



MEMORANDUM

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Religious Expression in the Workplace

According to the U.S. Supreme Court, “private religious speech, far from being a First Amendment orphan, is as fully protected . . . as secular private expression.” *Capitol Square Review Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). Unfortunately, religious discrimination still occurs when employers sometimes wrongfully prohibit religious speech, such as prayer or other forms of religious expression. If a government workplace prohibits religious expression, the government may be violating the free speech, as well as free exercise rights, of employees. In *Draper v. Logan Cnty. Pub. Library*, 403 F.Supp.2d 608 (W.D. Ky. 2005), ACLJ attorneys represented a librarian who had been fired for wearing a cross necklace to work. The court ultimately ruled that the public library’s policy prohibiting the wearing of a cross necklace to work violated her free speech and free exercise rights. *Id.* at 621, 623. As long as the expression did not interfere with her work setting, the librarian had the constitutional right to express her faith. *Id.* at 619.

In addition to government workplaces, private workplaces are also constrained by federal law. The law prohibiting religious discrimination in the workplace has been codified under Title VII of the Civil Rights Act of 1964 (hereinafter “Title VII”). 42 U.S.C. §§ 2000e et seq. Title VII makes it unlawful for an employer:

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, *religion*, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, *religion*, sex or national origin.

Id. at § 2000e-2 (emphasis added).

Title VII has extremely wide jurisdiction. It applies to the federal government, as well as state and local governments. *Id.* at §§ 2000e-16, 2000e(a)-(b). In addition, it also applies to private employers. *Id.* at § 2000e(b). In fact, it defines an employer as “a person engaged in an industry affecting commerce who has fifteen or more employees...” *Id.* Thus, Title VII applies to virtually all employers in this country.

In order for an employee to be protected under Title VII, he must show that:

- (1) He holds a sincere religious belief that conflicts with an employment requirement;
- (2) He has informed the employer about the conflict; and
- (3) He was discharged, disciplined or subjected to discriminatory treatment for failing to comply with the conflicting employment requirement.

See Baker v. Home Depot, 445 F.3d 541, 546 (2d Cir. 2006); *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993); *Turpen v. Missouri-Kansas-Texas R.R. Co.*, 736 F.2d 1022, 1026 (5th Cir. 1984).

The first requirement is usually not an issue since religion under Title VII is broadly defined as including “all aspects of religious observance and practice, as well as belief. . . .” 42 U.S.C. § 2000e(j). The second requirement can be satisfied by ensuring that the employer has sufficient notice of an employee’s religious belief in order to permit him to “understand the existence of a conflict between employee’s religious practices and the employer’s job requirements.” *Heller*, 8 F.3d at 1439. The third requirement is the employer’s actual discrimination against the employee. “Discrimination” includes demotion, layoff, transfer, failure to promote, discharge, harassment, or intimidation, or the threat of these adverse employment actions. *See Gregory Sarno, Harassment or Termination of Employee Due to Religious Beliefs or Practices*, 35 Am. Jur. P.O.F. 2d 209, 222 (1983); *EEOC v. Townley Eng’g and Mfg.*, 859 F.2d 610, 614 n.5 (9th Cir. 1988), cert. den., 489 U.S. 1077 (1989).

The third requirement also entails that employers reasonably accommodate an employee’s religious beliefs unless such accommodation would result in undue hardship to the employer. *See Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 73–74 (1977); *EEOC v. READS, Inc.*, 759 F. Supp. 1150, 1155 (E.D. Pa. 1991); 29 C.F.R. § 1605.2(c). “Accommodation” means that mere employer neutrality is not enough. *See Riley v. Bendix Corp.*, 464 F.2d 1113, 1115 (5th Cir. 1972); *Reid v. Memphis Publ’g Co.*, 468 F.2d 346, 350-51 (6th Cir. 1972) (the fact that a particular policy is applied uniformly to all employees does not lessen the discriminatory effect upon a particular employee’s religious beliefs). In general, an employer is required to accommodate an employee’s adherence to the principles of his religion unless such accommodation will actually interfere with the operations of the employer.

In sum, prayer is not illegal, unauthorized, inappropriate, nor improper – and as long as employees pray before or after work hours, or during official breaks, there should be no problem at all. In addition, employers are required to provide reasonable accommodation to employees’ religious beliefs, as explained above.

Our First Amendment rights apply to employers as well. Employers and business owners, just like employees, do not have to check their religion at the door when they come to work. “Title VII does not, and could not, require individual employers to abandon their religion.” *Townley Eng’g & Mfg. Co.*, 859 F.2d at 621. 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 ensure that the statements are accurate.

Furthermore, employers can even hold regular devotional or prayer meetings for employees so long as attendance is not required. *See Young v. Sw. Sav. & Loan Ass’n*, 509 F.2d 140 (5th Cir. 1975). Moreover, active participation of management in these meetings does not make them discriminatory. *See Brown v. Polk Cnty*, 61 F.3d 650 (8th Cir. 1995), cert. den., 516 U.S. 1158 (1996). To ensure that employees understand that devotional meetings are voluntary, notice of the meetings should state that they are not mandatory and it is a good idea to hold these meetings before the work day begins, during breaks, or after work.