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EMPLOYMENT PRACTICES AND LITIGATION

We recommend a pro-active and preventive approach to employment, and when litigation cannot be avoided, we work with employers to develop cost-effective litigation management strategies. Our services include:

Employment law compliance

Loss prevention, including in-house training for HR professionals, supervisory and managerial staff

Employment practices audits

Comprehensive risk assessment services

Best practices and employment policy reviews

Consultation regarding family medical leave, domestic violence leave and sick leave laws

Workplace investigations and investigation support services

Claims-handling

Litigation and dispute resolution support to employers

Employment agreements, non-competes, and confidentiality

The Firm is approved panel counsel for a number of EPLI underwriters, and has successfully defended employment claims under federal and state laws governing unlawful discrimination and harassment in the workplace, retaliation, wage and hour regulations and workplace safety; and represents employers with respect to common law causes of action including breach of contract, enforcement of covenants not to compete, negligent infliction of emotional distress and constructive discharge.

In addition to representing employers in the federal and state trial and appellate courts, we have appeared before various administrative agencies, including the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration Washington Human Rights Commission, Seattle Office for Civil Rights, Washington Department of Labor, Washington State Department of Employment Security, Alaska Human Rights Commission and Alaska Department of Labor - Wage and Hour Division.

EMPLOYMENT "BEST PRACTICES" AND DISPUTE PREVENTION

Preventive measures can mitigate many employment law disputes, and we therefore regularly provide in-house training to all levels of our clients' workforce.

We tailor training to meet the specific needs of an employer, and typically include instruction as to how to understand and recognize unlawful harassment, how to take appropriate corrective measures, implementing effective reporting systems for employee complaints of harassment or discrimination, and how to conduct internal investigations of employee complaints. We also provide specialized training for management and human resource professionals on topics such as how to achieve better employee performance, correct disciplinary problems, interface with regulatory agencies, and comply with affirmative action obligations.

Prompt resolution and settlement of most disputes is usually in the employer's best interest. We assist employers to evaluate the early settlement potential of claims, provide legal support and consultation to employers in investigating reports of harassment, discrimination and other allegations of unfair employment practices, and aid in the selection and implementation of appropriate discipline and corrective measures.

EMPLOYMENT PRACTICES AUDITS

We routinely conduct employment practices audits for our clients. Such audits involve a thorough review of a company's entire personnel system, from employment applications, interview and screening forms, to employment agreements or contracts, agreements not to compete, to policies and agreements relating to intellectual property, employee confidentiality, trade secrets, employee privacy and computer/internet use.

An audit may also include reviewing and recommending changes, if appropriate, to employment handbooks and personnel policy manuals, and analysis of an employer's personnel, payroll and medical record systems to ensure compliance with federal, state and local record-keeping requirements. Where necessary to ensure compliance, we will also provide appropriate policies, handbooks, or forms.

In addition to employment audit services, we assist clients in preparing and compiling Affirmative Action Plans.

REPRESENTATIVE CASES

The following are representative cases highlighting the firm's experience.

LaBerge. Superior Court of Washington, King County. Plaintiff alleged **breach of contract, failure to pay wages, and disparate treatment based on gender and age** in violation of state and federal law. Obtained pre-trial, dismissal of age discrimination claim; and following a five day jury trial on contract, wage and gender discrimination claims, the jury returned a complete **defense verdict**.

Aker. U.S. District Court, Western District of Washington at Seattle. Claimed **sexual assault and harassment, retaliation and constructive discharge**, including specific allegations supervisor made sexually explicit remarks, brushed behind Plaintiff in close quarters, groped Plaintiff on one occasion, and tried to kiss Plaintiff on another. Plaintiff failed to report any of these alleged occurrences to the employer before leaving employment. Plaintiff also claimed damages for emotional pain and suffering, and offered expert testimony to support a diagnosis of post-traumatic stress disorder. Final pre-mediation demand was \$675,000; nuisance value settlement at mediation.

Morgan. U.S. District Court, Western District of Washington at Seattle. Plaintiff alleged **disability discrimination** in violation of the Americans with Disabilities Act and the parallel Washington statute,

RCW Chapter 49.60, and brought a claim for personal injury damages under the Jones Act and general maritime law for a physical injury he sustained during his employment. Following completion of discovery, plaintiff was forced to nonsuit his disability discrimination claims. The remaining claims were tried to a jury, which returned a complete **defense verdict**.

Tineiafi. U.S. District Court, Western District of Washington at Seattle. Plaintiff alleged **unlawful discrimination** in violation of RCW Chapter 49.60 and 42 U.S.C. §1981, in addition to claims for personal injuries. Specifically plaintiff claimed he received less favorable treatment than his Caucasian co-workers because of his **race and national origin**. At mediation, plaintiff demanded \$600,000 for settlement. Plaintiff was ultimately forced to dismiss his discrimination claims and settled his personal injury claims modestly.

Brummond. U.S. District Court, Western District of Washington at Seattle. Plaintiff, an assistant engineer aboard a fishing vessel, asserted a **claim for unpaid wages under Washington and Alaska State wage and hour law**, claiming that his written employment contract had been modified by oral agreement; plaintiff also sought statutory penalties and attorney fees. In granting the employer's motion for summary judgment, the court enforced the crew contract's express prohibition against oral modifications. The court later awarded the employer its costs, which were recovered via an order of wage garnishment against the plaintiff.

Reid. Superior Court of Washington, King County. Plaintiff alleged **sexual harassment, disparate treatment discrimination based on gender, retaliation** in violation of RCW Chapter 49.60, and violation of state common law on theories of **wrongful termination, negligent supervision, hiring and retention, and intentional and/or negligent infliction of emotional distress**. Plaintiff's claims were barred by the applicable statutes of limitation, but she attempted to escape the time-bar by pleading the "continuing violation doctrine." On motion for summary judgment, the court refused to allow plaintiff to invoke the doctrine, and dismissed plaintiff's entire suit.

Giancoli. U.S. District Court, Western District of Washington at Seattle. Plaintiff sought damages for **sexual harassment, failure to provide a safe workplace, failure to pay wages and benefits, sex discrimination, retaliation, and negligent hiring, training and supervision**. Plaintiff was first forced to drop her claim of *quid pro quo* sexual harassment. A subsequent motion was brought to dismiss claims that were barred by her employment contract and those that failed to meet the maritime law requirements that the plaintiff be in a "zone of danger" and suffer physical manifestation to recover for emotional harm. If successful, the motion would have limited plaintiff to traditional maritime claims and eliminated any risk of an award of prevailing party attorney fees under federal or state anti-discrimination laws. Before a response to this motion was due to the court, plaintiff made an offer to settle her suit for nuisance value, which the employer accepted.

Albrent. Superior Court of Washington, King County. Plaintiff alleged **sexual harassment, disparate treatment because of gender and age, retaliation** in violation of RCW 49.60, and violation of state common law on theories of **wrongful termination, negligent supervision, hiring and retention, and intentional and/or negligent infliction of emotional distress**. After plaintiff's deposition, the employer brought a motion for summary judgment on the grounds that the conduct alleged by plaintiff was not sufficiently severe or pervasive as a matter of law to constitute sexual harassment, and that plaintiff lacked evidence to prove the *prima facie* elements of her other claims. We obtained for the employer a **pre-trial dismissal of all claims with prejudice**. The trial court's summary judgment order was **affirmed** by the Washington Court of Appeals.

Mendoza. U.S. District Court, Western District of Washington at Tacoma. Plaintiff alleged **breach of contract, race and disability discrimination**, in violation of both federal and state law. Following the plaintiff's deposition, he was forced to withdraw his claims for race and disability discrimination. Plaintiff's remaining claims for breach of contract claim and unpaid wages went to trial, resulting in a verdict in favor of the plaintiff for \$400.

Cornelio. Superior Court of Washington, King County. Twenty-three crewmembers on a processing vessel walked off the job at sea during operations to protest an increase in their work hours. After they were discharged at the nearest port, they filed suit alleging **wrongful termination, constructive discharge and breach of implied contract**. We obtained **pre-trial dismissal** of these claims for the employer. The Washington State Court of Appeals, Division I, **affirmed** summary dismissal of these claims.

LeBourgeois. U.S. District Court, Western District of Washington at Seattle. Plaintiff alleged **discrimination and harassment based on race and national origin** under 42 U.S.C. § 1981 and Washington's Law Against Discrimination, RCW 49.60. The federal claim was dismissed on summary judgment based on a six-month time for suit provision in plaintiff's employment contract. The state law claims were dismissed based on a choice of law provision in the employment contract specifying federal law and excluding state law.

Fisher. Superior Court of Washington, King County. Claim of **wrongful termination and age discrimination**. Early favorable settlement achieved via Offer of Judgment tendered immediately upon suit filing.

Stewart. Superior Court of Washington, King County. **Claim of national origin discrimination and retaliatory discharge**. Early Offer of Judgment succeeded in reasonable early settlement without substantial litigation costs.

Earley. Equal Employment Opportunity Commission. Ms. Earley filed an administrative complaint alleging **disability discrimination** under the Americans with Disabilities Act and RCW Chapter 49.60 after she was refused employment due to her obesity. After a satisfactory investigation with the EEOC, the complaint was favorably settled for the value of lost earnings for one fishing season.

Ewing. Equal Employment Opportunity Commission. Ewing filed a maritime personal injury action against his employer, which resulted in a complete defense verdict. He then filed an EEOC complaint alleging **disability discrimination** in violation of the Americans with Disabilities Act and the parallel Washington statute, RCW Chapter 49.60. Defense counsel successfully persuaded the EEOC that Mr. Ewing was neither disabled nor discriminated against, and the EEOC issued a **determination of no reasonable cause**.

Weiss. Washington State Human Rights Commission ("HRC"). Weiss filed an administrative complaint alleging hostile work environment and *quid pro quo* sexual harassment against her former employer and her supervisors. Settlement negotiations through the HRC resulted in a final settlement for \$5,000.

Aborah. Equal Employment Opportunity Commission. Aborah filed an administrative charge alleging that he was **denied a promotion and denied future employment because of his age and race**. He had received work performance reviews which substantiated the employer's position that its refusal to promote and to rehire Aborah were based on legitimate grounds. The employer was also able to provide demographic data to dispute the charges. **The charge was summarily dismissed with a finding that no violation of discrimination statutes could be substantiated.**

Christiansen. Equal Employment Opportunity Commission. Alleged female on male **sexual harassment, and retaliatory discharge**. Upon presentation to EEOC of employer's position, EEOC issued a **finding of no reasonable cause**.

Aguirre, et al. Washington State Department of Employment Security. Twenty-two processing workers walked off the job on their factory ship in a **dispute over work hours**. Following several days of hearings in which the employees argued their actions were justified because of changed conditions, the Commissioner ruled the employees lacked good cause to quit and **denied benefits**.

Vidal. National Labor Relations Board. Unfair labor practice charge based on alleged retaliatory refusal to rehire charging party for his participation in **protected concerted activities**. **Region 19 declined to issue a complaint upon our showing** of employer's legitimate non-discriminatory medical reasons for the no rehire decision.

Martinez. National Labor Relations Board. Companion case to Vidal. **Region 19 withdrew its ULP charge** upon our successfully establishing it as untimely.

Stevenson. Alaska Department of Labor and Workforce Development. Stevenson claimed he was **wrongfully discharged in retaliation** for bringing a worker's compensation claim. On behalf of the employer, we persuaded the agency that Stevenson's termination resulted from a violation of a safety rule, and it dismissed Stevenson's charge **finding no reasonable cause**.

Cornelio. United States Court of Appeals for the Ninth Circuit. Obtained 9th Circuit affirmance of NLRB ruling that at sea strike by shipboard fish processors was not **protected concerted labor activity**, and vessel's master justifiably terminated employment of striking crew.

Mukassa. Equal Employment Opportunity Commission. Mukassa alleged race and national origin discrimination based on alleged derogatory comments by co-workers, and retaliation following her reporting the comments to her employer. Following our submission of a detailed position statement on behalf of the employer, the **EEOC found no violations and dismissed the charge**.

Buchman. Alaska State Human Rights Commission. Buchman alleged that he was **unlawfully terminated based upon his age**. We provided evidence to the Commission showing that Buchman was terminated for legitimate, non-discriminatory, business-related reasons, and participated in the Commission's witness interviews. The Commission issued a determination finding no substantial evidence to support Buchman's claim and **dismissed the charge**.

Scott. Alaska State Human Rights Commission. Scott alleged that he was **discriminated against based on his race** by not being provided payroll advances, not being provided with medical attention, and by being terminated. We provided evidence showing that none of Scott's claims of race discrimination were true. The Commission issued its Final Determination **dismissing Scott's charge** and finding that Scott's claims were not supported by substantial evidence.

Koita. Equal Employment Opportunity Commission. Koita alleged that he was **discriminated against** and not rehired after completing his contract **based upon his race**. We submitted a detailed position statement and provided evidence showing that Koita's ineligibility for rehire was based upon legitimate

performance reasons, and that there was no evidence to support his claims of racial discrimination. The Commission determined there was **no evidence to support a violation and dismissed Koita's charge.**

Peato. State of Washington Department of Labor and Industries. Complaint of termination in violation of **Domestic Violence Leave Act.** Our client's violation was determined de minimis in light of employee's violation of anti-fraternization policy separately justifying the negative employment decision.

Chuol. Equal Employment Opportunity Commission. Chuol alleged he was **discriminated** against and harassed **based on his race and national origin.** We submitted a detailed position statement and evidence showing that Mr. Chuol's allegations were baseless. After investigation, the Commission was unable to find any statutory violations.

Avalis. Equal Employment Opportunity Commission. Avalis alleged he was **not hired because of a disability** in violation of the Americans with Disabilities Act. We oversaw submission of a detailed position statement and evidence showing that Avalis was not hired for legitimate reasons and that his claims were unfounded. The Seattle Office of Civil Rights, to whom the EEOC assigned the matter, **found no reasonable cause to find that any unfair practice occurred.**

D. Johnson. King County Superior Court. Johnson was a cook on a factory fishing vessel who alleged he was wrongfully terminated on account of his race (African-American), and was subject to a racially hostile work environment on the vessel. Plaintiff's counsel served a courtesy copy of the complaint, but agreed to defer filing with the court pending our investigation of the previously unreported hostile work environment allegations. We conducted a complete investigation of the racial harassment allegations, determined they were uncorroborated and meritless and shared the results of the investigation with Johnson's counsel. Counsel dropped the matter and never filed the complaint with the court.