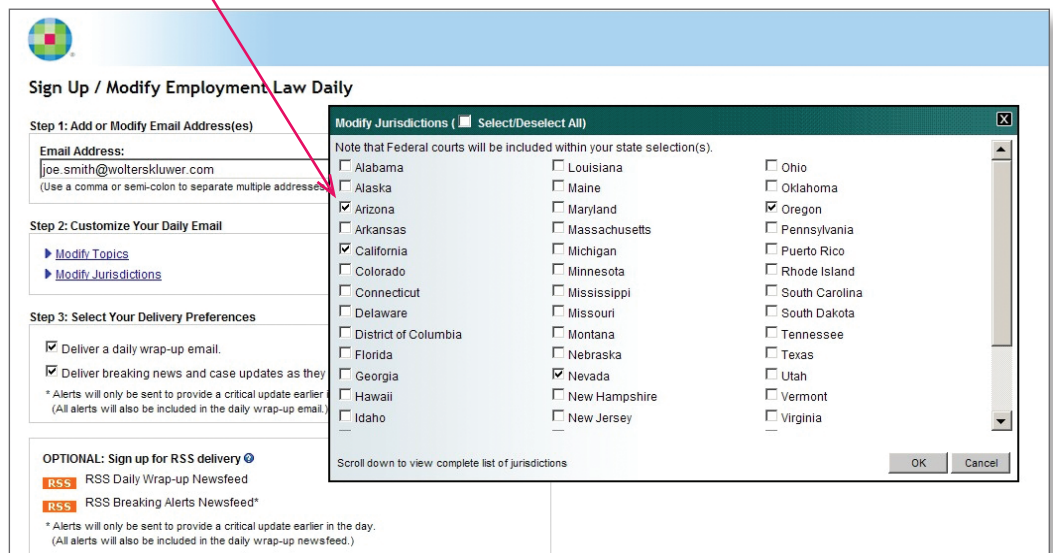


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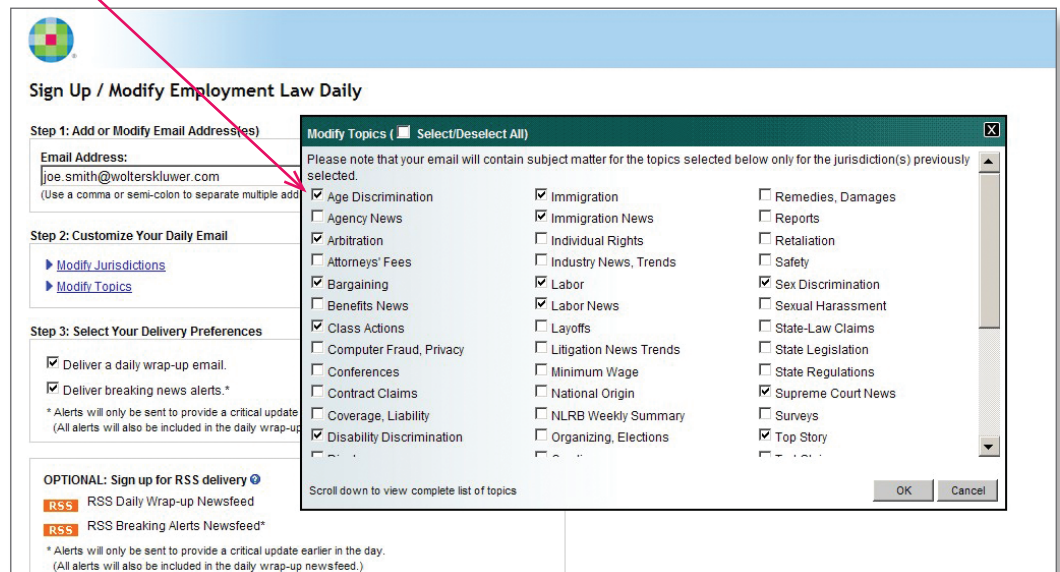
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TOP STORY—9thCir: Employer's "one-strike rule" denying employment to applicants who test positive for drug or alcohol use did not have an unlawful disparate impact on rehabilitated drug addicts

Rejecting disparate treatment and disparate impact claims brought under the ADA and California Fair Employment and Housing Act (FEHA) by a former drug addict who was denied a longshoreman's job, a divided Ninth Circuit panel upheld the Pacific Maritime Association's "one-strike rule," which automatically eliminates from consideration job applicants who test positive for drug or alcohol use (*Lopez v Pacific Maritime Assoc.*, March 2, 2011, Graber, S). Not only was it lawful for the employer association to eliminate applicants who were using drugs when they applied to be longshore workers, it was also permissible to disqualify those applicants permanently. The appeals court held, affirming summary judgment to the employer association. While the one-strike rule imposes a harsh penalty, and many people question the rule's reasonableness in light of the fact that many drug users later rehabilitate themselves, "unreasonable rules do not necessarily violate the ADA or the FEHA," majority wrote.

The employer association represents shipping lines, stevedore companies, and terminal operators that run the ports along the west coast, negotiating bargaining and administering payroll and hiring policies. One of those policies is the one-strike rule, under which the association rejects outright any job applicant who tests positive for drug or alcohol use during the pre-employment screening process. Applicants are notified at least seven days in advance of administering the drug test. Failing a drug test, even once, disqualifies an applicant permanently from future employment.

The plaintiff first applied for a longshoreman position in 1997 at a Long Beach, California port. At that time, however, he suffered from an addiction to drugs and alcohol and tested positive for marijuana at the time of his drug test; he was therefore disqualified from further consideration under the one-strike rule. He became clean and sober in 2002 and, in 2004, reapplied to be a longshoreman. However, because of the one-strike rule, his application was rejected. He attempted to appeal, but the employer does not entertain appeals from disqualifications arising from positive drug tests. This action followed, alleging the employer violated the ADA and the FEHA by discriminating against him on the basis of his protected status as a rehabilitated drug addict. The Ninth Circuit affirmed the district court's grant of summary judgment for the employer.

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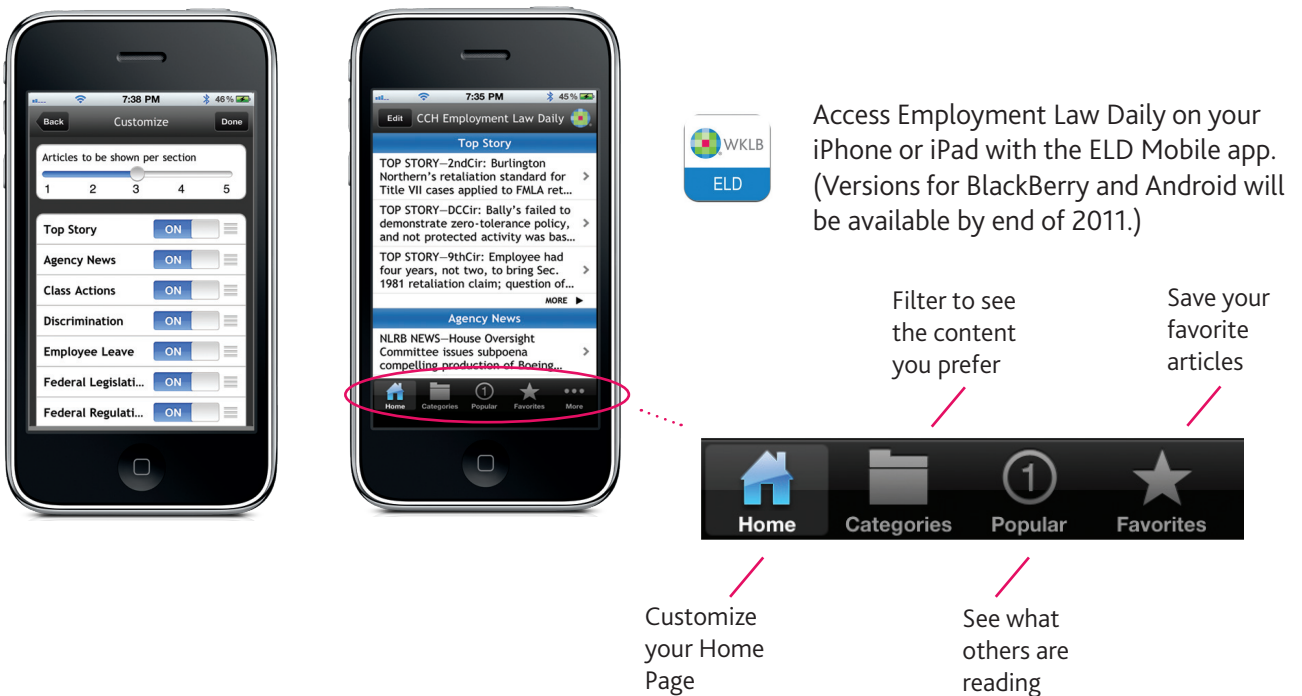
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