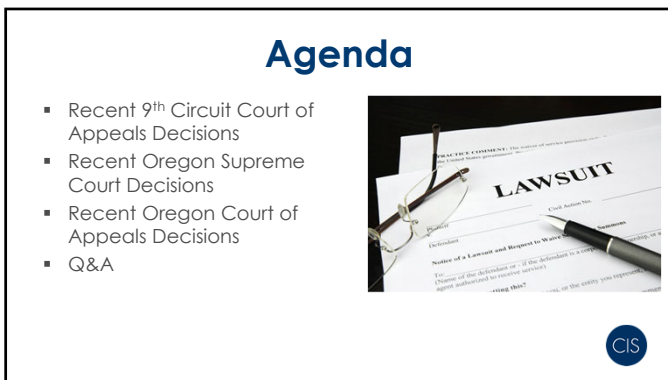




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9th Circuit Court of Appeals Decisions

Crawford v City of Bakersfield (2019)

Dist. Ct. erred when it did not permit father of subject shot by police to testify about his observations of his son's past behavior that was consistent with signs and symptoms his son was suffering from mental illness (schizophrenia).



4

9th Circuit Court of Appeals Decisions

Crawford v City of Bakersfield (2019) – Continued

Dist. Ct.'s. reasoning was because officer wasn't aware of the past behavior, or that the subject suffered from mental illness and he believed the subject's behavior that resulted in the shooting ("amped up" "angry" and "challenging") was the result of being under the influence of narcotics, the father's proposed testimony was not relevant.



5

9th Circuit Court of Appeals Decisions

Crawford v City of Bakersfield (2019) – Continued

Ct. of Appeals held the father's proposed testimony was relevant. The Ct. said testimony about the son's past behavior and (mental health) treatment was relevant to whether he was mentally ill at the time of the shooting. That is because evidence of his past behavior that was consistent with being mentally ill (including prior treatment), makes it more likely that he continued to suffer from mental illness on the day of the shooting, which in turn is relevant to whether he would have appeared to be mentally ill and, thus, whether the officer should have known he was suffering from mental illness and that his actions were not the result of being under the influence of narcotics.



6

9th Circuit Court of Appeals Decisions

Cuviello v City of Vallejo (2019)

Requiring plaintiff to get a permit to use a bullhorn to amplify his voice to protest alleged animal mistreatment at Six Flags Discovery Park violated his First Amendment rights.

The area where the protests were taking place was the public sidewalk in front of the park. Here, the noise from the park, coming from the rides and other park attractions was very loud. Plaintiff used the bullhorn to amplify his voice to make it more likely he would be heard.



7

9th Circuit Court of Appeals Decisions

Cuviello v City of Vallejo (2019) – Continued

Generally- requiring permits are a prior restraint on speech because filling out applications forms, seeking and waiting for approval can discourage potential speakers.

However, municipalities can promulgate permit systems that place reasonable time, place and manner restrictions on speech in a public forum.



8

9th Circuit Court of Appeals Decisions

Cuviello v City of Vallejo (2019) – Continued

A municipal permit system must satisfy four criteria:

1. It must not delegate overly broad licensing discretion to a government official
2. It cannot restrict based on content
3. The system must be narrowly tailored to serve a significant government interest
4. The system must leave open ample alternatives for communication.



9

9th Circuit Court of Appeals Decisions

Cuviello v City of Vallejo (2019) – Continued

Issue in this case was limited to the third factor- was it narrowly tailored. Not an area where people come for peace and quiet.



10

Recent Oregon Supreme Court Decisions



11

Oregon Supreme Court Decisions

Eugene Water and Electric Board v. PERB (2019)

Retired worker first worked for EWEB through a temporary staffing agency. The temporary agency paid his salary and benefits.

The worker eventually applied for an employment position with EWEB and was hired. Six months after being hired as an EWEB employee he became a PERS member, consistent with ORS 238A.300. He remained with EWEB until he retired.



12

Oregon Supreme Court Decisions

EWEB v PERB (2019) - Continued

Upon retirement a protracted dispute arose as to whether the worker became a member of PERS at the expiration of his first six month period as a temporary worker or not until six months after he was hired as an EWEB employee.



13

Oregon Supreme Court Decisions

EWEB v PERB (2019) - Continued

The Supreme Court reviewed the history of the PERS system and applicable statutes and determined that common-law employees who are being paid by third parties (such as temporary staffing companies) do not become PERS members even when they are working for the public agency for longer than six months.



14

Oregon Supreme Court Decisions

Ossanna v Nike, Inc. (2019)

Plaintiff was terminated for abusing his employee privileges related to the use of a company gymnasium.

Plaintiff filed a lawsuit claiming he was actually terminated in retaliation for having raised numerous safety and other concerns.



15

Oregon Supreme Court Decisions

Ossanna v Nike, Inc. (2019) - Continued

Nike conducted an independent investigation into his allegations that it was a retaliatory termination and did not interview a couple of potentially biased supervisors to whom had allegedly made safety concerns.

However at least one of the supervisors did communicate with the investigator. The investigator submitted her final report to a manager who had firing authority. That manager relied upon the investigator's report and terminated plaintiff.



16

Oregon Supreme Court Decisions

Ossanna v Nike, Inc. (2019) - Continued

The plaintiff wanted a jury instruction that essentially stated the jury could impute to the decision making manager any biased retaliatory motive held by a subordinate if the jury found the termination decision was not actually independent because the biased subordinate had influenced, affected or was involved in the adverse employment decision.



17

Oregon Supreme Court Decisions

Ossanna v Nike, Inc. (2019) - Continued

The trial court did not give the requested instruction and the Oregon Supreme Court held it should have done so.

The instruction requested is commonly known as the "cat's paw" instruction. The instruction allows the jury to impute a supervisor's bias to the employer, although plaintiff still needs to demonstrate that this unlawful bias caused the adverse employment action.



18

Recent Oregon Court of Appeals Decisions



19

Oregon Court of Appeals Decisions

Burley v Clackamas County (2019)

Plaintiff was a former human resources manager and sued the County alleging she was retaliated against for reporting the County's improper use of federal grant funds.

Issue was whether ORS 659A.199 applies to both private and public employers or to only private employers.



20

Oregon Court of Appeals Decisions

Burley v Clackamas County (2019) - Continued

Numerous Federal Courts in Oregon had held the statute does not apply to government employers.

The Supreme Court decided the statute does apply.



21

Oregon Court of Appeals Decisions

Bush v Prineville (2019)

The primary issue on appeal was whether the damage limitation cap in the Tort Claims Act limits both the damages and attorney fees a plaintiff is entitled to recover to the cap amount, or whether recoverable attorney fees are not limited by the cap.



22

Oregon Court of Appeals Decisions

Bush v Prineville (2019) - Continued


Unfortunately, the Court skirted the issue by holding the trial court erred because it awarded plaintiff attorney fees on all claims instead of requiring plaintiff to separate the work performed on claims that provided for attorney fees from those claims that do not provide for a recovery of attorney fees.



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Steve Kraemer
CIS Senior Litigation Attorney



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9th Circuit Court of Appeals Decisions

- **Crawford v City of Bakersfield**
Dist. Ct. erred when it did not permit father of subject shot by police to testify about his observations of his son's past behavior that was consistent with signs and symptoms his son was suffering from mental illness (schizophrenia).
Dist. Ct.'s. reasoning was because officer wasn't aware of the past behavior, or that the subject suffered from mental illness and he believed the subject's behavior that resulted in the shooting ("amped up" "angry" and "challenging") was the result




26

Crawford v City of Bakersfield (cont.)

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Ct. of Appeals held the father's proposed testimony was relevant. The Ct. said testimony about the son's past behavior and (mental health) treatment was relevant to whether he was mentally ill at the time of the shooting. That is because evidence of his past behavior that was



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Crawford v City of Bakersfield (cont.)

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28

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Cuviello v City of Vallejo (cont.)

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Cuviello v City of Vallejo (cont.)

Issue in this case was limited to the third factor- was it narrowly tailored. Not an area where people come for peace and quiet.



32

Oregon Supreme Court

- EWEB v PERS

Retired worker first worked for EWEB through a temporary staffing agency. The temporary agency paid his salary and benefits.

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EWEB v PERS (cont.)

Upon retirement a protracted dispute arose as to whether the worker became a member of PERS at the expiration of his first six month period as a temporary worker or not until six months after he was hired as an EWEB employee.

The Supreme Court reviewed the history of the PERS system and applicable statutes and determined that common-law employees who are being paid by third parties (such as temporary staffing companies) do not become PERS members even when they are working for the public agency for longer than six months.



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34

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Ossanna v Nike (cont.)

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36

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Bush v. Prinevill (cont.)

those claims that do not provide for a recovery of attorney fees.



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