

LEGAL UPDATE 2019

Civil Service Conference, September 10, 2019

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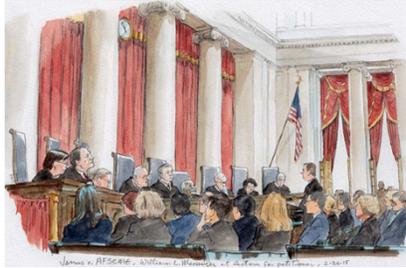
Public Sector Unions - *Janus v. AFSCME*

- *Janus* case (2018)
 - Court concluded requiring non-members to pay agency fees violated free speech rights of non-members
 - Spawned lawsuits attempting to claw back dues, but courts have denied based on good faith defense



Impact of *Janus*

- “[T]he reports of our demise were much exaggerated.”
Randi Weingarten, president of the American Federation of Teachers, *Public Unions Still Strong as Janus Turns 1*, Law360



Washington State Legislature – HB 1575

AN ACT Relating to strengthening the rights of workers through collective bargaining by addressing authorizations and revocations, certifications, and the authority to deduct and accept union dues and fees; amending RCW 28B.52.020, 28B.52.030, 28B.52.025, 28B.52.045,



HB 1575

- Removes union security provisions
- Clarifies union/employer responsibilities
 - Employer required to deduct dues and remit to bargaining rep once employer has authorization
 - Authorization remains in effect until revoked in accordance with terms of authorization
 - After written revocation, employer must stop deductions no later than second payroll
- Defense for dues deducted before June 27, 2018 (date of *Janus* decision)

Follow up for employers on *Janus* & HB 1575

- Review CBA provisions for consistency with *Janus* if not already done
- Revise union security, references to former RCW 41.56.122 (“bona fide religious tenets” language)
- Incorporate HB 1575 provisions

Equal Pay & Opportunities Act

- Enacted to remedy gender-based pay disparity

.9 (3) The legislature finds that:

10 (a) The long-held business practice of inquiring about salary
11 history has contributed to persistent earning inequalities;

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ESHB 1696.SL

1 (b) Historically, women have been offered lower initial pay than
2 men for the same jobs even where their levels of education and
3 experience are the same or comparable; and

4 (c) Lower starting salaries translate into lower pay, less family
5 income, and more children and families in poverty.

6 (4) The legislature therefore intends to follow multiple other
7 states and take the additional step towards gender equality by
8 prohibiting an employer from seeking the wage or salary history of an
9 applicant for employment in certain circumstances. Further, the
10 legislature intends to require an employer to provide wage and salary
11 information to applicants and employees.

Equal Pay & Opportunities Act

- Enacted to remedy gender-based pay disparity
- Employers with 15 employees or more
- No questions regarding salary history
- Transparency requirement
- Follows last year's prohibitions on pay secrecy



Follow up for employers on pay transparency

- Review application forms
- Training for those posting jobs, making hiring/compensation decisions
- Review policies, handbooks
- Be prepared to provide salary ranges on request

Workplace Pregnancy Accommodation

- Amendment to RCW 43.10.005
- “reasonable break time” for employee to express breast milk
- Location other than bathroom if available
- For two years after child’s birth
 - *Compare:* Federal FLSA – one year, limited applicability

PRA Exemption re: Workplace Harassment

- EHB 2020, amending RCW 42.56.250(6)
- Expands protection to investigations re: harassment, breach of policy
- Records of ongoing investigation exempt
- After the investigation is complete:
 - The agency must inform the complainant, other accusers, and any witnesses of a request for the investigation's records, and
 - The records may be disclosed only if the names of the complainant, other accusers, and any witnesses are redacted.
 - Individuals' names may only be released with their consent.

Obesity as Disability under WLAD

Taylor v. Burlington Northern Railroad Holdings



Obesity as Disability under WLAD

- Unlawful “[t]o refuse to hire any person because of ... the presence of any sensory, mental, or physical disability ... unless based upon a bona fide occupational qualification.”
- “Disability” is defined as
 - “a sensory, mental, or physical impairment that:
 - (i) “[i]s medically cognizable or diagnosable;” or
 - (ii) “[e]xists as a record or history;” or
 - (iii) “[i]s perceived to exist whether or not it exists in fact.”

Obesity as Disability under WLAD

- State law defines disability more broadly than federal ADA
- Taylor was disqualified based on BMI – undisputed that he did not get the job due to obesity
- Conclusion
 - Obesity is an “impairment” under WLAD because it is a “physiological disorder, or condition”
 - Cannot discriminate against a job applicant based solely on obesity

HB 1533 – Requiring new poster on domestic violence resources

- Purpose: making information about domestic violence available in workplace
- ESD created employment poster providing info on community resources
- Posting requirement effective July 28, 2019

Affirmative Action I-1000

- I-200 – enacted 1998



INITIATIVE MEASURE 200

PROPOSED TO THE LEGISLATURE

Note: The ballot title and explanatory statement were written by the Attorney General as required by law. The complete text of Initiative Measure 200 begins on page 32.

Official Ballot Title:

Shall government be prohibited from discriminating or granting preferential treatment based on race, sex, color, ethnicity or national origin in public employment, education, and contracting?

The law as it now exists:

Washington currently has a Law Against Discrimination, codified as Chapter 49.60 RCW, which prohibits discrimination against any person because of race, creed, color, national origin (including ancestry), families with children, sex,

Affirmative Action I-1000

- Initiative 1000 to legislature
- Referendum 88 on Nov. ballot (would veto I-1000)
- Text of measure:

Initiative Measure No. 1000 concerns remedying discrimination and affirmative action.

This measure would allow the state to remedy discrimination

for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.

Should this measure be enacted into law?

Yes [] No []





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SERVICES

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 School Districts

PRACTICE OVERVIEW

Andrea Bradford is a litigation associate at Foster Pepper PLLC. Andrea focuses her practice on the representation of local governments on issues including the Public Records Act, employment and labor matters, public works, and advising public school districts on various school law matters. She also has experience in environmental litigation. Andrea serves as a member of the WSAMA amicus committee as well as a board member of the Washington Council of School Attorneys. After graduating from the University of Washington School of Law with honors in 2012, Andrea clerked for two years for the Honorable Ann Schindler at the Washington Court of Appeals, Division One.

REPRESENTATIVE WORK

- Obtained summary judgment dismissal of Public Records Act lawsuit involving an allegation that a private nonprofit providing public defense services was the functional equivalent of a public agency under *Telford v. Thurston County Board of Commissioners*
- Represented property owners in multiple condemnation actions related to Sound Transit's Light Rail Projects
- Represented port district in construction contract litigation involving contractor termination
- Represented hospital district in responding to complaint before Public Disclosure Commission
- Represented school district in resolving Public Records Act lawsuit
- Represented public utility district in appeal before Capital Projects Advisory Review Board
- Represented employer in wage-and-hour litigation involving prevailing wage on a public project
- Assisted pro bono client in obtaining emergency relief from governor to avoid imminent deportation
- *Kanany v. City of Bonney Lake No. 46340-7-II*, Successfully argued appeal of denial of land use petition (2015)

Andrea L. Bradford ASSOCIATE

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ACTIVITIES

- Washington State Association of Municipal Attorneys, Amicus Committee, Member
- Washington Council of School Attorneys, Board Member

PRESENTATIONS

- “Building Schools: Financing and Property Acquisitions,” Speaker, Washington Association of School Business Officials 75th Annual Conference, May 2019
- “Top New Employment Law Developments Affecting Washington Housing Authorities,” Speaker, Association of Washington Housing Authorities, May 2018
- [“Is Your Workplace Ready for Washington State’s New Employment Laws?”](#) Speaker, Foster Pepper Client Briefing, May 2018
- “District Resolution Writing,” Speaker, Washington Association of School Business Officials Annual Conference, May 2018
- “The Insiders View of Washington’s Appellate Courts,” Panelist, Washington State Association of Municipal Attorneys 2017 Fall Conference, October 2017
- [“Pre-Employment Credit Checks,”](#) Speaker, 36th Annual Civil Service Conference, September 2017

EXPERIENCE

- Foster Pepper PLLC, Associate, 2017-Present
- Porter Foster Rorick LLP, Associate, 2014-2017
- Washington Court of Appeals, Division I, the Hon. Ann Schindler, Judicial Clerk, 2012-2014
- Federal Trade Commission, Bureau of Competition, Summer Law Clerk, 2011
- U.S. District Court, Western District of Washington, the Hon. Thomas S. Zilly, Legal Extern, 2010
- Department of Justice, Antitrust Division, Paralegal Specialist, 2007-2009

BAR ADMISSIONS

- Washington, 2013

EDUCATION

- J.D., University of Washington School of Law (with honors), 2012
 - + Order of the Coif
 - + *Washington Law Review*, Managing Editor
 - + CALI Excellence for the Future Award
- B.A., Tufts University (*magna cum laude*), 2006
 - + National Merit Scholar
 - + *Tufts Daily Newspaper*, Assistant Features Editor



P. Stephen DiJulio

MEMBER

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SERVICES

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 Zoning
 Litigation & Dispute
 Resolution
 Ports
 Public Records & Open
 Government
 Real Estate
 School Districts
 Sports Law
 Transportation
 Wine, Beer & Spirits

PRACTICE OVERVIEW

Steve's practice focuses on litigation involving state and local governments; civil service and public employment; and, land use and environmental law. His particular experience includes representation of jurisdictions on eminent domain, utilities (water, wastewater, storm water, solid waste systems), local improvement districts, facility siting and contractor litigation.

Steve serves as Chair of the firm's Executive Committee and in that capacity as the Managing Member (or "Managing Partner") of the firm.

SELECTED REPRESENTATIVE WORK

- *Brower v. State/Football Northwest*, 137 Wn.2d 44 (1998) (Successful defense of Seattle Seahawk stadium project and legislative referendum)
- *Washington Securities v. Horse Heaven Heights*, 132 Wn. App. 188, 149 P.3d 379 (2006), rev. denied, 158 Wn. 2d 1023 (successful prosecution of quiet title action for rail right of way)
- *Central Puget Sound Regional Transit Authority v. Miller*, 156 Wn.2d 403 (2006) (successful defense of Sound Transit eminent domain action)
- *City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 188 P.3d 533 (2008); 170 Wn.2d 1, 239 P.3d 589 (2010) (successful defense of water fluoridation program)
- *HTK v. Seattle Popular Monorail*, 155 Wn.2d 612 (2005) (successful defense of municipal condemnation authority)
- *Public Utility District No. 1 of Okanogan County v. State of Washington, Peter Goldmark*, 174 Wn. App 793, 301 P.3d 472 (2013); 182 Wn.2d 519; 342 P.3d 308 (2015) (successful prosecution of utility corridor acquisition)
- *Servais v. Port of Bellingham*, 127 Wn.2d 820 (1995) (amicus for Washington Public Ports Association in defense of protected public records)
- *Klickitat Citizens v. Klickitat County*, 122 Wn.2d 619 (1993) (Defense of comprehensive plan and environmental impact statement for regional landfill)
- *Rabanco v. King County*, 125 Wn. App. 794 (2005) (successful defense of county solid waste management authority)

P. Stephen DiJulio MEMBER

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- *Wong, et al. v. City of Long Beach*, 119 Wn. App. (2004) rev. denied 152 Wn.2d 1015 (2004) (successful defense of city trail project)
- *Washington Waste Systems, Inc. v. Clark County*, 115 Wn.2d 74 (1990) (Defense of multi-million dollar government contract procurement)
- *Grant County Fire District No. 5 v. Moses Lake*, Supreme Court, 150 Wn.2d 791 (2004) (Court reconsiders and unanimously reverses earlier ruling; affirms city annexation authority)
- *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774 (2001) (amicus for Fire Commissioners Association regarding public duty doctrine)
- *City of Seattle v. Shepherd*, 93 Wn.2d 861, 613 P.2d 1158 (1980) (upholding crime victims' rights to recovery of stolen property)

RECOGNITION

- *The Best Lawyers in America*® Appellate Practice, 2012-present
- Best in the Business: Leading Lawyers in the Puget Sound Region, *Seattle Business* magazine, Appellate Practice, 2013
- Washington Super Lawyers list, 2002-2019
- 2010 Top Lawyer, *Seattle Metropolitan* magazine
- Martindale-Hubbell AV rating

ACTIVITIES

- Municipal League, Board of Trustees, 2010-2013
- Washington State Association of Municipal Attorneys
- International Municipal Lawyers Association
- American Bar Association, State and Local Government Law and Employment Law Sections, Member
- Washington State Bar Association
 - + Environmental and Land Use Law and Administrative Law Sections, Member
- King County Bar Association
 - + Foundation Trustee, 1986-1989, 2018-Present
- South King County Bar Association, Trustee, 1986-1988
- South King County Legal Clinic
 - + Founder and Attorney Coordinator, 1985-1986
 - + Volunteer, 1978-1989
- University of Washington
 - + Lecturer, Evans Graduate School of Public Affairs

QUOTED

- “[Breaking Down Freedom of Information Laws](#),” The Willis Report, FOX Business News, July 2010

SELECTED PUBLICATIONS

- Foster Pepper [Local Open Government](#) Blog
 - + Steve DiJulio is a contributor to Foster Pepper's Local Open Government Blog.
- Washington Real Property Deskbook: Causes of Action, Taxation, Regulation, Chapter Editor (WSBA)

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- Washington Public Records Act Deskbook, Chapter 14, Attorney Client Privilege, Co-Author (WSBA)
- Washington Administrative Law Handbook, Chapter 14, Judicial Review of Administrative Proceedings, Author (Butterworth)
- [“Washington Supreme Court Levels the Playing Field in Real Estate and Land Use Litigation,”](#) Co-author, Foster Pepper News Alert, June 2015
- [“U.S. Supreme Court Decision Expands Scope of Takings Clause,”](#) Co-author, Foster Pepper News Alert, June 2013
- “A Blessing on Your Meeting?” Co-Author, MRSC In Focus: Council/Commission Advisor, April 2012
- [“Giving for the City: Constitutional Limits on Municipal Economic Development Programs,”](#) Cityvision Magazine, March/April 2012
- “Council Meeting Conduct and Citizen Rights under the First Amendment,” Author, Municipal Research and Services Center of Washington, November 2009

EXPERIENCE

- Foster Pepper PLLC
 - + Chair, Executive Committee, 2017-Present
 - + Member, 1990-Present
 - + Associate, 1986-1990
- City of Kent, City Attorney, 1982-1986
- City of Seattle, Assistant City Attorney, 1977-1982

BAR ADMISSIONS

- Washington, 1976
- U.S. District Court
 - + Eastern Division of Washington, 1993
 - + Western Division of Washington, 1976
- 9th Circuit U.S. Court of Appeals, 1980
- Supreme Court, State of Washington, 1976

EDUCATION

- J.D., Seattle University, 1976
- B.A., University of Washington (Oval Club Scholastic Honorary), 1973