Religious Discrimination


SUMMARY
On July 22, 2008, the Equal Employment Opportunity Commission (EEOC) issued a revised section of its Compliance Manual on religious discrimination (http://www.eeoc.gov/policy/docs/religion.html). The new section provides clarification of the EEOC’s views on an employer’s obligation to accommodate religious beliefs and practices absent undue hardship. It also provides useful guidance for employers faced with situations in which the accommodation of one employee’s religious beliefs or practices conflicts with another employee’s right to be free from religious harassment. Familiarity with these issues has become increasingly important: between 1992 and 2007, the number of religious discrimination charges filed yearly with the EEOC more than doubled.

BACKGROUND
The EEOC Compliance Manual is intended as a practical resource for employers, employees, practitioners and EEOC investigators in interpreting and applying the statutes the EEOC is charged with enforcing. It does not, however, supersede or modify in any way the EEOC’s existing regulations on religious discrimination, 29 C.F.R. § 1605 (2008).

REASONABLE RELIGIOUS ACCOMMODATION
Title VII requires reasonable accommodation of employees’ sincerely held religious beliefs and practices. Accommodation is required unless it would impose an “undue hardship” on business operations. The new section of the Compliance Manual stresses the importance of employer-employee communication in this endeavor. First, the employee has the obligation to request a religious accommodation. No “magic words” are required; the employee must simply provide sufficient information to make the employer aware that there exists a specific conflict between the employee’s religious practice or belief and a job
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requirement. The employee bears the burden of explaining the religious nature of the belief or practice at issue. Employers are encouraged to ask the employee for corroborating evidence before assuming that a request is not based on a sincerely held religious belief or practice.

Once a request has been made, the Compliance Manual encourages the employer and employee to work together to determine whether a reasonable accommodation is possible. Unlike the Americans with Disabilities Act (ADA), Title VII does not require a collaborative process in this effort, but an employer that denies a requested accommodation before discussing it with the employee may undermine its ability to convince a fact-finder that the accommodation would impose an undue hardship.

WHAT IS A REASONABLE ACCOMMODATION?
The employer is free to choose among various possible reasonable accommodations. The Compliance Manual notes that an accommodation that merely lessens the conflict between religion and work is not reasonable if the conflict could be eliminated by a different accommodation without undue hardship. Nor is an accommodation reasonable if it forces the employee to take a reduction in pay or suffer some other loss of benefits if there is an acceptable accommodation that does not do so.

WHAT IS AN UNDUE HARDSHIP?
To demonstrate an undue hardship under Title VII, an employer must show a “more than de minimis” cost or burden. This is an easier standard for employers to satisfy than the “undue hardship” defense under the ADA. Courts consider the effects on the employer’s business as a whole, rather than just the direct costs of the accommodation. Relevant factors include: the type of workplace; the nature of the employee’s duties; the identifiable cost of the accommodation in relation to the size and operating costs of the employer; and the number of employees who will in fact need a particular accommodation.

EXAMPLES OF POTENTIAL UNDUE HARDSHIPS
The new section of the Compliance Manual provides examples of costs or burdens that would likely impose an undue hardship:

- **Overtime wages and additional hiring** — requiring the employer to pay regular overtime wages or hire additional employees, although temporary or infrequent overtime wages generally do not establish an undue hardship.

- **Safety and security requirements** — requiring the employer to violate a law or internal rule that is necessary for workplace safety and security, although the employer should consider whether it would impose an undue hardship to modify or replace any internal rules that conflict with the accommodation.

- **Disproportionate burdens on fellow employees** — requiring other employees to assume a disproportionate share of the total workload or the most hazardous work, although voluntary swapping of assignments is acceptable.

- **Seniority systems and collectively bargained rights** — depriving other employees of a job preference or other benefit guaranteed by a seniority system or CBA, although, again, voluntary swaps are acceptable.
These examples are only guidelines. The determination of whether a proposed accommodation would pose an undue hardship is made on a case-by-case basis.

RELIGIOUS CONFLICTS IN THE WORKPLACE
An employee may seek an accommodation that allows him to proselytize, display religious icons or messages at his work station, or use the workplace for prayer sessions. This type of religious expression may cause friction in the workplace. To determine whether allowing this sort of behavior would pose an undue hardship, the Compliance Manual instructs that employers should consider what effect such expression has had, or can reasonably be expected to have, on co-workers and customers.

EFFECT ON CO-WORKERS
Employers have a duty under Title VII to protect their employees from religious harassment. Accommodating religious expression thus poses an undue hardship where it would subject other employees to religious harassment in violation of Title VII. Religious expression most likely constitutes harassment when it demeans people of other religions or when it persists even though co-workers have clearly stated that it is unwelcome. The employer should have tangible evidence before assuming that religious expression imposes an undue hardship, but the employer should also act quickly to stop any harassment before it becomes severe or pervasive.

EFFECT ON CUSTOMERS
Whether religious expression towards customers imposes an undue hardship depends on the nature of the expression, the nature of the employer’s business, and the extent of the impact on customer relations. Customer complaints are not necessary to show undue hardship if the employee’s expression could be mistaken as the employer’s message. Individualized, specific proselytizing is much more likely to pose an undue hardship than regular use of a religious phrase or greeting, but the latter may still pose an undue hardship where there is evidence that the employee’s expression is harming the employer’s business.
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CONTACTS

New York

- Robin D. Fessel +1-212-558-3832 fesselr@sullcrom.com
- John F. Fullerton III +1-212-558-3906 fullertonj@sullcrom.com
- Theodore O. Rogers Jr. +1-212-558-3467 rogersto@sullcrom.com