

NO. 93800-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JONATHAN SPRAGUE,

Petitioner,

v.

SPOKANE VALLEY FIRE DEPARTMENT,

Respondent.

STATEMENT OF ADDITIONAL AUTHORITIES
WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION

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Pursuant to RAP 10.8, the Washington Employment Lawyers Association, amicus curiae, submits the following statement of additional authorities from the EEOC Compliance Manual, §12-IV C (6)(a), entitled “Permitting Prayer, Proselytizing, and Other Forms of Religious Expression - Effect on Workplace Rights of Co-Workers.” The supplemental authority addresses whether and under what circumstances allowing religious expression in the workplace constitutes an undue hardship under Title VII of the 1964 Civil Rights Act.

To determine whether allowing or continuing to permit an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, employers should consider the potential disruption, if any, that will be posed by permitting this expression of religious belief. As explained below, relevant considerations may include the effect such expression has had, or can reasonably be expected to have, if permitted to continue, on co-workers, customers, or business operations.

a. Expression can create undue hardship if it disrupts the work of other employees or constitutes – or threatens to constitute – unlawful harassment. Since an employer has a duty under Title VII to protect employees from religious harassment, it would be an undue hardship to accommodate such expression. As explained in § III-A-2-b of this document, religious expression directed toward co-workers might constitute harassment in some situations, for example where it is facially abusive (i.e., demeans people of other religions), or where, even if not abusive, it persists even though the co-workers to whom it is directed have made clear that it is unwelcome. It is necessary to make a case-by-case determination regarding whether the effect on co-workers actually is an undue hardship. However, this does not require waiting until the alleged harassment has become severe or pervasive. As with harassment on any basis, it is permitted and advisable for employers to take action to stop alleged

harassment *before* it becomes severe or pervasive, because while isolated incidents of harassment generally do not violate federal law, a pattern of such incidents may be unlawful.

EEOC Compliance Manual, §12-IV C (6)(a), emphasis original, citations omitted.

Dated this 2nd day of June, 2017.

/s/ Jeffrey Needle

Jeffrey Needle, WSBA #6346

Mike Subit, WSBA #28189

CERTIFICATE OF SERVICE

I certify that on the 2nd day of June, 2017, I caused a true and correct copy of WELA's Statement of Additional Authorities to be filed with the Clerk of the Court, and served on the following via U. S. Mail and electronic mail:

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Dated this 2nd day of June, 2017 at Seattle, Washington.

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