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Inside this Issue

UPCOMING SEMINARS

Eric Quinn will be teaching some essential seminars in the coming months.

On April 5, 2025, Eric will be teaching on behalf of WFCA—the Washington Fire Commissioners Association. This training pertains to differentiating between the functions of fire commissioners and fire chiefs, and how this becomes important in the context of evaluating the fire chief. Eric will also be discussing how the fire commissioners should approach executive sessions in the context of evaluating the fire chief's performance. Information regarding this training is located here: https://wfca.wa.gov/page/SpringSeries2025

On April 12, 2025, Eric will be teaching for the Pierce County Fire Commissioners Association on the Formation and Administration of Regional Fire Authorities, from 0900 to 1200. This will be done in person at South Sound 911, 3580 Pacific Ave. Tacoma, Washington. This free seminar will also be offered remotely via Zoom. The Meeting ID is 815 7774 7587 and the Passcode is 868669.

Please email Denise Ross to register: dross@centralpiercefire.org. Please state whether you plan to attend in person or remotely so we can plan accordingly. The formal announcement of this training is attached here.

DISABILITY DISCRIMINATION AND TIMELINESS

Can a former employee claim discrimination based on a disability, after being terminated, if the former employee did not request accommodation, never claimed to be disabled, and was never perceived to be disabled?

Suppose an employee had a long history of tardiness or absenteeism, such as not showing up to work for six months? The interaction between employer and employee was very limited as to the reason for these problems, and so the employer wants to terminate the employee for "abandoning" the position. Can the employer do that with little or no fear that a discrimination case may be filed? Also, the employee never claimed to be disabled or requested accommodation for any alleged disability.

Let's say that now the former employee, having been terminated for abandonment, says the attendance problem was caused by a disability. Post-traumatic stress disorder, now a recognized disability, is mentioned. Does either the Americans with Disabilities Act or the Washington Law Against Discrimination allow such an after-the-fact claim of discrimination?

Because employers are only required to accommodate employees with known or perceived disabilities, it follows that the employee should disclose the existence of a disability before expecting accommodation. If there is no such disclosure and no such perception of disability during the term of the employment, we do not believe there can be a viable discrimination complaint after termination.

If the former employee argued that the employer should have perceived there was a disability, we would point that excessive absenteeism could be attributable to financial problems, relationship issues, other family difficulties or any number of underlying reasons for the problem. Employers do not have to be mind readers.

We believe that a former employee can only claim disability discrimination if they can prove that the employer knew or should have known of the existence of a disability at the time of the adverse action. Raising such a claim for the first time after being terminated for a non-pretextual reason should not be allowed. In other words, discrimination must be shown to be intentional, or at least grossly negligent.

A garnishment primer for employers

Recently, we have been dealing often with garnishment of wages pursuant to chapter 6.27 of the Revised Code of Washington. Therefore, we thought it might be beneficial to teach fire service employers the basics of properly dealing with the situation, when one or more of your employees is having their wages garnisheed.

Let's say plaintiff A has a judgment for $5,000 against one of your employees. Now they are a judgment creditor; we will refer to them now as JC. Local government employers are subject to garnishments pursuant to RCW 6.27.040. The garnishment process begins when the JC files an affidavit applying for a writ of garnishment. See RCW 6.27.060. If there is an employer involved—such as a fire district or regional fire authority—then the issued writ is served on the employer, who we shall call "G" for Garnishee Defendant.

The writ of garnishment orders G to answer the writ on forms provided within twenty (20) days after service of the writ. The answer of G is signed by an officer of the employer under penalty of perjury and then the original answer and copies have to be delivered personally or by mail as stated in the writ. If the writ of garnishment is a "continuing lien", which it usually is because the JC has a judgment well in excess of the amount that needs to be paid over by G (eventually) at any one time, another statute requires a somewhat more complex "first answer" to the writ. RCW 6.27.340 recites in detail the required contents of that "first answer".

Rather than go into a long-winded explication of what the answer needs to include, we'd like to suggest that the employer might want to initiate a brief conversation with counsel for the agency to answer any questions about "nonexempt earnings," "disposable earnings." "deductions required by law," "child support orders and liens," and other technical terms, before trying to complete that first answer.

Recently, we had a client who unfortunately paid over some wages without waiting for the judgment (in favor of the JC) based on the answer of the G as to what funds were being held by the G to satisfy the continuing lien. If nothing else, we hope this article makes employers realize that garnishment can be tricky, especially for small employers that have never been involved in a garnishment before.

AN OBSCURE STATUTE?

Until recently, we had not paid attention to RCW 49.60.530, a statute added in 2023 to the Washington Law Against Discrimination. Effective January 1, 2024, contractors and subcontractors with the state for public works, or for sale of goods or services, are subject to nondiscrimination provisions. The statute requires such state contracts to contain nondiscrimination provisions and even requires the contractors to notify any applicable unions with collective bargaining agreements of the nondiscrimination requirement.

The statute seems to apply only to state contracts and not the contracts for public works or purchase of goods or services by municipal corporations.

WHAT DOES EX OFFICIO MEAN?

In recent years, we have often seen fire districts or regional fire authorities accept or appoint ex officio members to their boards. Typically, these ex officio members are elected officials, such as city council members, serving in a city that the district or RFA contracts with for services, or which has annexed into the fire district pursuant to RCW 52.04.061 et seq.

But what does the designation mean and how does it work? Under the usual parliamentary rules "ex officio" denotes a non-voting or advisory member of the board. It makes a lot of sense to appoint a city council member to an ex officio position after a city annexes, to work as a sort of liaison to that city. In our opinion, the arrangement does not violate the statutes in Title 52 in any way. It is similar to the common practice of appointing advisory committees, drawn from the community, to allow commissioners to keep in touch what their voters are thinking about the fire department.

ANOTHER STATUTE WHOSE TIME HAS COME—PERHAPS

We have to admit, when this statute was first enacted in 2017 (already eight years ago!) we wondered why it was passed or who might use it. We are referring to RCW 52.20.160, enacted by Chapter 328 of the Laws of 2017, and signed into law. For the first time in our history, this law allowed, as an alternative to the usual petition method for forming a fire protection district, a resolution method. Under RCW 52.02.160, the legislative authority of a city or town may by resolution, subject to the approval of the voters, establish a fire district with boundaries that are the same as the corporate boundaries of the city or town. Prior to the passage of this law, fire protection districts could only be established in unincorporated areas of counties in Washington. Of course, cities could also annex into a fire district or a regional fire authority, or contract for services. But this law contemplated something different.

Suppose a city or town operates its own municipal fire department, but for whatever reason the city no longer wants to provide that service as a part of the services the city offers. There is no law stating that a city or town must operate a municipal fire department.

The statute requires the following elements to be included in the resolution: (a) a financing plan, including revenue sources such as property taxes or benefit charges; and (b) a date for public hearing on the issue. The financing plan must address the property taxes both the city and the fire district will impose if the measure passes. The plan must set out the actual dollar amount of taxes the district will levy in its first year. Also, the plan must disclose the city's highest lawful levy (HLL), reduced by the fire district's levy (above) and that reduced levy becomes the HLL thereafter, for subsequent levy calculations. This is a direct reference to the statutory 1% limit on the increase, year over year, to that HLL, unless the voters approve a "lid lift". See RCW 84.55.005 et seq. and particularly RCW 84.55.050 on lid lift elections.

The statute goes on to require the plan to provide the "estimated aggregate net dollar amount impact" on property owners within the city or town based on the changes. We believe this means the total dollar amount of any tax increase to all of the property owners. The total, not the individual tax increases, if any, is what they are getting at, by using the word "aggregate."

The statute also addresses what needs to happen if benefit charges are requested under RCW 52.18. As in the annexation and RFA formation statutes, if benefit charges are involved that means you need 60% voter approval instead of a simple majority.

Notice of the public hearing must be published for three consecutive weeks in a newspaper of general circulation and posted in three public places within the city for at least 15 days prior to the hearing as well. The resolution is obviously not effective until after approval by the voters at a general election (November).

One more point: If the district is to be governed by an elected board of commissioners, elections must be held for those posts at the same election. The statute even proposes some specific content for the ballot title, which is unusual.