

# **Bond Case Briefs**

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## **EMPLOYMENT - WASHINGTON**

### **Brownfield v. City of Yakima**

**Court of Appeals of Washington, Division 3 - January 14, 2014 - P.3d - 2014 WL 123438**

Former city police officer brought action against city, alleging retaliation for whistleblowing activities, wrongful discharge, negligent hiring, supervision, and retention of city police chief, and violation of Washington Law Against Discrimination (WLAD). The Superior Court granted summary judgment in favor of city. Officer appealed.

The Court of Appeals held that:

- City maintained its own whistleblower policy and was therefore exempt from suit under Local Government Whistleblower Protection Act;
- Federal court's ruling that former officer was not terminated based on his whistleblowing activities or free speech rights collaterally estopped officer from relitigating issue of cause of his termination, as element of state law claim for wrongful discharge;
- Federal court's ruling that former officer's refusal to comply with city's legitimate order to undergo fitness for duty evaluation constituted insubordination collaterally estopped officer from relitigating issue of validity of city's order to submit to fitness examination, as relevant to state law claim for wrongful discharge;
- Federal court's ruling that city's termination of officer did not violate Americans with Disabilities Act's (ADA) prohibition on disability discrimination did not collaterally estop officer from litigating issue of whether city violated WLAD by terminating him on account of his disability;
- Officer failed to demonstrate that city's stated reason for his termination was pretext for disability discrimination, as necessary to support disability discrimination claim under WLAD; and
- Officer could not maintain claim against city for negligent hiring and supervision of police chief and city manager.

Federal court's judgment finding that city did not terminate allegedly disabled former police officer on account of his disability, such that city's termination of officer did not violate ADA did not collaterally estop former officer from litigating issue of whether city violated WLAD by terminating him on account of his disability. Legal issues were not identical, as ADA and WLAD imposed different burdens of proof upon plaintiff alleging disability discrimination, in that ADA required plaintiff to prove that, "but for" the illicit motive of disability, he would not have been subject to adverse employment action, while WLAD required plaintiff to prove that disability was a "substantial factor" causing the adverse employment action.