

# Inquiring Minds Want to Know...

## *10 Developments to Watch Out For*

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### 1. How do we use criminal history in hiring?

- Seattle passed a new law, effective November 1, prohibiting employers from asking about criminal background during initial screening.
- After initial screening, use of criminal history is limited.
- Arrest alone is not enough for an adverse employment action.
- Nationwide trend.



## 2. What do we do if we learn an employee's social security number is invalid?

- Risk of discrimination claim.
- Advise the employee (in writing) and have them obtain appropriate documentation from the list on the I-9 form.
- If the employee fails to provide appropriate documentation, you can terminate.



## 3. How does Washington's legalization of marijuana affect my drug-free work environment?

- Make sure your drug policy states that drugs are not allowed if they are illegal under "local, state, or federal law".
- You can refuse to hire or you can terminate someone for a drug test showing positive for marijuana use.
- No need to allow even medical marijuana use.



#### 4. What's the latest on paying for sick and safe leave?

- Seattle requires employers to pay its workers for sick and safe leave days.
- Became effective last year – many employers still not following.
- Likely okay if you have a PTO plan.



#### 5. Does my company have to allow concerted employee activity, even if my employees are not unionized?

- Yes, the National Labor Relations Act extends to non-union employees.
- This can extend to allowing employees to photograph poor working conditions, sharing information about income/working conditions, and more.
- Increasing decisions protecting employees' rights.



## 6. How do I know if I have properly classified someone as an employee or independent contractor?

- Washington has several tests (see handout) and agencies are hot on investigating this.
- Default is “nonexempt employee” and you must meet a high burden to claim an independent contractor.
- Generally, to be an independent contractor, must state so in contract, have a UBI number, be allowed to compete, be free from control of boss, etc.



## 7. How do I terminate someone so they don't bring a claim against my company?

- Document all steps leading up to termination.
- Handle the termination professionally and with the truth, and no knee-jerk terminations.
- Consider a release and severance agreement – pay some amount of money in exchange for the employee agreeing not to bring any claims against you.



## 8. What's the latest on social media?

- Employers cannot seek access to their employees' private social media accounts.
- Employers can discipline or terminate for statements made about employer on social media (if public or learned from someone else) as long as those statements are not considered protected activity.
- Tricky area, so beware.



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9



## 9. How do I handle employees using their own electronic devices for work?

- This can create problems including wage and hour issues, security of employer's confidential information, and more.
- Consider a "Bring Your Own Device to Work Policy".
- Policy includes no expectation of privacy, security provisions, limitations, etc.
- Applies to work on and off employer premises and on and off regular working hours.
- Don't allow nonexempt employees to do this to avoid wage and hour claims.



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10



## 10. My employee claims a medical issue, but I don't believe him or his documents...

What can you do?

- Under the FMLA, you can get a second or third independent medical examination.
- Under the ADA, an employer may require an individual to go to an appropriate healthcare professional of the employer's choice if the individual provides insufficient information from his own doctor to substantiate that he has an ADA-covered disability and needs a reasonable accommodation.
- The employer should pay.



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11



### *Thank you!*



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