

# 34<sup>th</sup> Annual Best Practices for Best Employers™ Seminar

OCTOBER 11, 2016 // SEATTLE, WA // REGISTER NOW AT [LANEPOWELL.COM](http://LANEPOWELL.COM)

Join Lane Powell, Washington Bankers Association, the Greater Seattle Business Association, Lake Washington Human Resource Association, AIG and the *Puget Sound Business Journal* for the **"Best Practices for Best Employers" 34<sup>th</sup> Annual Labor and Employment Seminar**. This consistently popular seminar, repeatedly fresh and relevant, is the ideal event for employers, HR professionals, in-house counsel and managers, where you will get the most recent insights in employment law to avoid disruptive and expensive audits, charges and lawsuits. Join us to learn what to do now to be ready for changes coming in 2017.



# Test Your Employment Law IQ



01

**Can our company promise equity in exchange for services?**

- A. Yes. It is common practice.
- B. Yes. As long as I report the value of the stock as wages for federal tax purposes.
- C. Generally, no. But it may be fine if the recipient is a founder.
- D. No, it is never permissible.

02

**Should our company consider hiring consultants as independent contractors?**

- A. Yes. It is common and helps companies avoid unnecessary employment taxes.
- B. Yes. It is better for the workers, but we need to have an air-tight independent contractor template to avoid issues.
- C. It's complicated.
- D. I don't want to talk about it.

03

**Our small company is located in Bellevue, and has only a few employees working in Seattle, must we pay minimum wages of \$15/per hour?**

- A. No. Companies located in Bellevue are exempt.
- B. No. A small company must pay minimum compensation of \$12 per hour during 2016.
- C. No. A small company can pay an hourly minimum wage of \$10.50 per hour during 2016, and make up the difference with payments toward employees' medical benefits plan.
- D. No. But a small company can comply with the Seattle minimum wage law by doing either B or C, above.

04

**Our company already has a good culture. Do we need an employee handbook?**

- A. Never. Washington is an at-will state.
- B. Yes. Several laws require written policies and the handbook is the best place.
- C. Never. Handbooks limit a company's discretion.
- D. Never. Handbooks create more problems than they solve.

05

**Why should our company use offer letters or employment agreements when Washington is an at-will state?**

- A. Offer letters help eliminate disputes over terms and conditions of employment.
- B. An employee may successfully claim that they were promised employment for their lifetime based on a verbal promise.
- C. You may be personally liable for penalties if the employee was promised a bonus, but it was not paid.
- D. All of the above.

**Didn't score 100%? Attend our seminar on October 11 to learn more.**

**Answers →**

## Keep up with the trends on how to hire and retain **millennials**.

### Who is a millennial?

Individuals born from 1980 to 2000

Currently form 25% of the U.S. workforce

Will form 50% of the global workforce by 2020

"Millennials at Work: Reshaping the Workplace," PwC (2011)



**"More than 50% of millennials say they would take a pay cut to find work that matches their values, while 90% want to use their skills for good."**

"What Millennials Really Want," Adam Smiley Pbswolsky, Fast Company (June 2015)

### What millennials look for in new employment opportunities:

- Salary/benefits
- Work/life balance and flexibility
- Opportunities for mentorship, skills acquisition and leadership
- Meaningful work that helps make the world a better place
- Company values that match their personal values
- Collaborative and inclusive work culture



**"Millennials judge the performance of a business on what it does and how it treats people."**

"The 2016 Deloitte Millennial Survey: Winning Over the Next Generation of Leaders," Deloitte Touche Tohmatsu Limited (2016)



**What millennials perceive as the top performance indicators within a business:**

- Quality of products and services
- Levels of employee satisfaction
- Customer loyalty/satisfaction
- Product/service innovation
- Efficiency

Answer key: 1. C 2. C 3. D 4. B 5. D

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# Washington State Leave Laws

**Operating a business in Washington can be complicated.** There are numerous state leave laws that employers must abide by, many of which may be unfamiliar to you. The leave law puzzle is further complicated by the many local ordinances that various Washington cities have implemented. So, don't forget that you must comply with those too! The chart below summarizes the Washington state leave laws that may apply to you and your employees. Of course, each situation and need for leave may be different, so it is important to consult your attorney before making any employment decisions based on an employee's need for leave.

NAME OF LAW	WHICH EMPLOYERS ARE SUBJECT	WHICH EMPLOYEES ARE COVERED	KEY POINTS
<b>Washington Family Leave Act (WFLA)</b> <ul style="list-style-type: none"> <li>RCW 49.78</li> </ul>	Employers with 50 or more employees within a 75-mile radius for 20 or more calendar workweeks in current or preceding calendar year	Employees with: <ul style="list-style-type: none"> <li>12-months employment</li> <li>1,250 hrs in 12 months</li> </ul>	<ul style="list-style-type: none"> <li>12 weeks of leave in 12-month period</li> <li>For employee's own serious health condition</li> <li>To care for child, parent, spouse, registered domestic partner with a serious health condition</li> <li>Birth or placement of child</li> <li>Must be returned to equivalent position within 20 miles of original job</li> <li>In addition to pregnancy/childbirth related disabilities</li> </ul>
<b>Washington Family Care Act</b> <ul style="list-style-type: none"> <li>RCW 49.12.265</li> <li>WAC 296-130</li> </ul>	Employers with 1 or more employees	All employees, immediately upon employment who have a paid leave benefit	While this law does not require an employer to provide an employee additional leave, it does require you to allow employees to use accrued paid sick leave (or other paid time off) to care for a child, spouse, parent, parent-in-law or grandparent with a health condition
<b>Washington Sex Discrimination Regulation</b> <ul style="list-style-type: none"> <li>WAC 162-30-020</li> </ul>	Employers with 8 or more employees	All employees, immediately upon employment	<ul style="list-style-type: none"> <li>Unlimited leave for any disability related to pregnancy or childbirth</li> <li>WFLA does not run concurrently with period of pregnancy/childbirth disability leave</li> <li>FMLA does run concurrently with period of pregnancy/childbirth disability leave</li> </ul>
<b>Washington Law Against Discrimination (WLAD)</b> <ul style="list-style-type: none"> <li>RCW 49.60</li> </ul>	Employers with 8 or more employees	All employees, immediately upon employment	<ul style="list-style-type: none"> <li>Leave may be a possible reasonable accommodation for a qualifying individual with a disability</li> <li>No hard and fast rules regarding the length of leave request</li> <li>If employee cannot return to work at end of other protected leave, must consider whether or not employee qualifies for additional leave as a reasonable accommodation under WLAD</li> </ul>
<b>Leave for Victims or Family Members of Victims of Domestic Violence, Sexual Assault or Stalking</b> <ul style="list-style-type: none"> <li>RCW 49.77</li> </ul>	Employers with 1 or more employees	All employees, immediately upon employment	Reasonable leave to: <ul style="list-style-type: none"> <li>Obtain legal assistance</li> <li>Obtain medical or social services care</li> <li>Ensure safety of victim and/or children</li> <li>Obtain counseling services</li> <li>Attend legal proceedings</li> </ul> Family members covered: <ul style="list-style-type: none"> <li>Child</li> <li>Spouse</li> <li>Parent</li> <li>Parent-in-law</li> <li>Grandparent</li> <li>Person employee is dating</li> </ul>
<b>Leave for Spouses of Military Personnel</b> <ul style="list-style-type: none"> <li>RCW 49.77</li> </ul>	Employers with 1 or more employees	All employees who work 20 or more hours per week	Spouse of all military personnel allowed: <ul style="list-style-type: none"> <li>15 days per deployment</li> <li>To be taken prior to or while spouse is on leave from deployment</li> </ul>
<b>Leave for Emergency Services Personnel</b> <ul style="list-style-type: none"> <li>RCW 49.12.460</li> </ul>	Employers who had 20 or more FTE employees in the previous year	Employees who are volunteer firefighters, a reserve peace officer or a Civil Air Patrol member	Allows for late arrival or missed work to perform emergency services
<b>Jury and Witness Duty Leave</b> <ul style="list-style-type: none"> <li>RCW 2.36.165</li> </ul>	Employers with 1 or more employees	All employees, immediately upon employment	<ul style="list-style-type: none"> <li>Employer must provide employee with a sufficient leave of absence to serve as a juror</li> <li>If employee receives a summons, responds to the summons, serves as a juror or attends court for prospective jury service, employer may not:               <ul style="list-style-type: none"> <li>Deprive an employee of employment</li> <li>Threaten, coerce or harass an employee, or</li> <li>Deny an employee promotional opportunities</li> </ul> </li> </ul>

**Don't forget local ordinances regarding leave and sick and safe regulations.**

# 7 Things You Need to Know About New Department of Labor Regulations for Fair Labor Standards Act (FLSA) Exemptions

- 01** The new minimum salary of \$47,476 per year for full-time employees applies only to the Executive, Administrative and Professional Exemptions and takes effect on Dec. 1, 2016.
- 02** Computer professionals may now be paid either the minimum salary of \$47,476 per year or an hourly rate of at least \$27.63 under the new regulations.
- 03** The duties tests for Executive, Administrative, Professional and Computer Professional Exemptions have not changed.
- 04** Employers can now credit up to 10 percent of certain nondiscretionary bonuses and incentive payments toward the minimum salary, provided they are paid out at least quarterly.
- 05** Seasonal or part-time employees must receive at least \$913 per week to meet the minimum salary requirements (i.e., employers are not allowed to prorate the minimum salary requirements on a weekly basis for less than full-time employees).
- 06** The new regulations include a mechanism for automatically updating the salary and compensation levels every three years.
- 07** Employers will still need to comply with both federal and Washington state wage and hour laws for employees in Washington state.

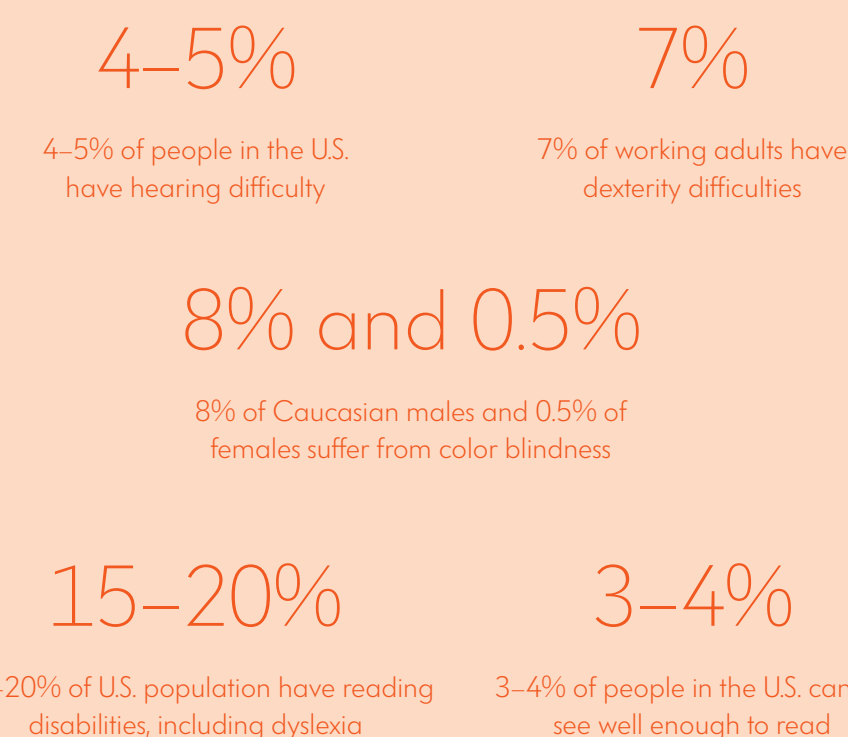
## Current Washington State Minimum Wage Laws



- |   |  |
|---|--|
| <b>01</b> Washington State<br><b>\$9.47</b> | <b>04</b> City of Seattle (Small Employers)<br><b>\$10.50 to \$12.00</b> |
| <b>02</b> City of Tacoma<br><b>\$10.35</b>  | <b>05</b> City of Seattle (Large Employers)<br><b>\$12.50 to \$13.00</b> |
| <b>03</b> City of SeaTac<br><b>\$15.24</b>  |  |

## Best Practices in Making Your Website Americans With Disabilities Act (ADA) Title III Compliant

**42 U.S.C § 12182(a):**  
 "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation."



## There are several digital barriers to keep in mind when maintaining an ADA-compliant website

- BLINDNESS/ LOW VISION**  
Ensure your website is compatible with screen reading software.
- DEAFNESS/ HEARING LOSS**  
Provide transcriptions of any verbal media.
- COLOR BLINDNESS**  
Use contrasting colors and a larger font size.
- MANUAL DEXTERITY**  
Make sure your website is keyboard accessible.

## What to Consider When Drafting a Social Media Policy

- Balance employees' Section 7 rights under the National Labor Relations Act (NLRA) with desire to protect company's reputation and confidential information**
- Consider a "catch-all" statement that the social media policy is not intended to preclude or dissuade employees from engaging in legally protected activities, such as discussing wages, benefits, or other terms and conditions of employment, etc.
  - Understand that some statutes, such as HIPAA, may permit stricter requirements on the disclosure of some types of information, such as Protected Health Information, on social media.
- Define "social media" broadly enough to capture the ever-expanding online world**
- Social networking communications (eg, Facebook, Instagram, Twitter, LinkedIn)
  - Electronic communications (eg, email, voicemail, text, instant messaging)
  - Electronic information (eg, Internet histories, digital photos)
- Dispel employees' expectation of privacy in social media and company's IT systems as appropriate**
- All social media created using or stored on company's IT systems
  - Social media publicly available or accessible if not created using or stored on company's IT systems
- Identify the type of monitoring and searching company will do of social media**
- Are employees allowed to visit Facebook on company computers?
  - Are employees allowed to text friends and family using company cell phones?
- Identify responsible uses of social media by employees outside of work**
- Provide a disclaimer before posting about company on social media
  - Respect copyright and intellectual property laws
  - Follow company's anti-harassment laws and respect co-workers online

# 34<sup>th</sup> Annual Labor and Employment Seminar

## Agenda for Tuesday, October 11, 2016

### 9:30-10 AM

Registration and Breakfast

### 10-10:10 AM

Welcome and Introduction

### 10:10-10:50 AM

**"Get Smart": Top 10 Things Employers Need to Know Now**

*Katheryn Bradley, Lane Powell PC*

This session provides updates on recent labor and employment developments and recommendations on how to stay compliant, including:

- Steps to comply with new wage theft and paid sick leave laws sweeping the country;
- Updating your hiring practices to comply with new laws affecting background checks;
- How to accommodate religious beliefs in light of new federal initiatives;
- Managing leave and disability accommodations to avoid claims;
- Dealing with new rules regarding "joint liability" employer status under the NLRB's new test;
- Implementing your wellness plan to comply with new EEOC rules; and
- How the "gig" economy impacts your workforce, and what to do about it.

### 10:50-11:30 AM

**The New "Price is Right": Pay Equity and Statistics — Avoiding and Defending Claims**

*D. Michael Reilly, Lane Powell PC and G. (Ted) Anderson, PhD, Welch Consulting*

Pay equity is an increasing focus. Learn about current litigation, legislation and enforcement trends, proactive practices to avoid and minimize liability using statistical analysis, strategies for using

audits, selecting statistical models and developing pre-suit defense strategies.

### 11:30 AM-NOON

**"Stranger Things" ... Bizarre Tales from the Employee Benefits World**

*Craig A. Day, Lane Powell PC*

Employee benefits lawyers and practitioners see strange things every day. Discover some practical and creative ways to avoid bizarre new issues, and recent developments in the benefits world including retirement plans, executive compensation, severance, the Affordable Care Act, the Mental Health Parity Act and COBRA. Receive practical answers to the following questions:

- Who gets your deceased employee's 401(k) account if she was married to a man currently married?
- Do I have to pay for expensive applied behavior analysis therapy for health plan participants who are autistic?
- When an employee goes on a leave and remains on our health plan, how do I collect the premiums?
- Can I offer to subsidize COBRA benefits for an employee under a severance or separation agreement?

### NOON-12:40 PM

Lunch

Lunch will be provided.

### 12:40-12:55 PM

Video Segment

### 12:55 PM-1:10 PM

**"Closed Case Files": Timing is Everything When It Comes to Your EPLI Claims**

*Mark R. Girolamo, Regional Manager, AIG*

What kinds of employment claims are you most likely to see? Find out the recent claim trends experienced by a broad range of industries. This session also explains the steps you should take when you learn you have an employment claim, and how and when to respond to employment disputes.

### 1:10-1:50 PM

**"Law & Order": Newest Trends and Practices From Department of Labor Enforcement — Policies, Targeted Investigations, Audits and Litigation; and Protecting Your Future Interests if an Audit Turns Into a Prosecution**

*Chuck P. Rullman, Lane Powell PC*

The Department of Labor (DOL) has changed its approach in investigation and audits. Learn new trends and practical approaches in responding to a DOL audit, steps to avoid litigation with the DOL and how to prepare your best defense.

### 1:50-2:05 PM

Break

### 2:05-2:15 PM

Video Segment

### 2:15-2:55 PM

**"Breaking Bad": When Cancer Comes to Work**

*Kelly Lipscomb, Lane Powell PC*

Statistics show it is highly likely some of your employees may be battling cancer themselves, or caring for a loved one with cancer. This session provides holistic approaches to the unique challenges cancer causes in the workplace. You will also receive insightful suggestions from cancer patients on how employers can better handle unique situations while supporting employees affected by cancer.

Register at [lanepowell.com](http://lanepowell.com).

Use the discount code

"PSBJReader2016" to receive \$50

off the online admission rate of

\$125! \*Printed materials will be

available for \$25; free to download.

### 2:55-3:05 PM

Video Segment

### 3:05-3:45 PM

**"The \$47,476 Pyramid": How to Win the FLSA Overtime Exemption Game**

*Sarah Swale, Lane Powell PC*

This session addresses practical strategies for employers in restructuring/reclassifying workers to meet the new federal overtime regulations and changing pay practices to minimize litigation risks. The session will also discuss the real-world challenges of changing employees from exempt to nonexempt, and the interplay of the new federal overtime regulations with Seattle, SeaTac and Tacoma minimum wage laws.

### 3:45-4:15 PM

**Networking and Q&A Sessions With Speakers**

A 30-minute session for attendees to meet with the presenters casually to ask questions and/or to network.

### LOCATION

**Motif Seattle  
Emerald Ballroom  
1415 Fifth Ave.  
Seattle, WA 98101**

**Questions? Contact:**  
Emily Snyder, 206.223.7000,  
[snydere@lanepowell.com](mailto:snydere@lanepowell.com).

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