

April 11, 2022

Attention: Fire Chief for Eastside Fire and Rescue, EF&R Board of Directors

To Whom It May Concern,

Members of Eastside Fire and Rescue have sought our help in the matter of termination of their employment due to the agency's stated inability to provide religious accommodations. Below please find important information pertaining to the matter.

1. Unsupported Claim of Undue Hardship

Eastside Fire and Rescue plans to terminate unvaccinated Firefighters as of April 17th based on a claim that said firefighters pose a health risk to the public. Specifically, they are said to pose a "direct threat" of infection when in proximity to others. EF&R claims that religious accommodations requested by firefighters are too burdensome to the fire departments, thereby creating "undue hardship." These reasons for discriminating against otherwise capable, healthy, and dedicated employees of King County, have already been discarded by fire departments outside of King County, such as in Pierce and Thurston Counties, which are bringing back their unvaccinated Firefighters safely. These reasons are even more unsupportable given the fact that the EF&R has granted accommodations to two female firefighters, which is inconsistent with decisions being made regarding others in an identical job role.

An employer can only deny reasonable accommodation to an exempt employee if doing so creates an "undue hardship" (or undue burden) for the employer and the employer bears the onus of demonstrating that by being unvaccinated, an employee creates a burden to the employer's duty to provide a safe workplace. However, Federal Courts hold that when an employer denies religious or medical accommodation on the grounds of undue hardship, "any hardship asserted must be real rather than speculative, merely conceivable, or hypothetical..." Brown v. Polk County, Iowa, 61 F.3d 650, 655 (8th Cir.1995).

On its Omicron Variant web page (<https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>) as of February 2, 2022, the CDC states that *"scientists are still learning how effective COVID-19 vaccines are at preventing infection from Omicron"* Based on the fact that Omicron is currently the predominant COVID strain and based on the CDC's own words "scientists are still learning" - any implied increase in risk of virus transmission from firefighters continued employment with the agency is unknown, not measurable, purely speculative. In light of the above stated facts, any attempt to deny religious accommodations based on a claim of undue hardship is at this time legally unsupportable.

2. Interference with Liberty and Violation of Due Process

The Fourteenth Amendment protects the right to be "free from unjustified intrusions into the body." This includes the right "to refuse unwanted medical treatment and to receive sufficient information to exercise these rights intelligently." Id. (citing White v. Napoleon, 897 F.2d 103, 111 (3d Cir. 1990)). Shillingford v. Holmes, 634 F.2d 263, 265 (5th Cir.1981) ("the right to be free of state-occasioned damage to a person's bodily integrity is protected by the fourteenth amendment guarantee of due process."). See also Washington v. Glucksberg, 521 U.S. 702, 720 (1997) ("the liberty protected by the Due Process Clause [of the Fourteenth Amendment] includes the right . . . to bodily integrity."). By disregarding your employees' rights to refuse unwanted medical treatment and creating coercive conditions (job loss, financial harm) for the injection of vaccines, your employment policies represent a substantial interference with their liberty.

We strongly recommend that you reconsider the present decision that EF&R has made of terminating unvaccinated firefighters. This is a courtesy notice, furnished by Washington Civil Rights Council, to help you prevent facing contentious legal action. Please use the contact information below if you have any questions or would like assistance in formulating a plan that will benefit all parties, including the public at large.

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