

PAID FAMILY LEAVE IS ON ITS WAY – ONE WAY OR ANOTHER

Employers and workers in Washington are likely to see a new Paid Family Leave Act soon, but it remains unclear whether it will be by legislative action or by citizen initiative. The issue has been around for some time, as the state has a ten year old paid family leave program that was adopted but never funded – and therefore has never actually been put into effect.

This year the proponents of a paid family leave program – generally the same interests that passed a statewide minimum wage act – continued their advocacy with the threat of another citizen's initiative if the legislature did not act. This threat, which is believed to be credible by the business community, resulted in a great deal of behind-the-scenes negotiations in order to find a compromise.

The result of those negotiations is a proposal that creates a paid family and medical leave insurance program, funded by premiums paid by employees and employers, and administered by the Employment

Security Department. It will be similar in many ways to the existing unemployment insurance program.

It is unclear at this time if the legislature will actually pass this program. The current details are twelve weeks of paid leave for employees for childbirth or to care for a seriously ill family member, or for serious medical conditions for the employee. The benefits are capped with a time limit, and also a dollar limit that is indexed to average annual worker earnings. All employers, public and private, will be covered by this program, although there may be size thresholds for smaller employers regarding requirements such as keeping jobs open for returning workers.

Regardless of legislative action or inaction on this issue, all employers and employees in the state are likely to see this program be adopted in some manner in the near future. ■



PORT SPOTLIGHT

PORT OF SUNNYSIDE SIGNS DEAL TO BRING \$25 MILLION AG PLANT AND 200 JOBS TO PORT PROPERTY

The Port of Sunnyside and Olympia-based Ostrom's Mushroom Farms have announced a deal that will develop a \$25 million growing-packing facility on port property in two years that is expected to create 200 jobs. Ostrom's Mushroom Farms signed an agreement with the Port of Sunnyside to purchase 25 acres at Midvale and Duffy roads, south of Interstate 82, with an option to buy an additional 20 acres, which is ideally situated to take advantage of the port's wastewater treatment plant and the region's agricultural labor force.



Ostrom's, which has been in business since 1928, grows a variety of mushrooms that are shipped to consumers in the Pacific Northwest, Alaska and Hawaii. The company employs 300 growers, pickers and packers at its Olympia-area facility.

The Sunnyside farm will have 48 grow rooms and a compost facility and will enable the company to develop a technologically advanced and efficient facility to replace an aging plant that it closed in Everson Washington last month.

The company currently produces 15 million pounds of mushrooms annually and has been experiencing

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KNOWING THE WATERS

By Frank Chmelik of Chmelik Sitkin & Davis P.S. - WPPA Counsel

This month's column focuses on employee hiring practices

and policies. Undoubtedly, one of the fastest growing areas of litigation is employment practice cases. All aspects of the employment relationship, including the hiring process, are subject to review and potential claims. Here are a few items to consider.

THE PORT HIRING POLICY. Many ports have a policy that specifies some process for hiring new employees. These frequently include a requirement to advertise the position and select the most qualified candidate. However, there is no legal prohibition against offering a specific position to a specific person without a process. For example, a port may promote a port employee or seek out a specific person to fill a position. But, if a port has a policy it should be followed. So, consider reviewing your port's policy and making sure the policy has the flexibility to promote

from within or seek out that perfect fit. Consider documenting the reason that a hiring process was not followed for a position.

KNOW WHAT IS OFF-LIMITS. As most everyone knows, race, sex, religion, age and national origin are all protected classes under federal anti-discrimination laws and therefore, cannot be part of the consideration in any hiring process. The Washington Law Against Discrimination, also prohibits discrimination based upon status as a veteran, current service in the National Guard or Reserves, sexual orientation, the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability. Therefore, questions related to these protected classes are "off-limits."

IDENTIFY ESSENTIAL JOB FUNCTIONS. Any good hiring process starts with identifying the essential job functions of the position.

This will help guide the formation of an appropriate list of questions because a prospective employee can always be asked about education, experience, training and ability necessary to perform the essential job functions.

DEVELOP COMMON QUESTIONS. Develop a preprinted list of acceptable questions for all port hiring (that have been approved by your human resources manager or port attorney) and that have been organized into topic areas. This is important because the list of "off-limits" questions based upon the federal and state discrimination laws is much longer than one might suspect and includes topics like marital status, family status, the year an applicant graduated from high school or college, the quality of an applicant's military discharge, health history, previous drug use or arrest record. In my experience, the "off-limits" list is not obvious. Before the interview begins, look at the common pre-approved questions and the

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increasing demand for its product. This growth prompted an extensive search for a site with land and high-quality infrastructure to increase its production. The Port of Sunnyside, with help from the Yakima County Development Association, the county's economic development arm, has been working on the deal since last year, when it heard about Ostrom's expansion plans. The Everson facility, which was built in 1980, was described earlier by the company as small and increasingly challenged to attract labor.

Port of Sunnyside Director Jay Hester says the plant, which provides a form of diversification within the regional agricultural industry, provides a great growth opportunity for the community of Sunnyside and the Yakima Valley.

Ostrom's Mushroom Farms now has 180 days to complete due diligence before closing on the purchase. The company has nearly completed that work and plans to have the plant up and running by the spring or summer of 2019. ■



UPCOMING EVENTS

Directors Seminar

July 13-14, 2017
Adrift Hotel & Spa and Chinook School, Long Beach

Commissioners Seminar

July 24-25, 2017
Alderbrook Resort, Union

Environmental Seminar

September 21 – 22, 2017
Heathman Lodge, Vancouver

Small Ports Seminar

October 26-27, 2017
Enzian Inn, Leavenworth

Annual Meeting

November 15-17, 2017
Motif Hotel, Seattle

essential requirements of the job and then select the appropriate questions from the list. Have the interview team stick to the questions. This avoids the very common mistakes that come from unscripted questions that drift into “off-limits” areas.

TRAIN THE PORT EMPLOYEES INVOLVED IN THE HIRING PROCESS.

We recommend that everyone in the hiring process be trained concerning the law and acceptable questions. Before the interviews start, spend a half-hour reminding everyone about the do’s and don’ts of the process. It is easy to avoid simple mistakes with a little training.

TREAT ALL CANDIDATES THE SAME.

Once you have developed the process for the position stick to it. In-house and external candidates must go through the same process and be treated the same. This is particularly important for in-house candidates who may resent not being selected for the position.

PRESERVE ALL HIRING DOCUMENTS INCLUDING NOTES.

For public employers, like ports, the retention requirement for “recruitment/hiring documents” is three years. These include working advertisements, papers/notes, applicant lists, interview questions, selection documents and employee applications. Avoid notations that could be viewed as showing a hiring bias against those applicants that fall within a protected class. This doesn’t mean that no notes should be made about the applicant; however, care should be taken when making notes so the port can defend its hiring decisions. Port employees should avoid making notes in the margins of resumes and instead make them on a note sheet that will be retained. Train the interviewers to make clear and purposeful notes related to the essential job functions.

DO ALL THESE RECOMMENDATIONS APPLY TO THE PORT COMMISSIONERS? Yes.

The port commissioners are typically involved only in hiring the executive

director. However, these same rules apply. Frequently a consultant is hired to help the commissioner’s move through the executive director search and hiring process. In my experience, these consultants usually start with identifying the essential job functions with the commission. These consultants should be experts in the do’s and the don’ts of the hiring process and are therefore able to guide the commissioners.

Finally, giving credit where credit is due – Rich Davis, who heads our employment practice group helped prepare this column. As always, please contact your port counsel with any questions regarding this topic. And, if you have a particular question for Knowing the Waters please email me at fchmelik@chmelik.com ■

EMPLOYMENT OPPORTUNITIES

Economic Development Coordinator

Port of Seattle

Project Manager II, Engineering

Port of Tacoma

Director, Port Operations

Northwest Seaport Alliance

Director of Marine Terminals

Port of Longview

Project Engineer

Port of Longview

Executive Director

Grant County Economic Development Council

Director of Aviation

Washington State Department of Transportation
Tumwater

Director of Finance and Administration

Port of Chelan County

Senior Cost Engineer Scheduler

Port of Seattle – AV Project Management Group

Director of Economic Development

Port of Bellingham

Airport Land Use and Strategic Programs Coordinator

WSDOT

Full-Time, Temporary (Seasonal) Port Maintenance

Port of Bremerton

If you would like information on any of these positions, visit washingtonports.org/washington-ports/employment-opportunities