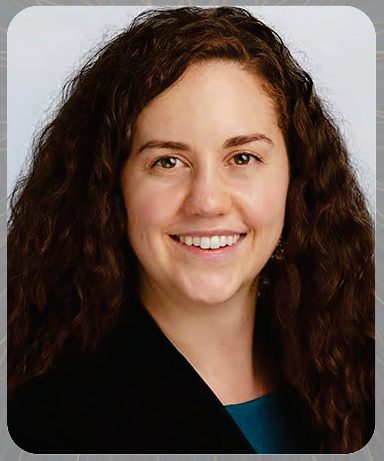
Who Wants to Be Legally Astute?
Federal & State Updates

Host



Souvanny Miller

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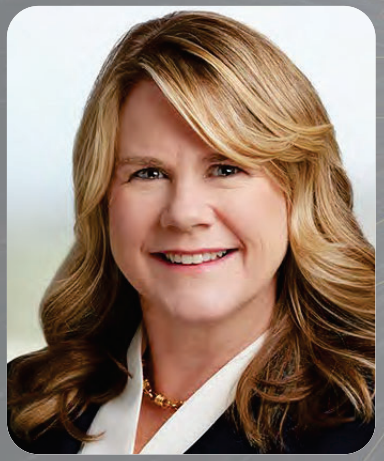
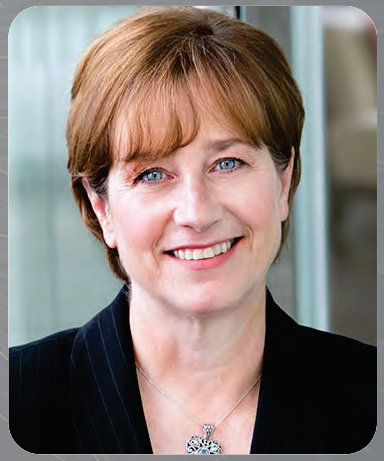
Contestants



Melissa Rawlinson

Iván Resendiz Gutierrez



Susan Stahlfeld

MILLER NASH LLP

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$ 500

The standard a court uses to determine whether an hourly employee's time at the beginning and end of the day is compensable is:

A: **Necessary and Sufficient**

B: **Integral and Indispensable**

C: **Recommended or Required**

D: **Salary Basis and Job Duties**

Overtime for Highly-Compensated Employees

Helix Energy Solutions Group, Inc. v. Hewitt (U.S. Supreme Court)

- Bona fide executive determined in this case by the salary basis test
- Highly compensated employee paid on a daily rate does not qualify as exempt under salary basis test because the amount fluctuated based on the number of days worked
- Employee who worked 28 consecutive days entitled to overtime pay.

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“Integral and Indispensable”

Cadena v. Customer Connexx LLC (9th Circuit)

- Time spent by call center employees turning on and logging into computers was compensable under the Fair Labor Standards Act (FLSA)
- The actions taken by the employees were an “integral and indispensable part of the principal activities” of employment.

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$ 1,000

Which of the following could be the basis for a hostile work environment claim?

A: Food quality in the company cafeteria

B: Insufficient number of electronic charging stations in parking lot

C: Music played so all employees can hear it

D: Birthday cakes prohibited for employees

Sharp v. S&S Activeware LLC

- Music with sexually graphic and violent lyrics that denigrate women can be the basis of a claim for hostile work environment
- "Equal opportunity harasser" is no defense.
- Employers should promptly investigate complaints related to vulgar or obscene language and content.

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Mike Porter

MILLER NASH LLP

$ 2,000

Which set of cases are not about employees, but may have impact on legal issues in the workplace?

A: ***Groff v. DeJoy*** and ***Coinbase v. Bielski***

B: ***Marbury v. Madison*** and ***303 Creative LLC v. Elenis***

C: ***Students for Fair Admission v. Harvard*** and ***303 Creative LLC v. Elenis***

D: ***Miranda v. Arizona*** and ***Students for Fair Admission v. Harvard***

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D: *Miranda v. Arizona* and *Students for Fair Admission v. Harvard*

Impact of Students for Fair Admission

- Employers may still take steps to expand applicant pools
- Employers must ensure language around diversity efforts does not suggest use of quotas or protected status decision making
- Employers should carefully construct affinity groups, mentoring programs, and other diversity initiatives

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Impact of 303 Creative LLC

- Limited impact—only applies to expressive services, it does not permit employment discrimination
- Employees—especially those familiar with *Groff v. DeJoy*—may try to assert it shields them from certain employment obligations

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$ 3,000

In *Groff v. Dejoy, Postmaster General*, a Title VII case, the Supreme Court "clarified" that, an employer may reject an employee's religious accommodation request as an undue hardship when the accommodation would:

A: Result in more than a *de minimis* cost to the employer

B: Cause an unreasonable impediment to the employer's pursuits

C: Be a substantial burden in the overall context of an employer's business

D: Impose some sort of difficulty or additional costs on the employer

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Groff v. Dejoy, Postmaster General

- The Court purported not to change the "undue hardship" standard but stated that its prior de minimis cost phrasing resulted in more religious accommodations rejections than Title VII intended.
- Employers should clarify their own policies to refer directly to the undue hardship standard.
- When assessing accommodations requests:
  - Determine whether the request will cause a substantial burden in the overall context of your business,
  - Be prepared to explain why, and,
  - Ensure that documentation reflects the correct standard.

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Welcome, Next Contestant

Iván Resendiz Gutierrez

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$ 5,000

Under Oregon law, time spent on the employer's premises waiting for and undergoing mandatory security screenings are compensable if they are:

A: An integral and indispensable part of the employees' principal activities

B: Compensable as a matter of contract, custom, or practice

C: A mandatory and necessary function of the employee's essential job duties

D: A and B

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D: A and B

Buero v. Amazon.com Svcs.
370 Or 502, 521 P3d 471 (2022)

Oregon law mirrors federal law:

- Oregon's wage statutes are an "offspring" of federal law;
- ORS 653.010(11)'s definition of "work time" was intended to mirror federal law; and
- Under Oregon law, as under federal law, time that employees spend on the employer's premises waiting for and undergoing mandatory security screenings before or after their work shifts is compensable only if the screenings are either (1) an integral and indispensable part of the employees' principal activities or (2) compensable as a matter of contract, custom, or practice.

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$ 10,000

The limitations on liability for local public bodies under the Oregon Tort Claims Act apply only to:

A: Economic Damages

B: Noneconomic Damages

C: Attorney's Fees

D: A and B

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Bush v. City of Prineville
325 Or App 37, 520 P3d 970 (2023)

- The Oregon Court of Appeals held that the limitations on liability under the OTCA applies to damages, not attorney fees and that ORS 30.272(2)(f) does not preclude an award of attorney fees to plaintiff
- The dissent argued that under a 1994 Oregon Supreme Court decision, the liability limits contained within ORS 30.272(2) are not limited to damages but include attorney fees awarded to the plaintiff.
- A petition for review is pending before the Oregon Supreme Court (S070347). Stay tuned!

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50:50

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$ 20,000

Eight employment cases were tried to an Oregon state court jury from September 1, 2022, to August 31, 2023. What was the average damages award per case?

A: **$500,000**

B: **$900,000**

C: **$1.2 million**

D: **$2.24 million**

50:50

$ 20,000

Eight employment cases were tried to an Oregon state court jury from September 1, 2022, to August 31, 2023. What was the average damages award per case?

B: $900,000

C: $1.2 million

Summary of Verdict Data (State)

- Number of cases tried to jury: 8
  - Defense verdicts: 4
  - Plaintiff's verdicts: 4
- Average damages awarded per case: $1,244,161.45 ($550,661.25 economic, $693,500.20 noneconomic)

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Summary of Verdict Data (State)

- Multnomah County (two cases): $1,163,645.14 ($54,894.64 economic, $1,108,750.50 noneconomic)
- Lane County (one case): $1,475,994 ($825,994 economic; $650,000 non-economic)
- Marion County (one case, two plaintiffs): $1,208,761.50 per plaintiff ($908,761.50 economic, $300,000 noneconomic)

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$ 30,000

The “cat’s paw” jury instruction is appropriate in cases where the biased employee is a coworker if there is evidence that the biased coworker

A: Actually influenced or was involved in making an adverse employment decision

B: Directed or was partially involved in making an adverse employment decision

C: Actually influenced or was significantly involved in making an adverse employment decision

D: Actually affected or was partially involved in making an adverse employment decision

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D: **Actually affected or was partially involved in making an adverse employment decision**

Crosbie v. Asante
322 Or App 250, 519 P3d 551 (2022)

- Issue: Whether the "cat's paw" theory of causation– where a jury can impute bias when a biased employee influenced an unbiased decisionmaker –extends to coworker bias.
- Argument: The defendants argued that the cat's paw instruction is only appropriate when the biased employee is a "supervisor" and not a "peer."
- Holding: The "cat's paw" jury instruction is appropriate in cases where the biased employee is a coworker if there is evidence that the biased coworker actually influenced or was involved in making the adverse employment decision. The trial court correctly rejected the defendant's arguments that the instruction should have been limited to supervisors.
- "The important issue is not dupes, cats, or monkeys, but causation."

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$ 50,000

Under Oregon, who can be held liable for aiding and abetting in the employment context?

A: Any person and persons directing the business-entity employer's unlawful conduct

B: Any person and persons influencing the business-entity employer's unlawful conduct

C: Any person and persons materially affecting the business-entiry employer's unlawful conduct

D: Any person and persons partially ordering the business-entity employer's unlawful conduct

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D: Any person and persons partially ordering the business-entity employer's unlawful conduct

Allison v. Dolich
321 Or App 721, 518 P3d 591 (2022)

- Issue: Whether a member and owner or chief executive may be liable for aiding or abetting the violations of an LLC under ORS 659A.030(1)(g).
- Argument: The defendants argued, and federal courts had held, that a person with executive authority who acts on behalf of a business entity employer through decision-making resulting in liability under ORS chapter 659A cannot be said to have aided or abetted the person's own decision-making in directing the business.
- Holding: ORS 659A.030(1)(g) applies to "any person" and persons directing the business-entity employer's unlawful conduct can be held liable for aiding and abetting.

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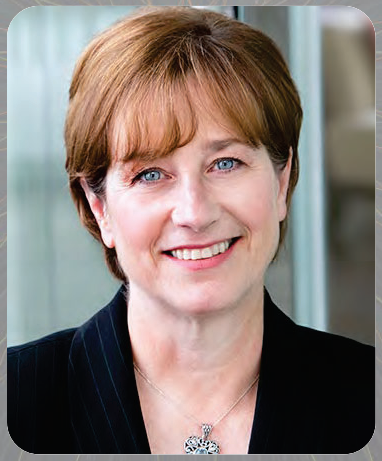
Welcome, Next Contestant



Susan Stahlfeld

MILLER NASH LLP

Text millernash033 to 22333

$ 100,000

On January 1, 2024, which jurisdiction will have the highest minimum wage in Washington State?

A: SeaTac

B: Seattle

C: Tukwila

D: Washington State

Text millernash033 to 22333

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A: SeaTac

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D: Washington State

Washington Minimum Wage Increases

- Washington: $16.28/hour
- SeaTac: $19.71
- Seattle: $19.97/$17.25 with $2.72 in tips or benefits
- Tukwila: $20.29/$18.29 [$19.29]

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2024 Washington Exempt Salary Level

- $1,302.40 per week [$67,724.80 per year]
- Must still meet a duties test!

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$ 250,000

What common hiring practice is changing for Washington employers in 2024?

A: Must pay for time spent in job interviews

B: May not require a college degree for any job paying less than state exempt salary level

C: Can only ask prior employers to confirm fact of employment, no other information

D: Generally, cannot refuse to hire for cannabis use

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A: **Must pay for time spent in job interviews**

B: **May not require a college degree for any job paying less than state exempt salary level**

C: **Can only ask prior employers to confirm fact of employment, no other information**

D: **Generally, cannot refuse to hire for cannabis use**

Pre-Hire Testing for Cannabis

- With some important exceptions, beginning January 1, 2024, Washington employers may not refuse to hire an applicant who (1) tests positive on pre-hire drug screening tests identifying nonpsychoactive cannabis metabolites, or (2) has a history of prior off-the-job cannabis use.

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Pre-Hire Testing for Cannabis

- Exceptions include if the employer has obligations under other law or federal contracts to test for cannabis, or if the employee is being hired for a safety sensitive position.
- Safety sensitive positions: must be a job where impairment would present a substantial risk of death, and must be designated as such prior to the application being submitted.

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$ 500,000

Which of these pregnancy accommodations can an employer decline to provide because it creates an undue hardship?

A: **Transfer to a vacant position**

B: **Providing more frequent and longer restroom breaks**

C: **Providing seating if job requires standing**

D: **No lifting over 17 pounds**

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$ 500,000

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B: Providing more frequent and longer restroom breaks

C: Providing seating if job requires standing

D: No lifting over 17 pounds

Pregnancy Accommodations

- WA statute identifies specific possible pregnancy accommodations.
- Recent WA case (*Arroyo*) held that the listed accommodations must be provided if the employee requests it, even if the employer offers a different reasonable accommodation. For some of the listed accommodations, however, an employer can decline to provide it if it would create an undue hardship.
- An undue hardship is "an action requiring significant difficulty or expense."

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Pregnancy Accommodations

- For the following listed accommodations, the employer cannot assert it creates an undue hardship: providing more/longer rest breaks, modifying a no food/drink policy, providing seating or more frequent breaks to sit, refraining from lifting more than 17 pounds.

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Pregnancy Accommodations

- Employers can claim (but will have to prove) undue hardship on these accommodations: restructuring or modification of job, work schedule, or equipment/workstation, reassignment to a vacant position, temporary transfer to a less strenuous position, lifting up to 17 pounds, and scheduling flexibility for prenatal visits.

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