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WASHINGTON STATE EMPLOYMENT ISSUES 2015

From BYOD to Wage & Hour Issues
Estimated BYOD devices in workplaces, by Country.

EIU, Strategy Analytics, Cisco IBSG, 2013
Percentage of BYOD-ers who bring laptops, smartphones and tablet to work.

Cisco IBSG, 2013
Top reasons BYOD-ers use their own devices at work.

Cisco IBSG 2013
• BYOD – Bring your own device

• Issue Spotting
  – Privacy
  – Wage & Hour
  – Trade Secrets
  – National Labor Relations Act
  – (other claims areas)
The Parties

- WeDoGoodWork
- Sandy (HR)
- Jamie (IT Manager)
- WC
- Pat (President)
- Peyton (Broker Asst)
- Tatum (Spouse of Peyton)
- SD (Peyton’s Lawyer)
• Hypothetical
  – WeDoGoodWork Insurance Corporation (WC) Broker
    • High-risk insurance – sold predominately on line.
    • Gives Peyton WC Iphone and WC laptop linked to servers and subject to WC policies.
    • Give copy of written policy (1985) regarding employee use of electronic communication equipment.
• Dual use device - Business vs. Personal
  – Who owns data?
    • Privacy rights
    • Corporate information, trade secrets

– Monitor employees

– Security Issues
  • Data Breach
  • Malicious software attacks
• Peyton (Broker’s assistant)
  – Millenial
    • Active on Facebook, Twitter
    • 90% of communications on an electronic device
    • Adds own apps on Iphone, including gmail account
    • Accesses internet over private and public wifi
    • Has not password protected laptop
Social Media a Growing Presence with individuals and businesses.

Crowell Moring,
Data Law Trends Report 2014
• Risk and Challenges
  – Lost or stolen devices
  – Accessing company server from remote access
  – Accessing social media sites
  – Apps access
• Dual use device - Business vs. Personal
  – Compliance Risks
    • Federal and State
    • Client data
    • E-Discovery
  
  – Wage & Hour Violations
• Peyton's work practices
  – Checking email and company communications on bus ride home.
  – Logs in remotely from home and Starbucks to download WC documents to work on, then saves them to laptop to use later.
  – Peyton accesses personal gmail account regularly via wireless connections at WC and public sites like Starbucks.
The incident (I)

- While sending an email to what Peyton thought was WC email, laptop auto-filled the email address with Peyton’s family I-cloud account address and sent it to Tatum, Peyton’s spouse who worked for a WC competitor.

- Tatum upon receiving the 2 gigs of WC client information sent it to his company.

- Peyton did not notice email mistakenly sent to Tatum.
• The incident (II)
  – While on an airplane feeling disgruntled, Peyton posted “We Do Good Work?” who are they kidding? WC has become a preverbal Water Closet” on Facebook, which all of Peyton’s co-worker friends saw and to which they “liked” or commented.
  
  – Completely distracted by the travel plans. Peyton left the WC laptop in the seat bin in front of him and left the plane. The laptop, with over 1,000 client names and information regarding WC’s business plans and strategy was unsecured because Peyton never bothered to password protect it.
• The incident (III)
  – Two weeks later, WC’s President, Pat began receiving calls from clients who stated their personal information had been comprised by WC.

  – Pat enlisted IT manager Jamie to investigate.

  – Jamie traced the compromise to Peyton’s laptop.

  – Upon informing Pat, Pat immediately elected to fire Peyton for violating Peyton’s non-compete.
• The incident (IV)
  – At Peyton’s termination meeting, Peyton told HR Manager Sandy that “This is because of my Facebook posting right?”

  – “What about all that time I worked outside my shift? This isn’t the last you have heard of me.”
• The incident (V)
  – After termination, Peyton immediately meets with super aggressive plaintiff’s lawyer, Sturman Drang, who urges Peyton to file an NLRB charge, which Peyton does.

  – Two weeks later the NLRB filed an unfair labor practices charge against WC alleging that Peyton’s termination was a result of Peyton’s participation in protected labor activity with Peyton’s Facebook posting.

  – Simultaneously, Sturman Drang files a complaint in King County Superior Court seeking double damages for wrongful withholding of wages and overtime compensation and attorney fees.
## Risk landscape for Enterprise Mobility – High Risk

<table>
<thead>
<tr>
<th>Threat</th>
<th>Losses</th>
<th>Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lost devices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stolen devices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unauthorized device access</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employees leaving with own device</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access credential theft</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Misuse and human errors</td>
<td></td>
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</tr>
</tbody>
</table>

Heavy Reading, May 2014 White Paper – Mitigating Security & Compliance Risks with EMM
## Risk landscape for Enterprise Mobility – Medium Risk

<table>
<thead>
<tr>
<th>Threat</th>
<th>Losses</th>
<th>Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data interception</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cloud services breach</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illicit location monitoring</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unauthorized network access</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malware apps</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social attacks (phishing)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jailbreaking</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee service abuse</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Heavy Reading, May 2014 White Paper – Mitigating Security & Compliance Risks with EMM
Risk landscape for Enterprise Mobility – Low Risk

<table>
<thead>
<tr>
<th>Threat</th>
<th>Losses</th>
<th>Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privacy rights violation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data protection violation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health and safety violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>eDiscovery obligations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labor law violations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>International data law violations</td>
<td></td>
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</tr>
</tbody>
</table>

Heavy Reading, May 2014 White Paper – Mitigating Security & Compliance Risks with EMM
Marijuana in the Workplace
Marijuana in the Workplace

Hempfester's! We thought you might be hungry. We also thought now might be a good time for a refresher on the do's and don'ts of I-502.

DON'TS Don't drive while high. Don't give, sell, or shotgun weed to people under 21. Don't use pot in public. You could be cited but we'd rather give you a warning.

DO'S Do listen to Dark Side of the Moon at a reasonable volume. Do enjoy Hempfest.

Remember: respect your fellow voters and familiarize yourself with the rules of I-502 at seattle.gov/police/marijwhatnow 🖤, SPD

WARNING: THE CONTENTS OF THIS PACKAGE ARE AS DELICIOUS AS THEY APPEAR
Marijuana in the Workplace

• **I-502* Overview**
  - Took effect on December 6, 2012.
  - Allows for the sale and possession of small amounts of marijuana under state law.
  - Also allows for licensed growing.
  - Still unlawful to open / use in public.
  - No express employment protections for users.
  
* Generally codified at Chapter 69.50 RCW.
Does I-502 Change Anything for Employers?

*So far, not very much*

- Medical marijuana already legal – no duty to accommodate
  - Medical Use of Marijuana Act ("MUMA"), enacted in Nov. 1998; Codified at RCW 69.51a
  - Qualifying patients are not guilty of a crime under WA law for possession or use of marijuana for medical purposes
Recreational Marijuana – Concerns and Solutions

- **Concerns:**
  - More employees come to work under the influence or use during work hours.
  - More workplace accidents.

- **Solutions:**
  - Communicate that marijuana use remains unlawful.
  - Require drug testing in certain situations and impact employment based on a positive drug test.
  - Prohibit employees from using or being under the influence of unlawful drugs at work, as well as lawful substances such as alcohol and prescription drugs (*in accordance with ADA and reasonable accommodation laws*).
• Unionized employers: remember your possible collective bargaining obligations regarding these issues.

• Employers with multi-state operations: continue to monitor developments across the nation.
  – Colorado legalized marijuana for recreational use by adults
  – 20 states and Washington, D.C. have some form of a medical marijuana law
  – Other states may require “reasonable accommodation” of use
Seattle’s Paid Sick & Safe Leave Ordinance

Overview:
- Mandates paid sick and safe leave for employees working in Seattle City limits
- Sets minimum requirements for accrual, use and carryover

Why We Remind You:
- SOCR is shifting from compliance to enforcement
- Technical compliance required!
## Snapshot of SOCR Enforcement Trends

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Advisory letters sent</td>
<td>38</td>
<td>103</td>
<td>45</td>
<td>186</td>
</tr>
<tr>
<td>Individual charges filed</td>
<td>0</td>
<td>6</td>
<td>38</td>
<td>44</td>
</tr>
<tr>
<td>Director charges filed</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Outcomes</th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Formal Settlements</td>
<td>0</td>
<td>3</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Reasonable Cause</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Proposed Reasonable Cause</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Amount Recovered</td>
<td>0</td>
<td>$5,835</td>
<td>$37,369.68</td>
<td>$43,204.68</td>
</tr>
</tbody>
</table>

*Amount recovered has increased by a factor of 7, year-to-date.*
SOCR’s Required Settlement Terms for Full Compliance

- Retroactive PSST hours for non-compliant period, up to 2 years
- Back wages for unpaid PSST absences for non-compliant period, up to 2 years
- PSSL policies written and disseminated to all employees
- Notice and explanation of PSSL rights to employees
- Notice to employees of available PSST balance each time wages paid
- Monitored compliance for specified time period
- Any other information that will demonstrate employer’s compliance
- Civil penalties for notice and posting violations
SOCR’s Future Enforcement Strategies

- Filing more Director’s charges; limiting use of advisory letters
  - Future advisory letters will require employer to show “clear evidence” of compliance

- Assessing whether individual complaints indicate company-wide violations

- Imposing civil penalties for willful violations

- Requiring payment for PSST absences that employees “would have used” if employer was compliant.
  - SOCR will propose rule to include a “3.7 day remedy” that replenishes employee accounts with accrued sick leave and pays for an average number of sick leave absences, similar to remedy used by San Francisco’s OLSE.

- Conducting directed investigations (i.e. without a complaint)
Who’s Covered Under the PSSL Ordinance?

**Employers:**
- Private-sector employers who have employees “working in” Seattle *regardless of where the employer is located*
- City of Seattle

**Employees:**
- Private-sector or City employees performing work in Seattle
- FT, PT, temporary, and occasional-basis employees (occasional-basis employees must work 240+ hours in Seattle during a calendar year)
- Employees who stop in Seattle as a purpose of their work (e.g. delivery, but not gas stops)
<table>
<thead>
<tr>
<th>Tier</th>
<th>Employer Size</th>
<th>Accrual</th>
<th>Maximum Use Per Year</th>
<th>Carry Over of Unused Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Covered</td>
<td>4 or fewer FTEs</td>
<td>There is no accrual, use or carry over requirements. However, notice and anti-retaliation provisions apply.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>More than 4 and fewer than 50 FTEs</td>
<td>1 hour per 40 hours worked</td>
<td>40 hours</td>
<td>40 hours</td>
</tr>
<tr>
<td>2</td>
<td>At least 50 and fewer than 250 FTEs</td>
<td>1 hour per 40 hours worked</td>
<td>56 hours</td>
<td>56 hours</td>
</tr>
<tr>
<td>3</td>
<td>250 or more FTEs</td>
<td>1 hour per 30 hours worked</td>
<td>72 hours</td>
<td>72 hours</td>
</tr>
<tr>
<td></td>
<td>250 or more FTEs (PTO benefits system)</td>
<td>1 hour per 30 hours worked</td>
<td>108 hours</td>
<td>108 hours</td>
</tr>
</tbody>
</table>
HOT Zones for Non-Compliance

- **Tracking procedure**
  - Communication; record-keeping

- **Proper notice to employees**
  - Poster; handbook; policies

- **Determining the correct Tier**
  - Joint-employers; decimals count

- **Employee documentation request**
  - > 3 days, may request; 50/50 cost shared

- **Record retention**
  - PSSL: 2 years
  - But Wage & Hour: 3 years
Washington State Specific Issues

For more information contact:
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