Recent Developments in Federal & State Law

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Federal - ADA - Essential Job Functions

- **Samper v. Providence St. Vincent Medical Center** (9th Circuit)
  - Regular Attendance can be an essential job function
- **Majors v. General Electric Co.** (7th Circuit)
  - Having co-worker perform “heavy lifting” is not a required reasonable accommodation
- **EEOC v. United Airlines, Inc.** (7th Circuit)
  - Disabled employees must be given open positions they are qualified for
Federal - EEOC - Background Checks

- Criminal background check could result in disparate impact
- Arrest records alone cannot be used to deny employment
- Check must be related for the position in question
- Apply the Green factors

Federal – FLSA

- **Christopher v. SmithKline Beecham Corp.** (Supreme Ct.)
  - Pharmaceutical reps exempt despite not making "sales"
- **Busk v. Integrity Staffing Solutions, Inc.** (9th Circuit)
  - Staff security screening were compensable
State – Arbitration Provisions

- **Gandee v. LDL Freedom Enterprises, Inc.**
  - Arbitration provision unenforced as unconscionable
  - Fee shifting
  - Statute of limitations

State – Discrimination

- **Davis v. Fred’s Appliance, Inc.**
  - Heterosexual employee called “Big Gay Al” by supervisor
  - Case was dismissed because only perception of being in protected class
  - Manager’s acts not imputed on employer
State – Employee Manuals

- **Quedado v. The Boeing Co.**
  - Employee demoted for improperly hiring family
  - Code of Conduct: Employer will act with integrity and impartiality
  - Employer procedures: Discipline shall be consistent, but ample discretion for employer
  - Two employees were treated less harshly

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**Thank you!**

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