

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



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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



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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 AI" 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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