ACLJ *MEMORANDUM*

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Working on the Sabbath/Sunday

The religious freedom of public sector and most private sector employees is protected by federal law under Title VII, 42 U.S.C. §§2000e, et seq. Title VII prohibits discrimination based on race, color, sex, religion, or national origin. This law applies to private employers who have fifteen or more employees on their payroll for at least twenty weeks during a given year. As to what constitutes an "employee," the statute is not limited to traditional definitions. "Employee" includes all who "are susceptible to the kind of unlawful practices that Title VII was intended to remedy." *Armbruster v. Quinn*, 711 F.2d 1332, 1342 (6th Cir. 1983). Thus, Title VII may apply to independent contractors.

In addition to private employers, the statute also applies to state and local governments through 42 U.S.C. § 2000e(a), and to the federal government via 42 U.S.C. § 2000e-16. In fact, Title VII is the exclusive judicial remedy offering injunctive relief for discrimination in federal employment. *Brown v. General Servs. Admin.*, 425 U.S. 820, 835 (1976); *Founding Church of Scientology of Washington, D.C., Inc. v. Dir., Fed. Bureau of Investigation*, 459 F. Supp. 748, 759–60 (D. D.C. 1978). However, Title VII does not apply to religious organizations. 42 U.S.C. § 2000e-1. Furthermore, 42 U.S.C. § 2000e-2(b) - (d) brings employment agencies, labor organizations, and training programs under the umbrella of Title VII.

The majority of jurisdictions have "deferral agencies," typically denoted as a "state equal employment opportunity agency" or "human rights commission." These are state or local agencies authorized to seek or grant relief from discriminatory practices or to institute criminal proceedings. 42 U.S.C. § 2000e-5(c). The majority of states require a charge to be filed with

their deferral agency as well as with the Equal Employment Opportunity Commission ("EEOC") within 180 days following the act of discrimination.

In states without a deferral agency, charges of specific discriminatory acts must be filed with the EEOC within 180 days after the discriminatory act occurred. 42 U.S.C. § 2000e-5(e)(1). The EEOC has 180 days of exclusive jurisdiction over the charge. Because the state deferral period is mandatory, a plaintiff must first await the results of state efforts for 60 days, ensure that an EEOC charge is filed, and then await the results of EEOC conciliation efforts for 180 days.

To prove religious discrimination under Title VII, one must show that he or she: "(1) [] holds a sincere religious belief that conflicts with an employment requirement; (2) [ ]has informed the employer about the conflict; and (3) [ ] has been discharged or disciplined for failing to comply with the conflicting employment requirement." *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987), *cert. denied*, 485 U.S. 989 (1988); *see 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); *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 65–66 (1986).

First, the sincerity of religious belief is rarely at issue in Title VII cases. Failure to act on a religious belief consistently may be considered evidence that the belief is not sincerely held. *Hansard v. Johns-Manville Prods. Corp.*, 5 Empl. Prac. Dec. (CCH) 8543 at *3–6 (E.D. Tex. 1973). However, the fact that the belief was only recently acquired does not render it an insincere one. *Cooper v. Gen. Dynamics*, 378 F. Supp. 1258, 1260 (N.D. Tex. 1974), rev'd on other grounds, 533 F.2d 163 (5th Cir. 1976), cert. denied, 433 U.S. 908 (1977). Furthermore, an employee is not held "to a standard of conduct which would have discounted his beliefs based on the slightest perceived flaw in the consistency of his religious practice." *E.E.O.C. v. Univ. of Detroit*, 701 F. Supp. 1326, 1331 (E.D. Mich. 1988), *rev'd. on other grounds*, 904 F.2d 331 (6th Cir. 1990).

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 EEOC defines religious practices as including "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views . . . The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee . . . ." Guidelines on Discrimination Because of Religion, 29 C.F.R § 1605.1. In other words, the EEOC's test does not require that the employee's religious beliefs coincide with the tenets of his church: "Title VII protects more than the observance of Sabbath or practices specifically mandated by an employee's religion." *Heller*, 8 F.3d at 1438–39; *Redmond v. GAF Corp.*, 574 F.2d 897, 900–01 (7th Cir. 1978); 22 A.L.R. Fed. 580 at *8.

Second, the employee must show that the employer was aware of the belief. An employer has sufficient notice of an employee's religious belief if he has "enough information about an employee's religious needs to permit the employer to understand the existence of a conflict between employee's religious practices and the employer's job requirements." *Heller*, 8 F.3d at 1439. Notification in writing is not absolutely necessary, as long as the employer is aware of the beliefs. *Brown v. Polk Cty.*, 61 F.3d 650, 654–55 (8th Cir. 1995), *cert. denied*, 116 S. Ct. 1042 (1996). A written notification, however, gives the employer a fair chance to attempt to accommodate the religious convictions by avoiding confusion or disputes over whether they actually had notice. *Chalmers v. Tulon Co.*, 101 F.3d 1012, 1019–20 (4th Cir. 1996).

Third, if an employee can show they have a sincerely held religious belief and that the employer knew about it, Title VII prohibits the employer from discriminating against the employee because of the belief. "Discrimination" includes demotion, layoff, transfer, failure to promote, discharge, harassment, or intimidation, or the threat of these adverse employment actions. Gregory S. Sarno, *Harassment or Termination of Employee Due to Religious Beliefs or Practices*, 35 Am. Jur. P.O.F.2d 209, 222 (1983); *E.E.O.C. v. Townley Eng'g & Mfg.*, 859 F.2d 610, 614 n.5 (4th Cir. 1988), *cert denied*, 489 U.S. 1077 (1989).

The employer is also required to reasonably accommodate the employee's religious beliefs unless such accommodation would result in undue hardship to the employer. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 73–74 (1977); *E.E.O.C. v. Reads, Inc.*, 759 F. Supp. 1150, 1155 (E.D. Pa. 1991); 29 C.F.R. § 1605.2(c). "Accommodation" means that employer neutrality is not enough. *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 other words, an employer is required to accommodate an employee's adherence to the principles of his religion unless such accommodation will substantially interfere with the operations of the employer. *Groff v. DeJoy*, 600 U.S. __, at ___ (slip. op. at 15) (2023).

For example, and as the Supreme Court explained just this year (2023) in *Groff*, if an employee cannot work on Sunday due to his or her sincerely held religious beliefs and requests Sunday off as his or her Sabbath, an employer has an affirmative obligation to accommodate the employee's sincerely held religious beliefs as long as it does not cause an undue hardship on the business. Undue hardship is "more severe than a mere burden." *Id*. at __ (slip. op. at 16). "[A]n employer cannot escape liability simply by showing that an accommodation would impose some sort of additional costs." *Id*. *De minimis* or "small or trifling" cost does not constitute undue hardship. *Id*. at __ (slip op. at 17). The costs would have to rise to the level of hardship" that is "excessive" or "unjustifiable." *Id*. at __ (slip. op. at 17). Thus, "it would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship." *Id*. at __ (slip op. at 20).

Similarly, an employer must "consider[] other options such as voluntary shift swapping." *Id.* If the employer can get a person who is willing to work in the employee's place on Sunday, and the business can operate, the employer must accommodate the employee's sincerely held religious beliefs. *See, e.g.*, *Sable v. Stickney*, 64 Empl. Prac. Dec. (CCH) 43148 at *21–22 (S.D.N.Y. 1993) (found a reasonable accommodation for an employee's religious observance of Jewish holy days by excusing his attendance for a conference and allowing him to send his deputy director).

Unfortunately, religious discrimination is becoming more prevalent in our society, but no law requires the workplace to be a religion-free zone. Federal and state laws protect the religious freedoms of employers and employees. The ACLJ is committed to defending the rights of believers in the workplace.

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