



Freedom Vans: Nine Months After the Decision, Where are We?

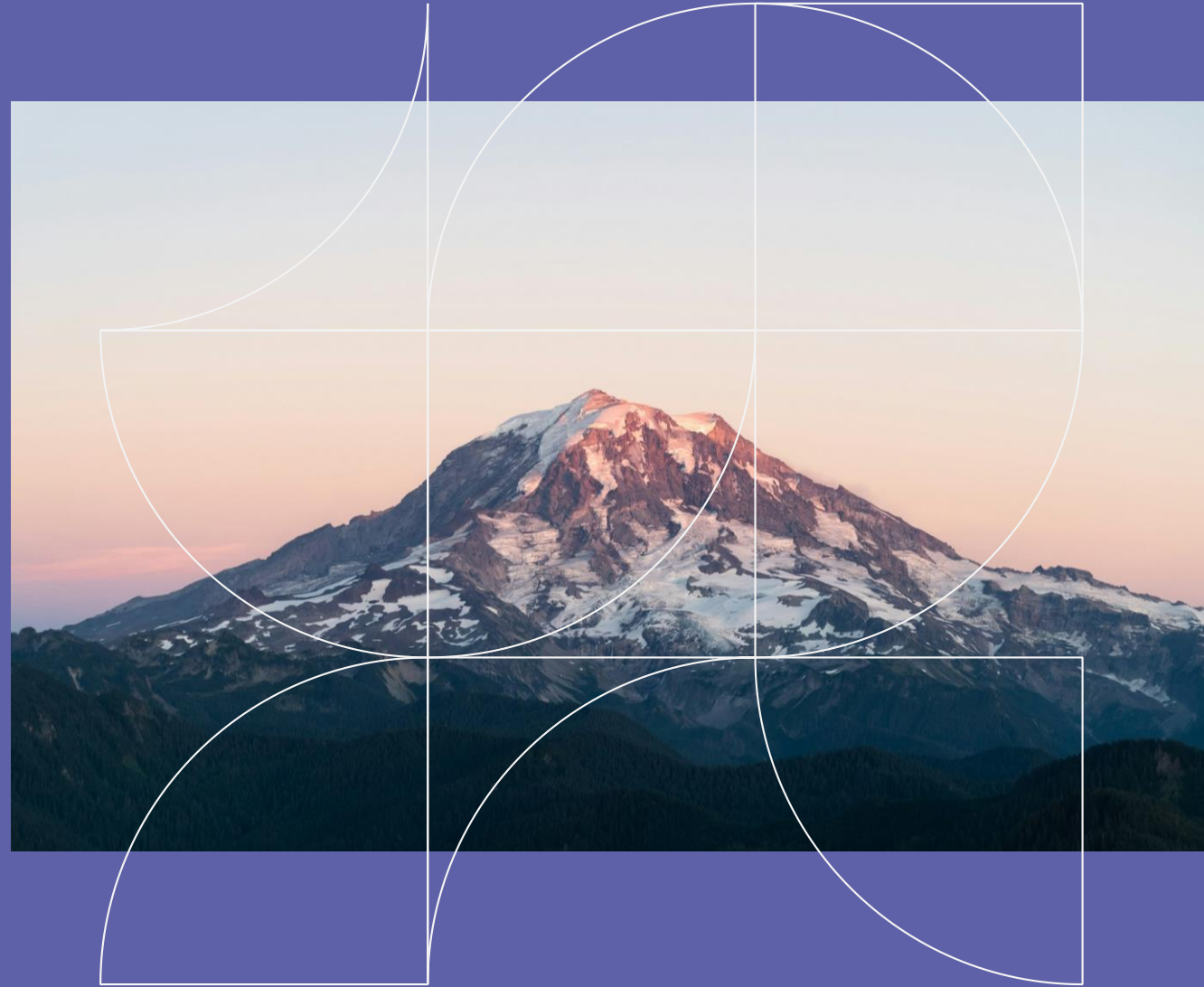
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Seyfarth Shaw LLP

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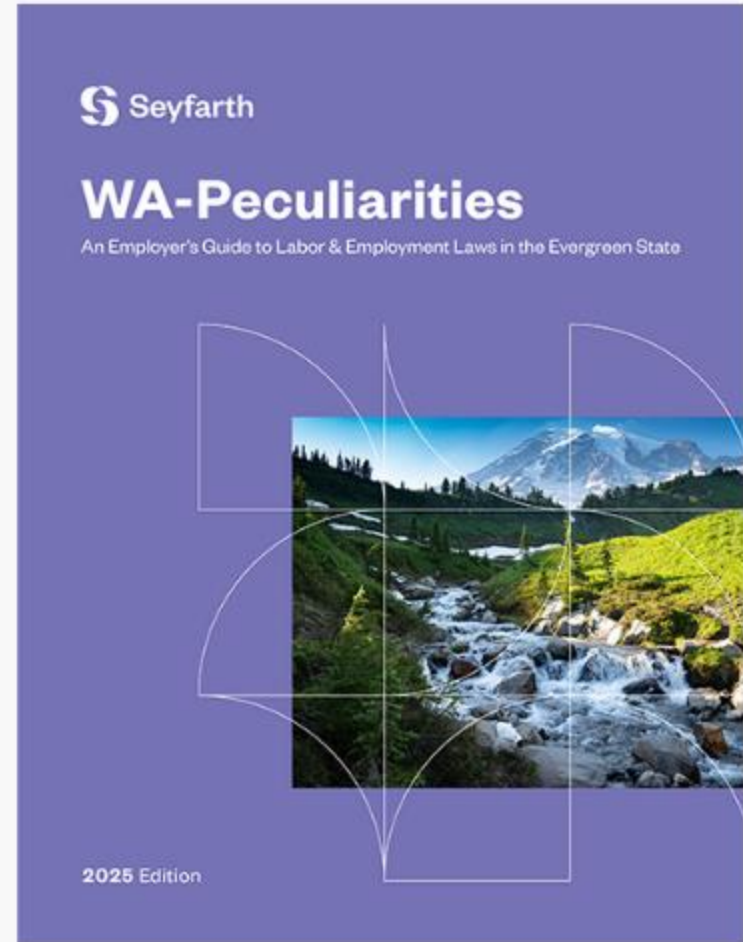
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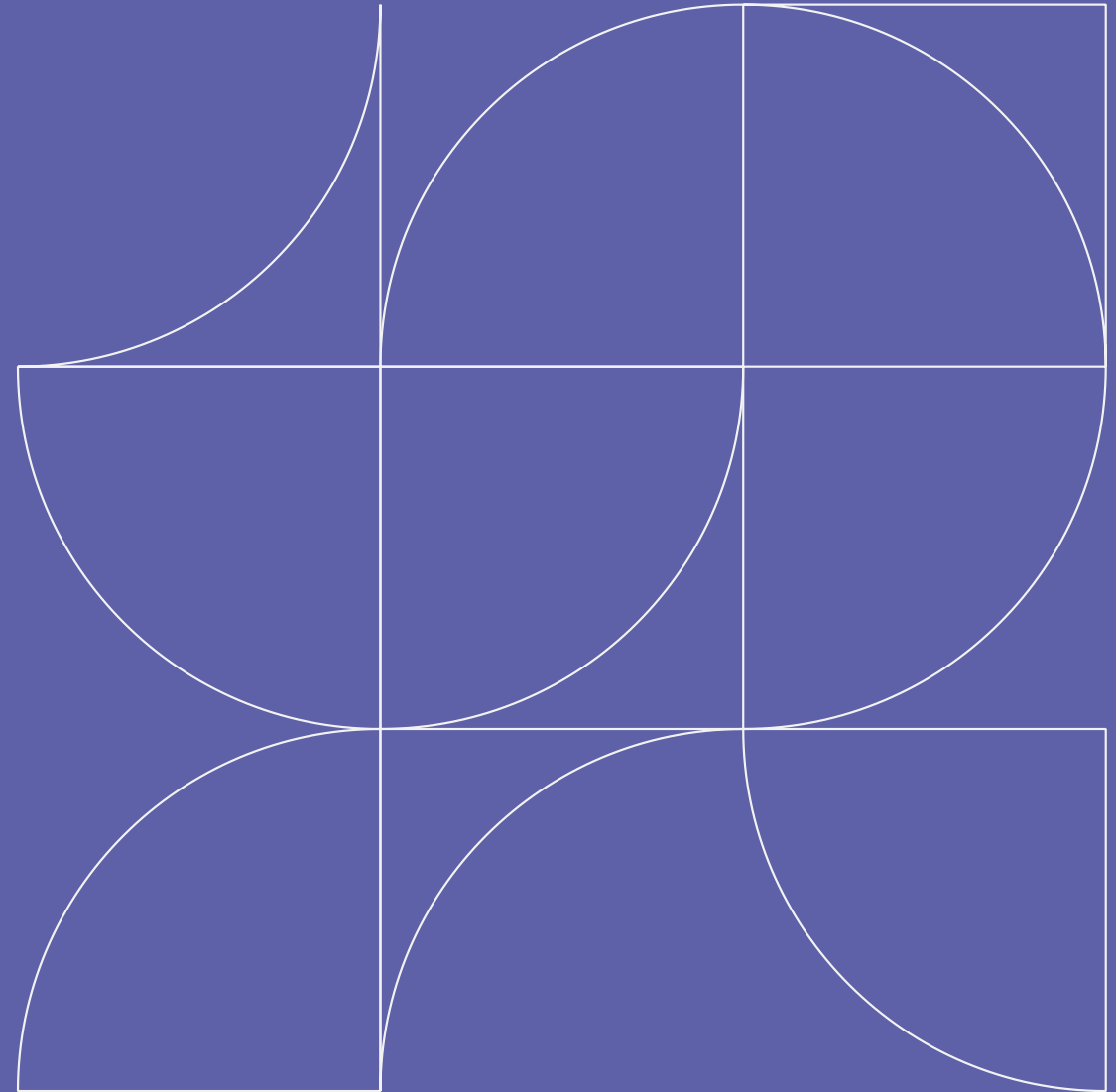
Speakers



Agenda

- 1 | Recap of *Freedom Vans* Decision
- 2 | Current Litigation Trends
- 3 | Compliance with *Freedom Vans* & Litigation Avoidance

Freedom Vans:
Recap of Case and
Decision



**Washington
Noncompetition
Covenant Act
RCW 49.62**

RCW 49.62.070

Employees having an additional job—When authorized.

- (1) Subject to subsection (2) of this section, an employer may not restrict, restrain, or prohibit an employee earning less than twice the applicable state minimum hourly wage from having an additional job, supplementing their income by working for another employer, working as an independent contractor, or being self-employed.
- (2)(a) This section shall not apply to any such additional services when the specific services to be offered by the employee raise issues of safety for the employee, coworkers, or the public, or interfere with the reasonable and normal scheduling expectations of the employer.
- (b) This section does not alter the obligations of an employee to an employer under existing law, including the common law duty of loyalty and laws preventing conflicts of interest and any corresponding policies addressing such obligations.



Ford Transit Conversions



Mercedes Sprinter 144 Conversions



Freedom Vans Trial Court

Background

- Freedom Vans required its current employees to sign a "Non-Compete Agreement," which prohibited its employees from "directly or indirectly" engaging "in any business that competes" with the company.
- Plaintiffs filed a class action lawsuit, alleging the employment agreement violated RCW 49.62.070.
- Freedom Vans moved for summary judgment, arguing that prohibiting current employees from "directly or indirectly" competing was permissible under the statute.
- The trial court granted Freedom Vans' summary judgment motion.
 - "As such, the employment agreement **as written** is not a violation of RCW 49.62.070." (Emphasis added).

Freedom Vans First Appeal

Washington Court of Appeals, Division 1

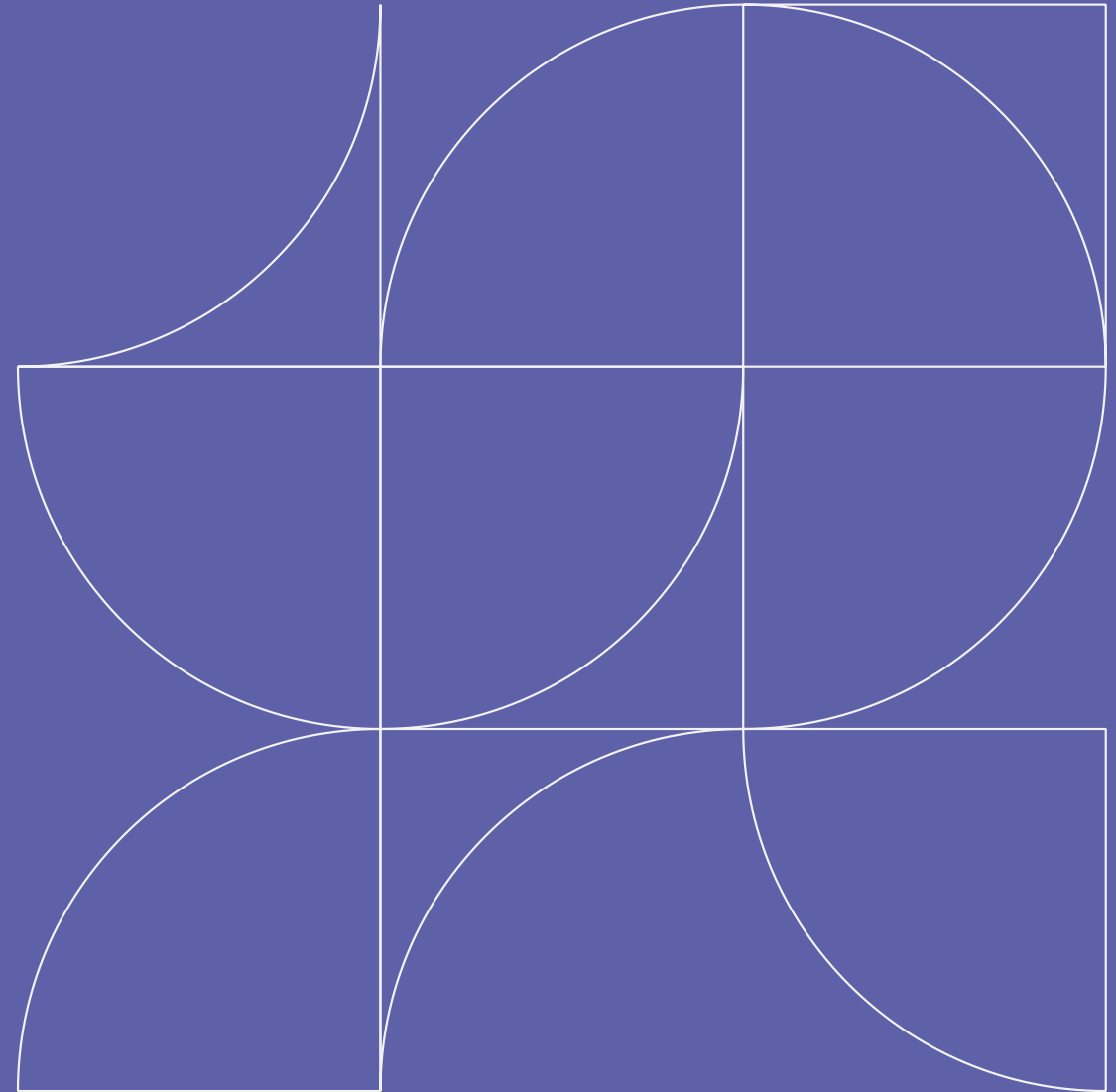
- The Washington Court of Appeals affirmed.
 - “... the policy at issue furthers the objectives of the duty of loyalty because a competing business will benefit, directly or indirectly, from the knowledge and skills acquired or refined at the principal place of employment.”
 - “For instance, a Pepsi marketing executive's loyalty would undoubtedly be compromised (even setting aside conflict of interest issues) if that executive also moonlighted as an accounting executive for Coca Cola. This is so because roles and duties in the workplace are often fluid and overlapping.”

Freedom Vans
Appeal to
Washington
Supreme Court

Washington Supreme Court

- The Washington Supreme Court reversed.
- "... noncompete agreements are presumptively invalid for low wage workers ... and only narrow exceptions apply."
- "Prohibiting employees from engaging in "all kinds of assistance" with a competitor would be contrary to the legislature's intent to protect low wage workers by allowing them to earn a supplemental income to support themselves and their family and would unreasonably broaden the duty of loyalty."
- Noncompete agreements must be reasonable, which is decided on a case-by-case basis.
 - Whether there is a need to protect the employer's business or goodwill.
 - Whether the restraint on the employee is reasonably necessary; and
 - Whether enforcing the agreement violates public policy.

Litigation Trends





Trends

- >40 Cases Filed (Almost All in 2025)
- Almost all are filed by the same firm that brought *Freedom Vans* and 300+ EPOA cases
- We expect the caseload to balloon >100 in the next 12 months
- Mostly targeting large employers where the policies affect thousands of employees
- The complaints largely do not describe which policy or agreement of the company is unlawful (or how it is unlawful)
- Targets all policies or agreements that mention outside employment, even if the restrictions are slight or do not necessarily result in adverse employment action



Working in a position that competes with [the Company] can interfere with your time, energy, and commitment to your responsibilities at [the Company]. [It is an impermissible conflict of interest to work at] a direct cosmetic retail competitor [] or a department store retailer that sells cosmetics.





The [Company] will not tolerate any employee engaging in outside employment in competition with the [Company]. Should a conflict arise, it will be at the discretion of management to determine whether the outside employment is in conflict. If necessary the employee may have to choose between jobs or the choice may be made for them.





The list below suggests some of the types of activity that indicate improper behavior, unacceptable personal integrity, or unacceptable ethics: (1) Employment by another firm that is a competitor of or supplier to [the Company]. (2) Carry on company business with a firm in which the employee, or a close relative of the employee, has substantial ownership or interest. (3) Holding a substantial interest in, or participating in the management of, a firm to which the company makes sales or from which it makes purchases.



“

While an employee of the Company, I will not, directly or indirectly, engage in (a) any business activity that is competitive with, or conflicts with, the Company's business activity or (b) any other outside business activity, except as expressly authorized in writing and in advance by a duly authorized member of Company management.

”



The company recognizes that an employee may accept secondary employment or participate in other activities or organizations. Employees are expected to be available for all scheduled work, including overtime, as needed. Any outside interests, business, financial activity, or employment which affect job performance or result in a direct or indirect conflict of interest or competition will not be permitted. Employees should speak to their supervisor/manager if a situation arises or occurs which appears to be in a conflict with this policy.

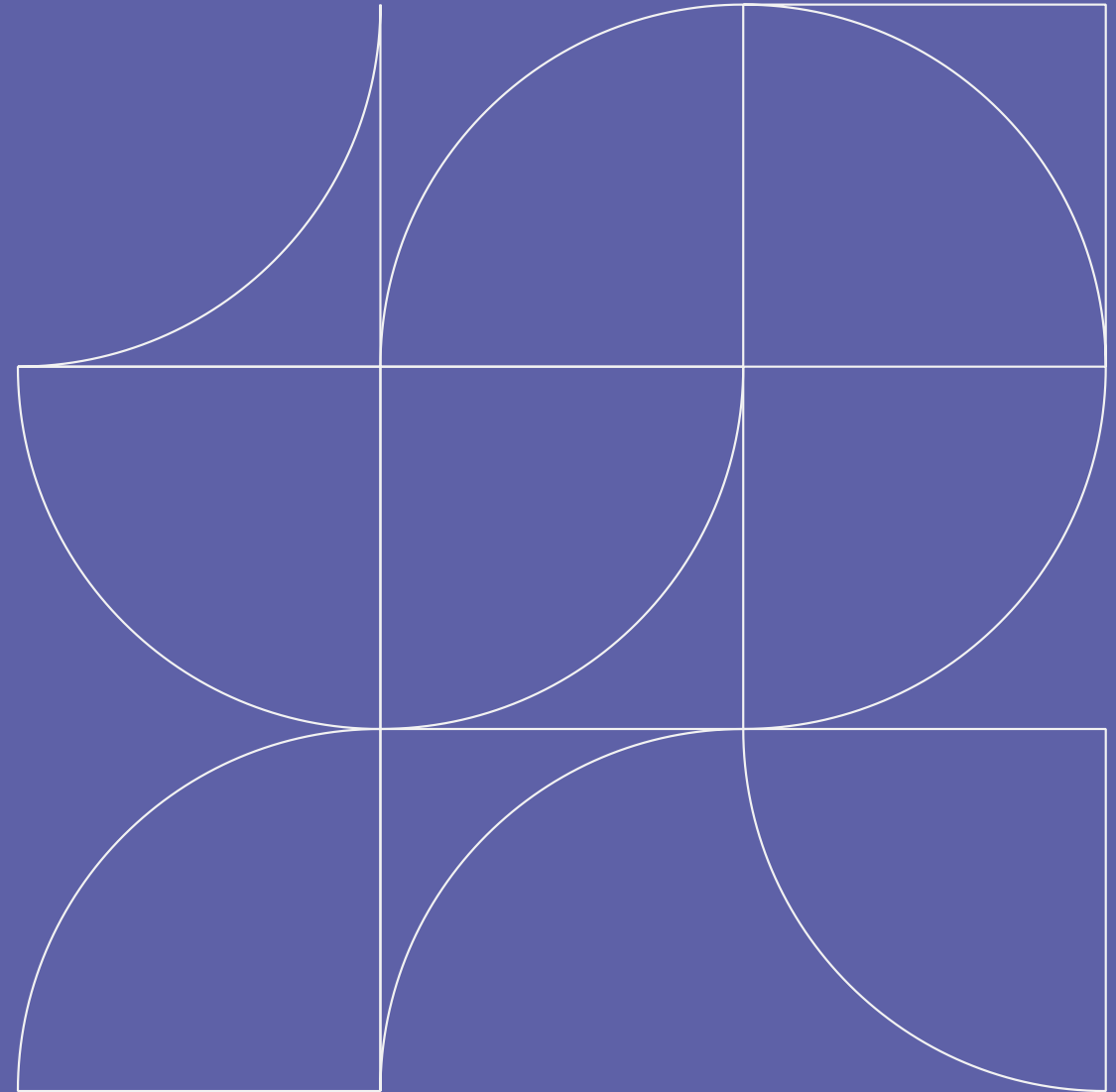




The Company does not prohibit employees from holding other jobs; however the following types of outside employment are prohibited: Employment that directly or indirectly competes with the business or interests of the company.



Compliance





Compliance & Litigation Avoidance

- Consider whether a policy is necessary
- If keeping a policy, Freedom Vans is instructive:
 - Case-by-case approach
 - Reasonable restrictions (narrowly tailored to legitimate business interests)
 - Develop review processes of outside employment requests that only implement “reasonable” restrictions
- Consider protecting business interests with other policies
- Consider arbitration agreements & class action waivers



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Questions



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contact information

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