

Hop on the Bullet Train:

*Hiring and Retention Considerations
in a Fast-Paced Employment Market*



2022 Employment Law Seminar



Speaker Introductions



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Hiring and Retaining Employees



Best Practices for Optimal Hiring

- Labor shortages in recent years created huge challenges for organizations
- Reminders for best practices despite pressures to fill empty positions



Best Practices for Optimal Hiring

- **Job descriptions** are a key starting point to explain job duties and increase likelihood of qualified applicants
 - Clearly explain expectations for remote or in-person work
 - Remember the description can be legal evidence of expectations for essential functions announced before a discrimination claim is asserted
 - Avoid cutting corners on explaining essential functions



Best Practices for Optimal Hiring

- Consider **federal and state pay-equity laws** when making salary offers to attract employees
 - Pay-equity laws may limit making high salary offers
 - These laws prohibit employers from paying an employee more than it pays an employee of a protected class when they perform comparable work
 - Pay transparency requirements increasing
- **Labor union considerations** in hiring
 - Some hiring practices are mandatory subjects for negotiation

Best Practices for Optimal Hiring

- Considerations in **diversity-conscious recruitment**
 - Many organizations are trying to diversify workforce or show commitment to diversity, equity, and inclusion initiatives
 - Some applicants actively look for equity practices in an organization
 - Anti-discrimination laws prohibit direct race-conscious hiring
 - Legal approaches to diversifying workforce



Best Practices When Using Retention Strategies

- Competitive labor markets lead to retention challenges because of recruitment from competitors
- Unique retention strategies are just as important as remembering basics of good employment practices to keep top talent



Best Practices When Using Retention Strategies

- Workplace culture plays a big role in retention
 - Compensation isn't the only factor in retention
 - Consider nonmonetary or intangible benefits, such as employee well-being and mental health care, flexible schedules, remote work, social opportunities, and others
 - Remember responsiveness to complaints and requests as aspect of culture
- Increased professional development opportunities—conferences, additional education, and others—can help employees see a future in your organization
 - Professional development can be used as a tool to retain diverse employees, too, but remember singling out diverse workers can lead to discrimination claims

Best Practices When Using Retention Strategies

- Labor union considerations in retention
 - Collective bargaining agreement may impose constraints on flexibility
 - Retention or performance bonuses are negotiable subjects
- Remember pay-equity laws in offering retention bonuses and salary raises



Restrictive Covenants as a Retention Tool



Restrictive Covenants as a Retention Strategy



- Types of restrictive covenants
 - Non-compete agreements
 - Nonsolicitation agreements (customer/employee)
 - Confidentiality agreements
- Can be constrained by both statutes and law

Non-compete Statutory Requirements/Limitations

OREGON – ORS 653.295	WASHINGTON – RCW 49.62.005-900
<ul style="list-style-type: none"> • Advance notice in writing – at least two weeks before first day of employment of bona fide advancement • Certain types of employees (essentially exempt)* • Protectable interest • Income requirement* • Post-separation notification • 12-month term limitation* 	<ul style="list-style-type: none"> • Advance notice in writing – no later than at the time acceptance of offer of employment or independent consideration • Income requirement • Reason for separation can't be layoff* • 18-month term limitation

Also in Washington

Other statutory requirements and limitations:

- Venue/applicability requirements for Washington-based employees (even if employer is based in another state)
- Can apply to some independent contractors
- Damages/penalties and **attorney fees**

RCW 49.62.005-900

Common Law Constraints

OREGON	WASHINGTON
<ul style="list-style-type: none"> • Reasonably necessary to protect the employer's legitimate interests • Reasonable in time and geography 	<ul style="list-style-type: none"> • Necessary to protect employer's business or goodwill • No greater than reasonably necessary to secure employer's business or goodwill • Reasonable in time and geography • Injury to public does not outweigh benefit to employer

California and Alaska

California



Alaska



Employee Benefits: Worth a Second Look



(Rail)roadmap

- In hiring and retaining talent, employee benefits should be considered
- Build your employee benefits team and learn how to utilize it
- Employee benefits can help employees stay happy, healthy, and productive (among other benefits)
- What should employers consider when taking a second look at their employee benefit offerings?

Assemble Your Employee Benefits Team

- Employee benefits are too complex for one person (or even one department)
- Assemble your employee benefits team:
 - Insurance broker
 - Service provider (e.g., third-party administrator)
 - Employee benefits attorney
 - Internal and external HR professionals



Assemble Your Employee Benefits Team

- You will not need to engage all team members at all times
- Instead, establish these relationships early and engage certain team members when needed
- Consider how individuals in your company might utilize your employee benefits team



How Your Employee Benefits Team Can Work For Your Company

- **Internal HR Professionals**
 - Deeply knowledgeable about employee needs
 - Manage the company's employee relations
 - Tasked with employee benefit plan compliance
- Well-designed, competitive employee benefit plans can:
 - Reduce employee turnover, freeing up HR professionals' time and resources
 - Mitigate risk of noncompliant employee benefit plans, avoiding expensive corrections and headaches



How Your Employee Benefits Team Can Work For Your Company

- **C-Suite Professionals**
 - Focused on growth and nurturing company culture
 - Lead with an eye toward strategic planning
 - Required to balance employee wellbeing with profitability
- Well-designed, competitive employee benefit plans can:
 - Help smooth the path for M&A deals
 - Create an engaged and healthy workforce
 - Foster an organically attractive company culture



Implement an Employee-Focused Approach to Benefits

- Employee polls
 - Help employers determine what their employees need and want
 - Consult benefits broker and other benefits team members prior to polling employees
- Diversity, equity, inclusion in benefits
 - Review your company's employee benefit plans through a DEI lens
 - Set the bar higher than nondiscrimination for legal purposes
 - Are your benefits inadvertently leaving employees behind? (Consider diverse family structures, LGBTQI+ employees, etc.)



Educate Employees on Your Company's Benefits

- Increase employee education about benefits
 - Employees are often unaware of how to fully take advantage of the employer's benefit plans
 - May lead to inadequate coverage, missed deferral opportunities, insufficient retirement savings, etc.
 - Consider automatic contribution arrangements, opt-out plan designs, and other plan design options that make saving the default
 - Employees often do not realize the true cost of retirement
 - Many expenses increase during retirement (e.g.,: health care expenses)
 - Adequate education can help remedy these issues
 - Some brokers or service providers will offer tailored education for employees

Thank You!



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