

The Firehouse Lawyer

Volume 21, Number 4

Be sure to visit firehouselawyer.com to get a glimpse of our various practice areas pertaining to public agencies, which include labor and employment law, public disclosure law, mergers and consolidations, financing methods, risk management, and many other practice areas!!!

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April 2023

REMINDER: DEI SEMINAR IS APRIL 28TH

Eric Quinn will be presenting a seminar on diversity, equity and inclusion on Friday, the 28th of April this year. Please tune in to hear any surprises that may be in store. Eric has some interesting points about how the DEI effort squares with the current Washington law on affirmative action, which seems disfavored.¹ See the flier below for additional information on how to register and attend.

FOLLOW-UP ON LEGISLATION

In the February edition² of the *Firehouse Lawyer*, we reported in some depth on SB 5618,³ which was working its way slowly through the legislature. This was the bill that would increase the limit factor (limiting tax revenue growth, year over year) from the usual 101% to 103%. We mentioned that WFCA is urging its members to show support for SB 5618.

1

<https://www.firehouselawyer.com/Newsletters/August2020FINAL.pdf>

2

<https://firehouselawyer.com/Newsletters/February2023FINAL.pdf>

³ See former SB 5618 here:

<https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Bills/5618.pdf?q=20230417093322>

We noted in that article, however, that SB 5618 was tied to another bill, SB 5495.⁴ We say “tied” because section 6 of SB 5618 originally provided that this law only takes effect if SB 5495 is enacted by August 1 of 2023.

SB 5495 was the bill that would provide a property tax exemption or actually a rebate on the first \$250,000 of a residential property owner’s tax from a previous year, or in the alternative, if a person is a renter and not an owner, a rebate of 2% of the rent paid in a prior year.

The good news is that section 6 of SB 5618 was changed and now the 3% increase is longer tied to SB 5495 at all. In fact, the bill number changed: SB 5770.⁵

But as we go to press today, it appears that the Washington Legislature is going to adjourn Sunday without passing any of the bills we have devoted attention to this year. It makes us think that maybe we were right many years ago, when the Firehouse Lawyer usually waited until legislation was actually adopted and approved by the Governor before writing about it. Oh well, the Legislature did adopt a bill to significantly enhance volunteer pensions so the session was not a total waste of time for the fire service. Maybe next year SB 5770 or something akin to it will appear before the Legislature again and the 1% lid will be increased to 3%. We can only speculate—and hope.

⁴ See former SB 5495 here:
<https://app.leg.wa.gov/billsummary?BillNumber=5495&Year=2023&Initiative=false>

⁵ See SB 5770 here:
<https://lawfilesexternal.leg.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Bills/5770.pdf?q=20230417093228>

RESPONSIBLE BIDDER COLUMN

In this column on public bid laws, we have discussed before in depth the purchasing through cooperative agencies, which are often headquartered in other states, such as Minnesota, Oregon and Texas. Since we have been issuing many legal opinions lately on purchasing through such cooperatives, we decided to include another short article.

The five prerequisites to buying through purchasing cooperatives are as follows:

1. Make sure your participating agency has signed a membership agreement with the coop, or what we call the lead agency.
2. The lead agency must have advertised the bidding process broadly.
3. The lead agency must have met all of the legal requirements for competitive bidding in the state where it has its principal operations (not Washington state statutes).
4. The vendor must have agreed to let other agencies participate or “piggyback” on the contract awarded by the lead agency.
5. The bid or contract must still be open or current so that other agencies may participate, with only minor changes such as insignificant price increases or somewhat different details in the purchase.

FLSA EXEMPTIONS

We have often written in these pages about the various exemptions to the FLSA, such as executive, administrative and other exemptions from the overtime requirements.⁶ Nevertheless, we continue to get questions about these exemptions. Here we set forth the essential elements of the common exemptions.

The bona fide executive exemption applies when the employee earns at least \$684 per week in salary, supervises at least two employees, and whose primary duty involves management of the entity, or at least a department or division thereof. Also, to be an executive exempt employee, the person must have authority to hire and fire or at least make recommendations that are given significant weight about hiring, firing, promotions or other important changes in employment status of other employees. See 29 C.F.R. 541.100 for this general rule.

The administrative exemption also has salary and primary duty tests. To qualify for the administrative exemption, an employee must:

- Meet the same salary minimum as the executive employee;
- Perform office or non-manual work directly related to management or the general business operations of the entity;

- But only if their primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

See 29 C.F.R. 541.200 for these general rules.

The following subsections after 541.100 and 541.200 provide more definitional specificity as to the meaning of terms such as “management” and “independent judgment,” which we can expand upon in future issues.

Based on the regulations above, various court cases and Department of Labor opinions, we have found several examples of exempt employees in the fire service, including but not limited to certain IT personnel, fire prevention employees, supervisory maintenance employees, etc. Do not hesitate to ask your attorney if you suspect that an employee really should be classified as FLSA-exempt.

DISCLAIMER. The Firehouse Lawyer newsletter is published for educational purposes only. Nothing herein shall create an attorney-client relationship between Eric T. Quinn, P.S. and the reader. Those needing legal advice are urged to contact an attorney licensed to practice in their jurisdiction of residence.

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<https://www.firehouselawyer.com/NewsletterResults.aspx?Topic=Fair+Labor+Standards+Act>



**PIERCE COUNTY FIRE COMMISSIONERS'
ASSOCIATION PRESENTS**

**Diversity, Equity
and Inclusion (DEI)**

Date: April 28, 2023

Time: 0900 - 1200

Location:

In person at South Sound 911, 3580 Pacific Ave., Tacoma, WA
or Remotely via Zoom:

<https://us02web.zoom.us/j/8151456645?pwd=NHFTa2o2ZWZWMzenU4Qlg2Q2tLejNFUT09>

Meeting ID: 815 145 6645 Passcode: 123456

Cost: Free

Presenter: Firehouse Lawyer, Eric Quinn

Registration: Please email Denise Ross at dross@centralpiercefirer.org
Please state whether you plan to attend in person or remotely so we can plan accordingly.

Join the Pierce County Fire Commissioners Association and other friends in government for a presentation by Firehouse Lawyer, Eric Quinn, on the benefits and risks of Diversity, Equity and Inclusion (DEI) initiatives in the public sector. Come learn how these initiatives intersect with the Washington Law Against Discrimination and other laws. Don't miss out on the opportunity to promote a more diverse and inclusive workforce! This presentation is sponsored by the Pierce County Fire Commissioners Association and is free to all participants.



Topic: PCFCA Diversity Equity and Inclusion Presentation
Time: Apr 28, 2023 09:00 AM Pacific Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/8151456645?pwd=NHFTa2o2ZWMzenU4Qlg2Q2tLejNFUT09>

Meeting ID: 815 145 6645

Passcode: 123456

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+1 689 278 1000 US

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

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Meeting ID: 815 145 6645

Passcode: 123456

Find your local number: <https://us02web.zoom.us/j/8151456645?pwd=NHFTa2o2ZWMzenU4Qlg2Q2tLejNFUT09>



Eric T. Quinn is an attorney with substantial experience in the practice of municipal law, with a special interest in civil rights. He has utilized this experience in the representation of over 40 public agencies in Washington State.

Eric graduated from Seattle University School of Law, where he was a finalist in mock-trial competitions and gained substantial experience as a legal intern at various law firms in Seattle. Following law school, Eric honed his practice with Quinn and Quinn, P.S., a law practice with over 50 years in combined experience serving municipal clients. Eric's practice is focused on employment and labor law, in addition to public and medical records, procurement, contract drafting and negotiation, mergers and consolidations, governance and open meetings, telecommunications and risk management.

Throughout his career, Eric has addressed civil rights issues on a near-daily basis, with Diversity, Equity and Inclusion (DEI) Initiatives coming into greater focus in his practice.

Eric is a sought-after speaker. He has presented to numerous organizations, including the Washington Fire Commissioners Association, the Washington Fire Chiefs Association, the Washington State Risk Management Group and various local commissioner associations, on a variety of issues, from municipal financing to civil rights. He has published numerous articles regarding civil rights and employment law at firehouselawyer.com (subscribe to his free newsletter).

In his spare time, Eric is a member of the Rotary Club of Lakewood, WA. Eric loves to stay active and spend time with his wife Johanah and their two sons, Storey and Madsen.

Diversity, Equity and Inclusion: Are we Doing It and Are we Doing it Right?

Presentation Sponsored by Pierce County Fire Commissioners Association

Agenda

1. Introduction

- a. Welcome and introductions
- b. Goals of the presentation

2. Understanding DEI

- a. Definitions of diversity, equity, and inclusion
- b. Costs and Benefits: Affirmative Action

3. Implementing DEI Initiatives

- a. Recruitment and hiring practices (without engaging in affirmative action)
- b. Creating inclusive policies and procedures (without engaging in affirmative action)

4. Measuring Success

- a. Establishing goals
- b. Monitoring and evaluating DEI initiatives

5. Best Practices

6. Q&A Session

7. Conclusion and Closing Remarks

- a. Recap of key points and takeaways
- b. Encouragement for continued commitment to DEI initiatives
- c. Closing Remarks