

Sincerely Held: Religious Discrimination in the Workplace

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Religious Discrimination: Overview

- Employer cannot take an adverse employment action because of or motivated by religion
- Applies to an employer's conduct throughout the employment relationship as well refusing or failing to address or prevent harassment
- Recent EEOC Guidance at end of the Trump Administration in January 2021 reinforced EEOC's mandate to protect against religious discrimination.

Religious Discrimination: Types

- Types of Religious Discrimination and Harassment
 - Quid Pro Quo
 - “This for that”
 - Example:
 - An employer operates a busy delivery business. The busiest days are Saturdays and Sundays. An employee is a Seventh Day Adventist and cannot work on Saturdays but does work full-time Monday through Friday. Lately, things are getting busier for the company and the employer told the employee that unless he pitches in and picks up shifts on Saturdays, which the employer knows are the employee’s Sabbath day, to help that would be reflected poorly in his review and he likely wouldn’t get his annual raise.

Religious Discrimination: Types

- Coercion
 - Explicit or implicit
 - Implicit example
 - The employer continually asks the employee to join her Bible study group, come to church with her, and start the work day with prayer. The employee consistently rejects such overtures. The employee's performance reviews start to turn negative and eventually her contract is not renewed.

Religious Discrimination: Types

- Hostile Work Environment
 - Harassment was based on religion
 - Harassment was unwelcome
 - Harassment was severe or pervasive enough to alter terms of employment and objectively create a hostile or abusive relationship
 - There is a basis for employer liability
- Example: Isolated comments
- Example: Verbal comments/threat with physical action

Religious Discrimination: Case Examples

- Recent Examples
 - Terminating an employee because of his schedule
 - Refusing to hire an employee because of his beard
 - Failing to correct an abusive/hostile work environment
 - No discrimination where the employee rejected the proposed accommodation
- Employer Best Practices

Religious Accommodation: Overview

- Title VII requires employers to reasonably accommodate an applicant or employee’s “sincerely held” belief, unless doing so would impose an undue hardship on the employer’s business
 - What is a “sincerely held” belief?
 - (1) Has the employee acted in a manner inconsistent with the stated belief?
 - (2) Is the accommodation sought a particularly desirable benefit?
 - (3) Is the time of the request suspicious?
- How is a request for a reasonable accommodation made?
 - Employer put on notice
 - No actual knowledge is required—mere suspicion of religious belief is enough

Religious Accommodation: Reasonable

- Examples of Reasonable Accommodations
 - Work schedules
 - Religious expression
 - Dress codes
 - Example

Religious Accommodation: Unreasonable

- Examples Not Reasonable Accommodations
 - Fails to resolve conflict
 - Unnecessarily disadvantages the individual

Religious Accommodation: Undue Hardship

- Undue Hardship
 - Employer not required to make a religious accommodation if constitutes an undue hardship
 - Undue hardship means more than a de minimis cost on the employer's business

Religious Accommodation: Undue Hardship

- Factors of undue hardship:
 - Diminished efficiency in other jobs
 - Infringes on other employees' job rights or benefits
 - Impairs workplace safety
 - Causes coworkers to carry accommodated employee's share of potentially hazardous or burdensome work
- Case-by-Case determination

Religious Accommodation: Undue Hardship

Examples

- Examples
 - Allowing a female employee to wear a dress on the manufacturing floor because that would be a safety risk
 - Allowing an employee to not use a Social Security Number as that would require the employer to violate the law
 - Allowing an employee to post anti-gay posters to counter diversity posters that included LGBT information because that'd infringe on co-workers' rights
 - Allowing an employee to skip assignments because that'd create burdensome work for other co-workers

Religious Accommodation: De Minimis

- An accommodation constitutes an undue hardship when it imposes more than a “de minimis” cost on the employer
- Not limited to just financial cost
- Examples
 - Increased financial cost or cause a violation of standards
 - Even if unscheduled breaks would impose more than a de minimis cost, evidence that it was already being done precluded finding that as a matter of law the accommodation would impose more than a de minimis cost
 - Imposing a “real” and “actual” effect on co-workers by infringing their rights

Religious Employers

- Ministerial Exception
 - Ministerial Exception protects religious employers from discrimination claims because these employers have a right under the First Amendment to hire what “minister” they want
 - Who counts as a “minister?”
 - Not just the head of a religious congregation
 - But not all employees of religious employers either
 - Employer questions to ask before adverse employment action taken