
Privacy in the Workplace:

Managing Employees in the Digital Age

November 18, 2014

Foster Pepper
Seattle, Washington

Presented by:

FOSTER PEPPER

Table of Contents

- Presentation
- Panelist Bios
 - Steve Peltin, Foster Pepper PLLC
 - Alicia Feichtmeir, Foster Pepper PLLC
 - Connie Davis, King County Housing Authority
 - Hilary Domeika, Northwest Hospital & Medical Center, UW Physicians, UW Neighborhood Clinics and Children's University Medical Group
 - Anne Shannon, BECU

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Presentation

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Privacy in the Workplace:

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Managing Employees in the Digital Age

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Today's Program

- Overview of common workplace privacy issues
- Panel discussion
 - Connie Davis, King County Housing Authority
 - Hilary Domeika, Northwest Hospital & Medical Center, UW Physicians, UW Neighborhood Clinics and Children's University Medical Group
 - Anne Shannon, BECU

Do Employees Have a Basic Right to Privacy?

- Federal law
- State law
- Public vs. private workplaces
- Collective bargaining
- Washington common law claims

Common Workplace Privacy Concerns

- Monitoring electronic communications
- Employee use of personal technology at work
- Surveillance/GPS tracking
- Access to and protection of confidential information

Monitoring Electronic Communications

- Why monitor?
 - Productivity
 - Protect business interests
 - Regulatory compliance
 - Disclosure of business information/trade secrets/customer information
 - Maintain employer reputation

Regulations Applicable to Electronic Monitoring

- Federal Laws
 - Electronic Communications Privacy Act
 - Wiretap Act
 - Stored Communications Act
- Washington State Laws
 - Social Media Privacy – RCW 49.44.200
 - Wiretap Act – RCW 9.73.030

Internet/Online

- Examples of monitoring
 - Email
 - Corporate instant messaging
 - Websites: time online, blocking websites, visiting prohibited websites
 - Keystroke
- Limitation to employer systems
- Comprehensive, clear policies
 - Notice, consent, legitimate business purpose

Phone/Voice

- Voicemail/telephone calls on company phones
 - Requires consent from all parties - RCW 9.73.030
- Company smart phone/texts
 - Tracking data, online activities, texts, call lists
 - *City of Ontario v. Quon*
- Personal phones
 - Impermissible

Social Media

- Monitoring
 - On duty vs. off duty issues
 - Carefully crafted policy, clear parameters and notice to employees
 - Social Media Privacy - RCW 49.44.200
- Taking action
 - Duty to respond if know or should know about harassment or other risks
 - Investigating and disciplining off duty conduct that violates workplace policies
 - Employees' rights under NLRA

Risks of Electronic Monitoring

- Common law privacy claims
- Labor issues
- Discrimination claims
- Ensuring compliance with data privacy and security laws

Best Practices for Electronic Monitoring

- Notice to employee through carefully crafted policy
- Employee consent/written acknowledgment
- Consistent enforcement of policy
- Justifiable business interest

Employee Use of Personal Devices in the Workplace

- Employee privacy expectations
- Employer monitoring
- Risks
 - Liability for wrongful use of device
 - Data security, breach and retention issues
 - Wage and hour liability
 - Confidentiality

Best Practices – Personal Devices

- Can prohibit or restrict use of personal devices during work hours, or putting work materials on personal devices
- Can implement Bring Your Own Device (“BYOD”) Policy
 - Clear privacy expectations
 - Confidentiality and security requirements
 - Compliance with other company policies
 - Written consent
 - Employee eligibility (non-exempt)

Video Surveillance

- Locations
- Risks
- Best practices: notice and consent, well-drafted policy and legitimate business rationale

GPS Tracking

- Devices: smart phones, company cars, ID cards
- Expanded privacy concerns
- Risks
- Best practices: requiring notice and consent, carefully crafted policy and legitimate business rationale

Access to and Protection of Confidential Information

- Types of information: personnel files, medical records, personal identifying information, trade secrets/confidential business information, customer/client data
- Regulations
 - Federal: HIPAA, GINA, ADA
 - Washington: Public Records Act, Health Care Information Act, Data Privacy and Breach, Trade Secrets Act
- Access
- Improper disclosure
- Best practices to safeguard information

Panel Discussion

- **Connie Davis**

King County Housing Authority

- **Hilary Domeika**

Northwest Hospital & Medical Center, UW Physicians, UW Neighborhood Clinics and Children's University Medical Group

- **Anne Shannon**

BECU

Panelist Bios

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PRACTICE OVERVIEW

Steve chairs the firm's Employment and Labor Relations practice. His work covers the gamut of employment and labor law. His advice practice is dedicated to helping employers solve problems such as employee discipline and discharge, leaves of absence, discrimination and harassment claims, and threats of employee violence. Steve enhances employee handbooks and prepares and negotiates employment, confidentiality, and non-compete agreements. He also counsels executives and professionals on employment and separation agreements, and assists with corporate transactions such as purchases and sales of businesses.

Steve has extensive litigation experience and represents public and private employers in lawsuits claiming discrimination, harassment, wrongful discharge and violations of wage and hour, employee benefits, trade secrets, and non-compete obligations. He also appears before local, state, and federal administrative agencies and arbitrators in employment and labor matters.

REPRESENTATIVE CASES

- Won jury trial for an employer accused of age discrimination by laid-off union employee.
- Prevailed in hearing before the United States Department of Labor brought by a union business agent who claimed that the company conspired with the union to discharge him.
- Co-counsel in class action claiming pay for commuting in company vehicle; certification defeated and individual claim resolved promptly.
- Co-counsel for large employers in two U.S. Department of Labor collective actions claiming that employees worked off the clock; summary judgment obtained in one case, and the other was settled favorably.
- Won summary judgment on discrimination / harassment claim for financial services company.
- Obtained temporary restraining orders in two cases where employees refused to return computerized documents and information.
- Won summary judgment on sex bias claim by male employee of performing arts client.

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- Convinced OSHA that a safety whistleblower on a construction site was not subject to a hostile work environment.
- Obtained anti-harassment orders against former employees.
- Defended company in ERISA cases brought by former executive seeking payments under a Supplemental Executive Retirement Plan and by pension funds seeking payment of withdrawal liability.

REPRESENTATIVE TRANSACTIONS

- Employment and labor counsel in sales of business, including drafting of purchase agreement language, preparation of offer letters, executive employment agreements and employee communications.
- Assistance to client in reductions in force.
- Counseling of clients facing threats of workplace violence.
- Creation of documentation for background investigations, hiring, leaves of absence, requests for disability accommodation, last chance agreements and severance agreements.
- Preparation on policies such as travel pay, use of cell phones and social media.
- Management training on employment law topics, including avoiding harassment and discrimination, performance management and hiring.

HONORS & AWARDS

- The Best Lawyers in America®
 - Labor Law – Management, 2012-2015
 - Litigation – Labor & Employment, 2013-2015
- Best in the Business: Leading Lawyers in the Puget Sound Region, *Seattle Business* magazine
 - Labor: Management, 2013
 - Litigation: Labor & Employment, 2013

PROFESSIONAL/CIVIC ACTIVITIES

- Seattle Theatre Group
 - Board of Directors
 - Executive Committee
- University Preparatory Academy
 - Board of Directors, 2011-2012
 - Chair of Personnel Committee, 2011-2012
- Foster Pepper Pro Bono
 - Featured in 2013 Pro Bono Annual Report
 - Featured in 2012 Pro Bono Annual Report

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PUBLICATIONS

Steve Peltin is a frequent contributor to Foster Pepper's Washington Workplace Law blog. See the latest at www.washingtonworkplacelaw.com.

- ["Seattle Police Officer Claims Hostile Working Environment After Refusing to Hand Out Doritos at Marijuana Festival"](#) February 2014
- ["Six Federal Agencies to Propose Joint Standards Governing Diversity"](#) December 2013
- ["Are Payroll Debit Cards Right for Your Organization?"](#) November 2013
- ["What We're Reading: What Do Domestic Service Workers, Law Firm Interns, and San Francisco Giants Clubhouse Managers Have in Common?"](#) September 2013
- ["Is BYOD Right For Your Workplace?"](#) September 2013
- ["What We're Reading: Getting Hired, Getting Fired, and Getting More Employees,"](#) September 2013
- ["What We're Reading: Labor Day Edition,"](#) August 2013
- ["Updated FMLA Guide Now Available,"](#) August 2013
- ["Employers Should Confront Threats Of Workplace Violence,"](#) August 2013
- ["Many Employers Out Of Compliance With Seattle Sick And Safe Leave Ordinance,"](#) July 2013
- ["New Decision Continues Uncertainty Over Exempt Status of Mortgage Loan Officers,"](#) July 2013
- ["What We're Reading: Offensive Speech Edition,"](#) June 2013
- ["Happy Birthday FMLA! Lots of Presents for Employers,"](#) April 2013
- ["The Seattle Office for Civil Rights Clarifies Its Interpretation of 'Occasional Employee',"](#) November 2012
- ["Ho Ho Ho? Employers Should Be Careful of Holiday Parties,"](#) November 2012
- ["#1 Again: Washington State Raises Minimum Wage for 2013,"](#) November 2012
- ["What We're Reading: Improving Performance Through 'Loss Aversion'?"](#) September 2012
- ["Employee or Independent Contractor? Washington Supreme Court Changes the Rules – Part Two,"](#) July 2012
- ["Employee or Independent Contractor? Washington Supreme Court Changes the Rules,"](#) July 2012
- ["Railroads Challenge Seattle Sick Leave Ordinance,"](#) May 2012
- ["Not So Fast III: NLRB Employer Posting Requirement Again Delayed,"](#) April 2012
- ["Can't I Require a Job Applicant to Have a High School Diploma?"](#) January 2012

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- ["Not So Fast II: NLRB Again Delays Employer Posting Requirements,"](#) January 2012
- ["Court Rejects Arbitration Award Reinstating Employee Who Hung Noose at Work,"](#) October 2011
- ["Interns & Volunteers: Do We Really Have to Pay Them?"](#) July 2011
- ["Letting Someone Else Dig for the Dirt: Hiring Vendors to Assist in Social Media Searches,"](#) July 2011
- ["Some Things Don't Have to Be In Writing: Supreme Court Protects Employees Against Retaliation After Making Verbal Complaints of Wage and Hour Violations,"](#) March 2011
- ["Unsafe at Any Speed: Unauthorized Passengers in Employer-Owned Vehicles May Sue Employer for Driver's Negligence,"](#) February 2011

Additional Publications

- "Effective Negotiation of Executive Employment Agreements," Author, *Inside the Minds: Negotiating and Employment Agreements, Leading Lawyers on Constructing Effective Employment Contracts*, 2012 Edition
- "Employers: Beware of High School Diploma Requirements," Author, *WIB HR & Training Digest*, February 2012
- "Hidden Threats – There are steps you can take to prevent violence in the workplace," Co-author, *Washington CEO* magazine
- "Bad Acts: Smaller Employers Should Confront Threats of On-The-Job Physical Assaults," Author, *Washington Journal*
- "Telecommuting: Legal and Management Risks For Employers," Author, *Corporate Counsel* magazine
- "Reducing Telecommuting Management Risks," Author, *National Underwriter* magazine
- "How To Reduce Workplace Violence," Author, *National Underwriter* magazine
- "50-State Survey of Employment Libel and Privacy Law, Washington Chapter," Author, Media Law & Resource Center
- "Hiring Employees: Disability Questions and Medical Exams," Author, Realty & Building

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NEWS

- ["Court Overturns Loan Officer Overtime Ruling in 'Win' by MBA,"](#) Quoted in Reverse Mortgage Daily, July 2013
- "In Person' Feature - Best Practices for Employers to Comply with the City of Seattle's Paid Sick and Safe Time Ordinance," Interviewed in Puget Sound Business Journal, November 2012
- "It's Not Just Paid Time Off -- It's the Law: Attorneys explain what Seattle's new sick leave ordinance means for employers," Quoted in *Puget Sound Business Journal*, September 2011
- "Your Office Away from the Office," Quoted in *Utah CEO Magazine*
- "Keeping violent employees out of the workplace," Quoted in *Risk Management Magazine*
- "10 Considerations in Developing Telecommuting Policies and Agreements," Quoted in HR.COM

PRESENTATIONS

- "Social Media and the Workplace - Protecting the Hospital in the Digital Age," Speaker, Washington State Hospital Association's NW Council's Hot Topics Meeting, Edmonds, WA
- "Filling the Empty Chairs: Legal and Effective Hiring," Speaker, Northwest Marine Trade Association
- "What You Should Know About Executive Director Employment Agreements," Speaker, Association of Washington Housing Authorities
- "Filling the Empty Chairs: Legal and Effective Hiring," Presenter, Northwest Marine Trade Association - Professional Development Series, Seattle, WA
- "Bullying and Violence in the Workplace: Prevention and Intervention Strategies," Speaker, Foster Pepper Client Briefing
- "Legalization of Marijuana - The Impact on Washington Employers,"
 - Speaker, South King County SHRM
 - Speaker, Employee Assistance Professionals Association Pacific Northwest
- "Employment Discrimination Law – Hear From The Agencies," Speaker/Moderator, Foster Pepper Client Briefing
- "Wage & Hour Compliance – Beyond the Basics (Part II)," Speaker/Moderator, Foster Pepper Client Briefing
- "Wage & Hour Compliance – Beyond the Basics (Part I)," Speaker/Moderator, Foster Pepper Client Briefing

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- "Filling the Empty Chairs: Legal and Effective Hiring," Speaker/Moderator, Foster Pepper Client Briefing
- "Out of Sight But Not Out of Mind: Untangling Leave of Absence Requirements," Speaker, 14th Annual Labor & Employment Law Seminar, The Seminar Group
- "Understanding Seattle Paid Sick and Safe Time"
 - Speaker, Washington Trucking Associations
 - Speaker, Northwest Marine Trade Association
- "Seattle Paid Sick and Safe Time: Practical Guidance Employers Need to Know," Speaker/Moderator, Foster Pepper Client Briefing
- "Legal Issues for Startups: Employment Law," Presenter, SURF Incubator
- "Employment Law Challenges for Public Employers and Current Developments under the Public Employees Collective Bargaining Act," Panelist, 2012 Association of Washington Housing Authorities (AWHA) Meeting
- "Reasonably Accommodating Employees with Disabilities," Speaker/Moderator, Foster Pepper Client Briefing
- "High-Stakes Employment and IP Protections: Protect your Company from Increasing Employment Risks and Shield your Valuable Intellectual Property," Panelist, Foster Pepper and Washington State Chapter of ACC America
- "Conducting Effective Workplace Investigations," Speaker/Moderator, Foster Pepper Client Briefing
- "Managing the Process of Labor Negotiations," Panelist, Washington Fire Commissioners Association 63rd Annual Conference
- "Out of Sight but Not Out of Mind: Untangling Employer Obligations under FMLA and Other Leave Statutes," Speaker/Moderator, Foster Pepper Client Briefing
- "Social Media in the Workplace," Speaker/Moderator, Foster Pepper Client Briefing
- "Payroll Management," Speaker, Lorman Educational Services
- "Time Off: State and Federal Laws on Employee Leave, Vacations and Holidays," Speaker, Lorman Educational Services
- "Recent Developments under the Family and Medical Leave Act," Speaker, National Council of State Housing Agencies
- "10 Scary Issues You Need to Know About Your Employees," Speaker, ASTRA Women's Business Alliance
- "New Developments in Employment Law," Speaker, Seattle CFO Arts Roundtable

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- "Best Practice in FMLA Administration," Speaker, Council on Education in Management
- "Conducting Effective Investigations Into Employee Complaints," Speaker, PUD and Municipal Attorneys Association
- "Cyberstalking: The Washington Employer's Perspective," Speaker, King County Bar Association
- "Workplace Investigations," Speaker, Council on Education in Management
- "Email and the Internet – Legal Challenges for Employers," Speaker, PUD and Municipal Attorneys Association

PROFESSIONAL BACKGROUND

- Foster Pepper PLLC, Member, 2010-Present
- K&L Gates LLP (formerly Preston Gates & Ellis, LLP), Partner, 1998-2010
- Georgia-Pacific Corporation, Senior Counsel, 1996-1998
- Altheimer & Gray (Chicago, IL), Associate and Partner, 1986-1996
- Isham Lincoln & Beale (Chicago, IL), Associate, 1983-1986
- U.S. District Court for the Western District of Wisconsin, Law Clerk for Hon. John C. Shabaz, 1982-1983

ADMISSIONS

- Washington, 1999
- Illinois, 1983 (Inactive)

EDUCATION

- J.D., Cornell Law School (*cum laude*), 1983
- B.A., University of Wisconsin-Madison (*with distinction*), 1978
- Phi Beta Kappa

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PRACTICE OVERVIEW

Alicia's litigation practice focuses on resolution of civil cases, including employment, commercial litigation, environmental and regulatory disputes. She counsels clients on all aspects of the litigation process, including case strategy, risk evaluation, discovery and trial planning.

In her employment practice, Alicia advises public and private employers on compliance with various federal, state and local employment laws including wage-and-hour, leave, and anti-discrimination regulations. She has defended employers in agency and court proceedings involving harassment and discrimination, whistleblower actions, wrongful discharge, trade secret misappropriation, and unemployment claims. She regularly assists employers in drafting and revising employee handbooks, management policies, and employment agreements, including talent and production agreements for local and national film projects.

HONORS & AWARDS

- Rising Star, *Washington Super Lawyers*, 2014

PROFESSIONAL/CIVIC ACTIVITIES

- ArtsWest Gallery and Playhouse, Board Intern, 2014-Present
- ArtsFund Associates Program, 2012-Present
- Federal Bar Association of the Western District of Washington, Website/Communications Committee Co-Chair, 2011-2013
- Solid Ground Family Assistance Program, Advisory Board Member, 2009-2011
- Foster Pepper Pro Bono
 - Featured in 2012 Foster Pepper Pro Bono Annual Report
 - Featured in 2011 Foster Pepper Pro Bono Annual Report
 - Featured in 2010 Foster Pepper Pro Bono Annual Report

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NEWS

- "Are WYLD Members Too Green for Pro Bono?" *Three young lawyer volunteers are proving otherwise*, DeNovo, Washington State Bar Association, August 2011
- "Judicial Candidates Pledge Ethical Campaigns," May 20, 2010

PUBLICATIONS

Alicia Feichtmeir is a contributor to Foster Pepper's Washington Workplace Law Blog. Read more at www.washingtonworkplacelaw.com

Recent blog posts include:

- "[Seattle Passes \\$15 Minimum Wage, Highest of Any Major U.S. City](#)," June 2014
- "[The Minimum Wage Debate Rages in Seattle, Washington state, and the Nation](#)," February 2014
- "[Will Seattle Really Have a \\$15 Minimum Wage?](#)" December 2013
- "[Food for Thought: Wage Theft Protests Serve As Reminder of Importance of Wage & Hour Compliance](#)," October 2013
- "[Revenge of the Intern: Wage and Hour Class Actions Keep Employers on Their Toes](#)," May 2013
- "[Access Denied: Legislation Prevents Employers from Demanding Employees' Social Media Passwords](#)," April 2012
- "[Preventing and Addressing Workplace Bullying](#)," March 2012
- "[Washington State Supreme Court Orders Disclosure of Investigative Reports Alleging Police Misconduct](#)," September 2011
- "[Check Your Files: U.S. Supreme Court Narrows FOIA Exemption for Internal Personnel Rules](#)," March 2011
- "Advocating for the Native American Child: Comprehensive Overview of the Indian Child Welfare Act," Chapter Contributor, Native American Practice Group and CASA CLE Manual, November 2008

PRESENTATIONS

- "Bullying and Violence in the Workplace: Prevention and Intervention Strategies," Presenter, Foster Pepper Client Briefing, March 2014
- "Employment Discrimination Law – Hear from the Agencies," Presenter, Foster Pepper Client Briefing, September 2013
- "Wage & Hour Compliance – Beyond the Basics (Part II)," Presenter, Foster Pepper Client Briefing, May 2013
- "Intellectual Property Ownership and Public Employment," Co-presenter, Association of Washington Cities, 33rd Annual AWC Labor Relations Institute, Yakima, WA, May 2013
- "Wage & Hour Compliance – Beyond the Basics (Part I)," Presenter, Foster Pepper Client Briefing, February 2013

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Alicia M. Feichtmeir (continued)

- "Mandatory/Permissive Bargaining" and "Public Records/Information Disclosure," Presenter, Managing the Process of Labor Relations, Spokane, WA, October 2011

PROFESSIONAL BACKGROUND

- Foster Pepper PLLC
 - Associate, 2010-Present
 - Summer Associate, 2008
- Solid Ground (Fremont Public Association), Legal Intern, 2007-2008
- Immigrant Families Advocacy Project, University of Washington School of Law, Volunteer Advocate, 2007-2009
- Seattle Art Museum, Community Campaign Coordinator, 2005-2006
- Seattle Children's Museum, Group Sales Manager, 2003-2005

ADMISSIONS

- Washington, 2009
- Ninth Circuit Court of Appeals, 2012
- U.S. District Court
 - Western District of Washington, 2011
 - Eastern District of Washington, 2011

EDUCATION

- J.D., University of Washington School of Law, 2009
 - *Washington Law Review*, Articles Editor
 - Law Women's Caucus, Alumnae Event Chair
- B.A., Wesleyan University, 2003

Connie Davis
Deputy Executive Director
King County Housing Authority

Connie Davis is the Deputy Executive Director of KCHA. Her responsibilities include oversight of all administrative functions including finance, risk, procurement, human resources and information technology. A member of the Senior Executive Team, Ms. Davis has been with KCHA since 1995. Prior that she held a variety of positions in the retail and wholesale industries and started her career as a Certified Public Accountant in a Big 8 firm in New York City. Ms. Davis holds degrees from Tufts University and New York University.

KCHA is a municipal corporation that was created in 1939 in order to provide housing assistance to low-income residents. KCHA operates in King County, Washington outside the cities of Seattle and Renton, and provides subsidized housing to over 18,000 low and moderate income families dispersed among 23 suburban cities and the unincorporated areas of the county. Using a variety of federal, state and local housing programs the agency assists a mix of single, family, disabled and special needs households. The agency's portfolio includes 3,500 owned and managed units, 4,500 workforce units and 11,000 Section 8 vouchers serving a total of approximately 43,000 residents. Primarily financed by the U.S. Department of Housing and Urban Development (HUD), KCHA has been designated as a high performing Public Housing Authority and is also one of approximately 39 Public Housing Agencies nationally in the Moving to Work Program (MTW).

Hilary Buckley Domeika
Associate General Counsel
Northwest Hospital, UW Physicians, UW Neighborhood Clinics and
Children's University Medical Group

Experience

My law practice has focused on health care legal issues and entities, in private practice or as in-house counsel, representing academic medical centers, a wide variety of health care providers and groups, skilled nursing facilities, ambulatory care facilities, clinics, and for profit and tax exempt entities.

- **Northwest Hospital & Medical Center, UW Physicians, UW Neighborhood Clinics and Children's University Medical Group**, 2012 through Present, Associate General Counsel
- **Swedish Medical Center**, Seattle, Washington. November 2011 - January 2012. Legal Department.
- **Swedish Medical Center**, Seattle, Washington. November 2004 - June 2008. Legal Department.
- **Preston, Gates & Ellis**, Seattle, Washington. March 1998 – September 2004. Partner 2002-2004, Associate 1998-2002.
- **Alston & Bird, L.L.P.**, Atlanta, Georgia. October 1995 - October 1997. Associate.
- **Federal District Court for the Eastern District of Virginia**, Alexandria, Virginia. August 1994 - July 1995. Law Clerk to the Honorable Claude M. Hilton, United States District Judge for the Eastern District of Virginia.

Anne Shannon
Senior Vice President of Human Resources
BECU

As Senior Vice President of Human Resources for BECU, Anne Shannon guides the HR department with skill and experience, applying specific emphasis in Talent Management including Executive Coaching, Strategic Planning, Organizational Development, Succession Optimization and Workforce Planning. She provides leadership in Total Rewards through Compensation, Benefits, Incentives and Rewards. With a career history in Global Human Resources including Starbucks, Amazon and Colliers International, her expertise in HR strategies is attained from a variety of businesses including Consumer Products, Technology, Real Estate and Development and most recently Financial Services. She demonstrates her versatility in applying HR disciplines in diverse environments.

Anne holds a BA in Sociology from Western Washington University and a Presidents and Key Executives MBA from Pepperdine University.