Decision
 - OSHA ETS—100 Employers Limit (Blocked*)
 - CMS
- Federal Contractors



Washington Health Emergency Standards

- Worker's Comp Coverage for Frontline Workers
- Employers with 50 or more covered employees at a workplace or worksite are required to report infectious or contagious disease outbreaks of 10 or more employees to L&I



Federal Law Updates

EEOC Updates

- 10/25/2021 | Vaccines and Religious Accommodations



EEOC Updates

11/17/2021 | Guidance regarding retaliation
& interference claims related to COVID-19
and FMLA, OSHA, and EEO rights



EEOC Updates

- 12/14/2021 | EEOC released updated guidance on “long-haul COVID” or “chronic COVID”
- ADA’s three-part definition of disability applies to COVID-19 the same way it applies to any other medical condition



ADA | Remote Work



Remote work—here to stay for some employers



When offices reopen?



Always remember
the interactive process

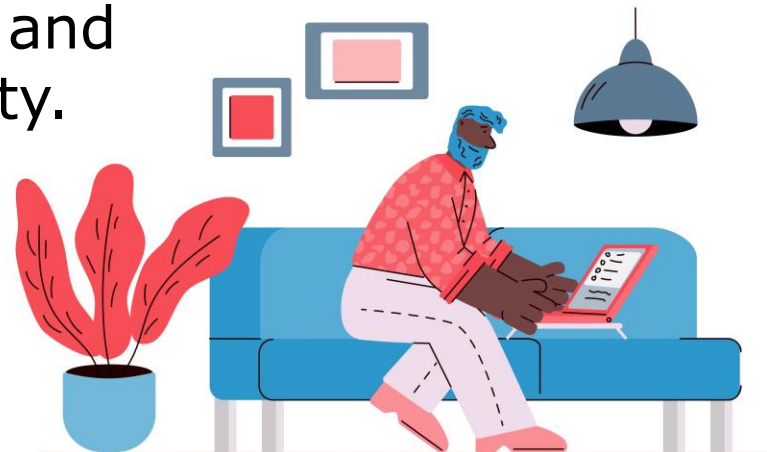


Document meetings
and requests



ADA | Remote Work

- Attendance in the workplace can be an essential function. Not all work can be performed via telework.
- Burden on employer to show essential functions.
- “Essential functions” are those that, if not performed, would change the purpose of the position, or significantly alter the job.
- Must show the task or function is job-related, uniformly enforced, and consistent with business necessity.
- Some non-essential functions can be transferred.



DOL/NLRB



1/6/2022 ■ Announcement of
Memorandum of Understanding
to coordinate information sharing
efforts between agencies



FLSA | Independent Contractors

May 5, 2021, | DOL Repeals
“Economic Realities”
Independent Contractor Rule




Federal Contractors

- Federal Fair Chance Act in effect as of 12/21/2021
- Restrictions on criminal background checks

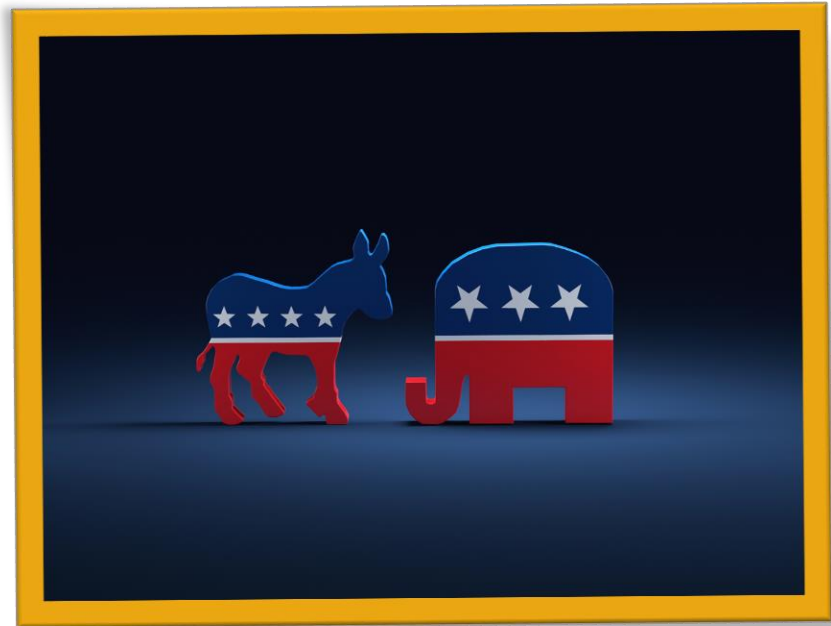


Uniformed Services Employment and Reemployment Rights Act

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- A photograph of three National Guard soldiers in camouflage uniforms and face masks standing in front of a building. The soldiers are positioned in the foreground, with a building and other personnel visible in the background. The image is slightly faded to allow the text to be read clearly.
- January 21, 2021 | Expanded USERRA protections for some National Guard duty
 - National Guard duty performed as state-active duty fall under USERRA protections

National Labor Relations Board

- NLRB comprised of 3 Democrats and 2 Republicans



- Office of General Council—Guidance suggests more favorable to unions

FMLA Case

- *Scalia v. State of Alaska* (Department of Transportation), 9th Circuit (2021)
 - Calculating continuous FMLA leave for employees working rotational workweeks.
 - When an employee working a one-week-on, one-week-off schedule takes continuous leave, an employer may count the on and off weeks against the employee's FMLA leave entitlement.
 - Employee gets 12 weeks total time (each week off work counts as workweek for FMLA).





Washington State Updates

Washington Paid Family and Medical Leave

Expands definition of "Family member"

"any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care."



Washington Paid Family and Medical Leave



Key Rulemaking Last Year



Employer Size



Small Business Grants



Employment Restoration

WA Wage and Hour

- Washington Minimum Wage:
 - State: \$14.49 effective 1/1/22 (↑5.83%)
 - Seattle: \$17.27 effective 1/1/22
 - (\$15.75+benefits/tips)
 - Employer size no longer a factor
- Federal Contractor Minimum Wage:
 - Increase: \$15.00 effective 1/30/22



WA Overtime Exemption

Salary Basis Test for Exempt

- 01/01/22 (now same for small and large businesses)
 - \$1,014.30/week
- 01/01/28 projection = \$1,635/week
- Computer Professionals 3.5 times the minimum wage (\$50.72/hour)



WA Non-Competes

NON-COMPETE AGREEMENT

1. Purpose

This agreement, when countersigned below, shall constitute an agreement regarding certain confidential and proprietary information and trade secrets ("Confidential Information") relating to the business of the Company (collectively referred to as the "Parties"), hereinafter referred to as the "Company" and the "Parties".

Recipient shall strictly maintain the confidentiality of the Confidential Information as of the date executed by the Recipient (the "Effective Date").

2.

- New 2022 pay threshold for non-competes:
 - Non-competes will be prohibited for employees earning less than \$107,301.04
 - Prohibited for contractors earning less than \$268,252.59

Travel Time for Non-Exempt



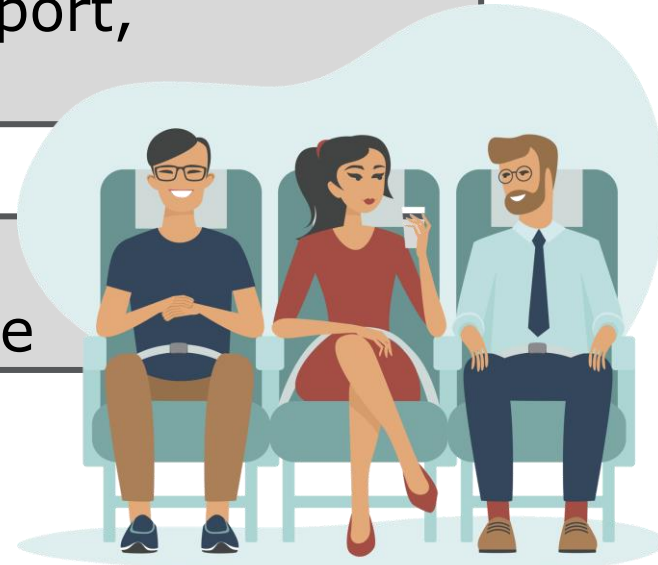
Port of Tacoma v. Sacks
(Washington State Court of Appeals)



Reaffirmed LNI's position—All travel time considered "hours worked", including travel to and from airport, time at airport, and time during flight



Affirming the holding that overnight travel is compensable

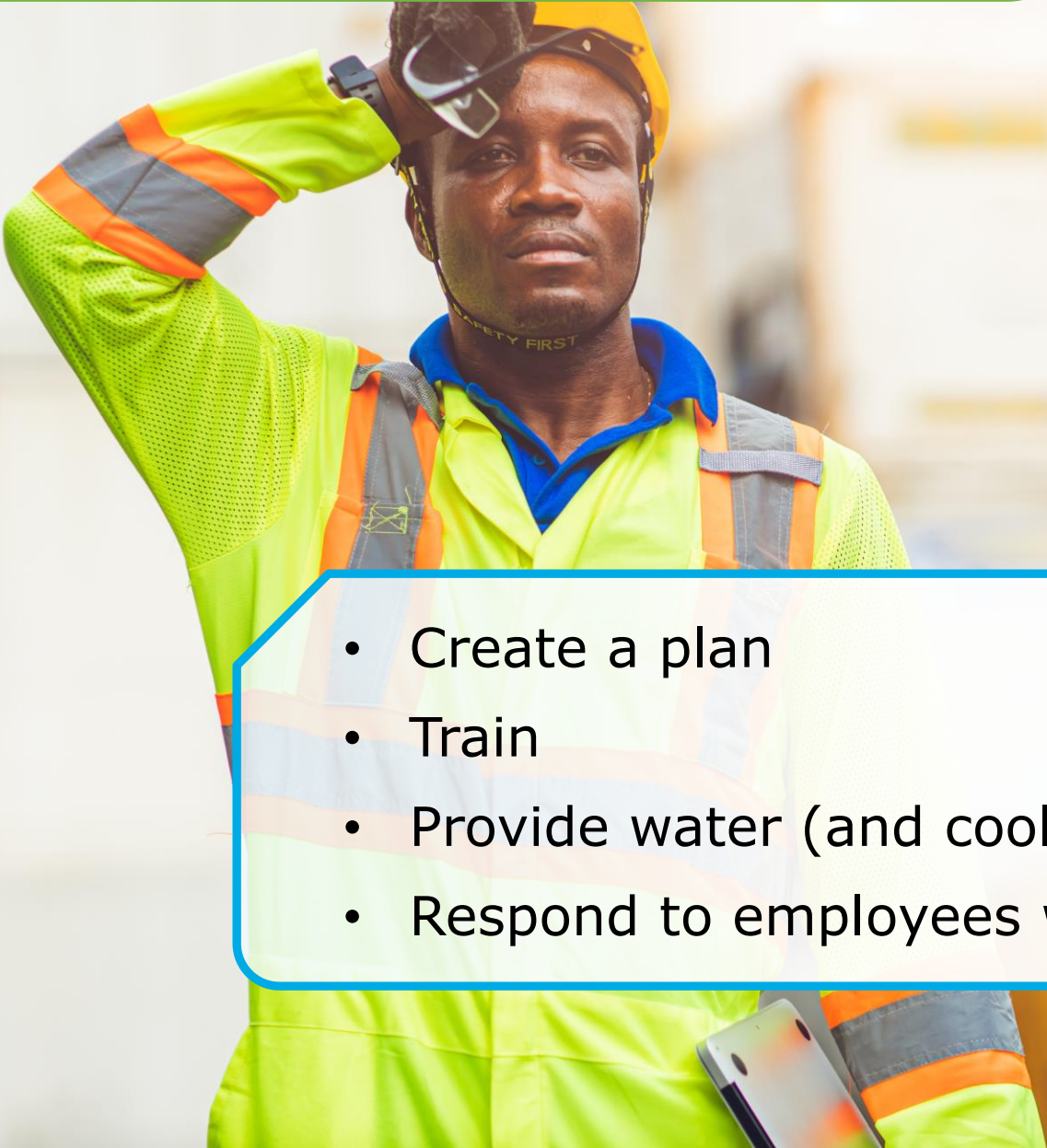


Wage Recovery Act

RCW 60.90.030 allows a wage lien on real property for an unpaid wage claim



WA | Heat Safety Rules

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- Create a plan
 - Train
 - Provide water (and cooling opportunities)
 - Respond to employees with symptoms

WA | Wildfire Smoke Rules



Update Accident Prevention Program



Train Employees



Provide Protection Measures



Respond to Employees with Symptoms



Volunteer Firefighters

- Senate Bill 5384 | Passed into law April 16, 2021
- Expanded RCW 49.12.460
- Workplace protections for volunteer firefighters to include wildland firefighting



WA Long-Term Care Tax?

- On hold until next year.



WA Paid Sick—2022 Legislative Session

- S-3290.1, SENATE BILL 5559
 - Amending R.C.W. 49.46.210. | Regarding verification for use of paid sick leave



Settlement Agreements WA 2022 Legislative Session

- House Bill 1795 | “Silenced No More Act”
 - Settlement Agreements | Prohibits non-disclosure and non-disparagement clauses for certain claims

What to Watch For in 2022

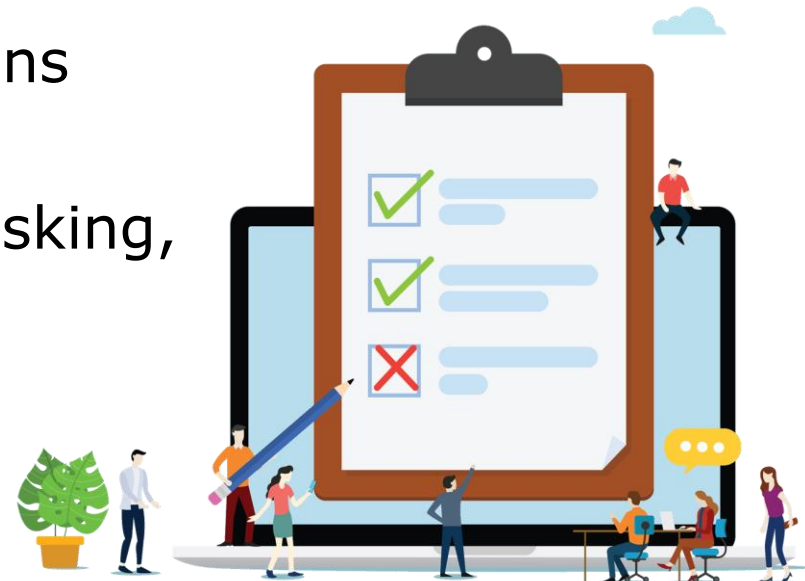
- Remote Work Issues
- Employee engagement
- Union Organizing Efforts



Final Thoughts

Key Takeaways

- Review Handbooks and Update Policies
- Job Descriptions—Exempt/Non-Exempt
- Independent Contractors
- Remote Work—Tax Implications
- Avoid COVID-19 Fatigue—Masking, Social Distancing, Booster Shot Considerations



Thank You!

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