



MEMORANDUM

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Religious Discrimination in the Workplace (Title VII)

Introduction:

The religious freedom of public sector and most private sector employees is protected by a federal law called “Title VII,” 42 U.S.C. §§ 2000e, et seq. Title VII prohibits discrimination based on race, color, sex, religion, or national origin. Title VII applies to private employers who have fifteen or more employees on their payroll for at least twenty weeks during a given year. Religious discrimination can take the form of using an employee’s religion as a factor in decisions to or not to hire or to give or not give promotions, treating employees unequally based on their religion, and harassment. Employers may also have an affirmative duty to accommodate an employee’s religious practices in the workplace, unless the employer can show that such an accommodation would impose an undue hardship on the employer. This summary will give a brief overview of what employers may or may not do in regard to religious activities in the workplace.

Religious Accommodation and Undue Burden

Unless an employer is an exempt religious organization, the employer is required to reasonably accommodate its employee’s sincerely held religious beliefs in the workplace, unless such an accommodation would impose an undue burden on the employer’s business. The most common methods of reasonable accommodation include allowing shift swaps, making exceptions to dress and grooming requirements that are not essential to the business, allowing observance of

religious rituals in a quiet area during breaks, allowing the non-disruptive display of religious symbols, and allowing non-intrusive, non-disruptive proselytization.

The EEOC explains what may constitute an undue hardship as the following:

An accommodation would pose an undue hardship if it –would cause more than de minimis cost on the operation of the employer’s business. Factors relevant to undue hardship may 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.

Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer’s business. For example, courts have found undue hardship where the accommodation diminishes efficiency in other jobs, infringes on other employees’ job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee’s share of potentially hazardous or burdensome work. Whether the proposed accommodation conflicts with another law will also be considered.

To prove undue hardship, the employer will need to demonstrate how much cost or disruption a proposed accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather should rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.

U.S. Equal Employment Opportunity Commission, *Questions and Answers: Religious Discrimination in the Workplace*, http://www.eeoc.gov/policy/docs/qanda_religion.html, (last visited Jan. 20, 2015).

In sum, employers have an affirmative duty to reasonably accommodate the religious beliefs and practices of their employees that they are aware of, unless such accommodation would place an undue burden on the employer.

Employers

Many employers have sincerely held religious beliefs which they want their businesses to reflect. But federal and state laws prohibiting religious discrimination in employment have discouraged many business owners from communicating their religious convictions at work. The good news is that, just like employees, business owners do not have to check their religion at the door when they come to work. The following information provides some guidance for religious employers who want their business to reflect their faith.

Do employers unlawfully discriminate if they base business objectives and goals upon Biblical principles?

No. An employer does not discriminate on the basis of religion by affirming the faith of its owners in business objectives. "Title VII does not, and could not, require individual employers to abandon their religion." *E.E.O.C. v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 621 (9th Cir. 1988). Employers must be careful, however, not to give prospective or current employees the perception that employment or advancement with the company depends on acquiescence in the religious beliefs of the employer. This can be accomplished in a number of ways. For instance, applications for employment should state that applicants are considered for all positions without regard to religion. This statement should also be included in any orientation materials, employee handbooks, and employee evaluation forms. Of course, employers must also be sure that this statement is accurate by not discriminating on the basis of religion.

As the owner of the business, can I witness to my employees?

An employer can talk about his religious beliefs with employees as long as employees know that continued employment or advancement within the company is not conditioned upon acquiescence in the employer's religious beliefs. Employers must be careful, however, not to persist in witnessing if the employee objects. Such unwanted proselytizing could be deemed religious harassment. *Meltebeke v. Bureau of Labor & Indus.*, 903 P.2d 351 (Or. 1995).

Am I permitted to give my employees religious literature?

As with spoken religious speech, employers can share their religious beliefs with their employees in print form such as pamphlets, books, and newsletters. *Taylor v. Nat'l Group of Co's.*, 729 F. Supp. 575 (N.D. Ohio 1989) (employer's gift of a book endorsing secular humanism to new employees on their first day of work did not rise to the level of religious

discrimination against a Christian employee). Employers must be careful, however, not to give employees the impression that they have to agree with the employer's religious beliefs in order to keep their job or get a promotion. For instance, in one case a Jewish employee was wrongfully terminated for complaining about the printing of Bible verses on his paychecks and the religious content of a company newsletter. *Brown Transp. Corp. v. Human Relations Comm'n.*, 578 A.2d 555 (Pa. Commw. Ct. 1990), *overruled on other grounds by*, *Hoy v. Angelone*, 720 A.2d 745 (P.A. 1998). If an employer shares religious convictions with employees, and the employee disagrees or protests, no adverse action can be taken against the employee.

Furthermore, employers should be ready to accommodate any employee's objections to the religious speech contained in publications distributed to employees. Sufficient accommodation may be to provide the objecting employee with a publication that does not contain the religious content. In order to counter any impression given by publications that job security and advancement are contingent upon faith, it is also recommended that publications with religious material state that the employer does not discriminate on the basis of religion for purposes of continued employment, employee benefits, or promotion.

Can an employer hold regular prayer meetings or chaplain services for employees?

Employers can hold regular devotional meetings for employees so long as attendance is not required. *Young v. Sw. Sav. & Loan Ass'n*, 509 F.2d 140 (5th Cir. 1975). To ensure that employees understand that devotional meetings are voluntary, notice of the meetings should state that they are not mandatory and it is wise to hold these meetings before the work day begins, during breaks, or after work.

Can I require my employees to attend training based on Biblical principles?

Employers can use training programs that are based on the Bible. For instance, requiring an employee to attend a management seminar put on by the Institute of Basic Life Principles which used scriptural passages to support the lessons it sought to promote did not violate a Massachusetts civil rights law. *Kolodziej v. Smith*, 588 N.E.2d 634 (Mass. 1992). Employees cannot, however, be required to undergo religious training, participate in religious services or religious activities, or engage in behavior that would violate their sincerely held religious beliefs.

But, my organization is religious; does this mean that I cannot hire people of the same faith to work in my organization?

According to the EEOC,

Under Title VII, religious organizations are permitted to give employment preference to members of their own religion. The exception applies only to those institutions whose “purpose and character are primarily religious.” Factors to consider that would indicate whether an entity is religious include: whether its articles of incorporation state a religious purpose; whether its day-to-day operations are religious (e.g., are the services the entity performs, the product it produces, or the educational curriculum it provides directed toward propagation of the religion); whether it is not-for-profit; and whether it affiliated with, or supported by, a church or other religious organization.

This exception is not limited to religious activities of the organization. However, it only allows religious organizations to prefer to employ individuals who share their religion. The exception does not allow religious organizations otherwise to discriminate in employment on the basis of race, color, national origin, sex, age, or disability. Thus, a religious organization is not permitted to engage in racially discriminatory hiring by asserting that a tenet of its religious beliefs is not associating with people of other races.

U.S. Equal Employment Opportunity Commission, *Questions and Answers: Religious Discrimination in the Workplace*, http://www.eeoc.gov/policy/docs/qanda_religion.html, last updated Jan. 31, 2011.

Note, however, that some state employment laws may not have an exception for religious organizations.