



THE WORKPLACE WORD

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contacts

DENVER

Kati Miller Rothgery
303.634.2047
krthgery@swlaw.com

LAS VEGAS

Swen Prior
702.784.5262
sprior@swlaw.com

ORANGE COUNTY

Tiffany Brosnan
714.427.7068
tbrosnan@swlaw.com

PHOENIX

William R. Hayden
602.382.6329
bhayden@swlaw.com

SALT LAKE CITY

David Williams
801.257.1914
dawilliams@swlaw.com

TUCSON

John Robertson
520.882.1206
jrobertson@swlaw.com

Charges of Discrimination Based on Religion Have More Than Doubled Since 1992

The U.S. Equal Employment Opportunity Commission (EEOC) reports that charges of religious discrimination have more than doubled from 1992 to 2007. The EEOC also reports that in Fiscal Year 2007 alone it obtained over \$6.4 million for individuals charging religious discrimination. Surprisingly, this amount did not include any awards from litigation, but represented the amount the EEOC was able to negotiate through its mediation programs.

Because of the dramatic “increase in charges of religious discrimination,” on July 22, 2008, the EEOC issued a new Compliance Manual Section (New Section) regarding workplace discrimination on the basis of religion.¹ While the New Section does not unveil any new policies or procedures, it nevertheless provides a practical and user-friendly resource for EEOC investigators, employers, and employees in understanding, preventing, and resolving religious discrimination. The New Section is broken down into five subsections relating to certain facets of religious discrimination.

1. Coverage Issues

The EEOC begins its compliance documents by discussing and defining an array of religious discrimination coverage issues. Religion, according to the EEOC, is defined as “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.” The EEOC further defines religious belief as a belief that “typically concerns ultimate ideas about life, purpose, and death.” This definition does not include an individual’s social, political, economic philosophies, or personal preferences. These are decidedly not “religious” beliefs protected by Title VII.

¹ Along with the new Compliance Manual Section, the EEOC also issued two additional documents: Questions and Answers: Religious Discrimination in the Workplace and Best Practices for Eradicating Religious Discrimination in the Workplace. These documents, as well as the new Compliance Manual Section, are available on the EEOC’s website at www.eeoc.gov.



This subsection also provides guidance as to when employers may inquire into the religious nature, practice, or sincerity of an employee's religious beliefs. As a practical application, however, employers should err on the side of caution and should not jump to any conclusion that any given set of beliefs and practices of their employees, no matter how unusual, are not religious.

2. Disparate Treatment Issues

In this subsection the EEOC explains that disparate treatment occurs, except to the extent permitted by the religious organization and ministerial exceptions, when, for example, an employer refuses to recruit, hire, or promote individuals of a certain religion. The employer could be found to have discriminated under a theory of disparate treatment if it imposes stricter requirements on individuals of a certain religion, or imposes more or different work requirements on an employee because of that employee's religious beliefs or practices. Simply stated, it is illegal for employers to treat persons of different faiths differently. For example, an employer that allows one employee to display a Bible on his desk must also allow a similarly situated employee to display his/her Koran.

3. Religious Harassment Issues

The EEOC provides a detailed analysis of what constitutes religious harassment. Harassment claims based on religion are analyzed similar to harassment claims based on race, color, sex, or national origin; however, religious discrimination claims may present unique considerations, especially where the alleged harassment is based on another employee's religious practices -- a situation that may require the employer to reconcile its dual obligations to both employees. Accordingly, employers should take prompt remedial action in response to alleged harassment and reasonable requests for religious accommodation.

4. Religious Accommodation Issues

The EEOC spends a significant portion of the New

Section addressing religious accommodations. Some of the many reasonable accommodation requests include such things as modifications of dressing and grooming standards, change of policies regarding use of employer's facilities for religious purposes, employer's use of tests and other selection procedures, and other religious expression in the workplace.

Dress and grooming standards, for example, is an area in which the EEOC expects employers to be liberal in their provision of accommodations. In *EEOC v. Alamo Rent-A-Car, LLC*, a jury awarded a Muslim woman more than \$287,000 in damages after her employer refused to allow her to wear a headscarf while at work and failed to demonstrate what steps it took to attempt to accommodate her. *EEOC v. Alamo Rent-A-Car LLC*, No. CIV 02-01908-PHX-ROS (D. Ariz. June 2007) (jury verdict); see also *EEOC v. Alamo Rent-A-Car LLC*, 432 F. Supp. 2d 1006 (D. Ariz. 2006) (summary judgment for plaintiff on liability).

However, employers are not required to make these accommodations if doing so would cause an undue hardship. Because of misconceptions of what constitutes an undue hardship, the EEOC provides guidance as to when employers are required to accommodate and when they are not. Undue hardship is defined as anything that poses "more than a de minimis" cost or burden to the employer. The employer must show real evidence of either direct monetary costs or another burden on its business, such as lowered productivity, decreased safety, or infringement of the rights of other employees. For example, if a religious practice "conflicts with a legally mandated security requirement," accommodation of such a practice would be an undue hardship; however, if a security requirement is not legally mandated, but is just an employer preference, the employer will be required to modify the requirement, or establish that the requested accommodation would pose an undue hardship through another means.

An employer should be cautious as to when and how its management team makes inquiries into an employee's



request for an accommodation. There “is usually no question whether the practice at issue is religious or sincerely held;” however, an employer with a “bona fide doubt” about the religious basis of the request may inquire about the basis for a request and make a limited inquiry into the relevant circumstances regarding whether the belief or practice is religious and sincerely held. Because religious beliefs change over time, an employer should not rely on the employee’s past inconsistent conduct to question the sincerity of the employee’s religious beliefs.

Employers are cautioned to handle requests for workplace accommodations due to religious beliefs and practices with care and discretion. Like requests for accommodation under the Americans With Disabilities Act, one key step in properly addressing these requests and avoiding legal entanglements is that the employer talk to the employee about his or her needs, and the ways in which the employer can help. In this regard, the EEOC suggests that employers train their managers and supervisors on how to properly recognize accommodation requests and that employers develop procedures for processing reasonable accommodation requests.

5. Other Related Issues

The EEOC also provides practical guidance into how its investigators analyze religious discrimination charges in conjunction with other forms of discrimination. Some of these related issues include discrimination based on national origin, race, or color, as well as retaliation. The EEOC asserts that all four discriminatory bases (religion, national origin, race, or color) would be implicated

when, for example, “co-workers target a dark-skinned Muslim employee from Saudi Arabia for harassment.”

EMPLOYERS SHOULD TAKE STEPS TO PREVENT RELIGIOUS DISCRIMINATION

Employers should take proactive steps to prevent religious discrimination at the workplace. These steps may include the following:

Inform employees (perhaps as part of a handbook) that the employer will make reasonable efforts to accommodate religious practices and that discrimination based on religion will not be tolerated:

- Train supervisors and managers on how to recognize reasonable religious accommodation requests;
- Develop procedures and policies for processing reasonable religious accommodation requests;
- Train supervisors and managers not to engage in stereotyping based on religious dress and grooming practices;
- Train supervisors and managers “to gauge the actual disruption posed by religious expression in the workplace, rather than merely speculating that disruption may result;” and
- Train supervisors and managers to be sensitive to the risk of pressuring employees to attend social gatherings after they make a religion-based objection to attending.

For questions regarding the content of this newsletter, please contact a Snell & Wilmer attorney.