

Religious Discrimination Gets Renewed Attention

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The Equal Employment Opportunity Commission (EEOC) recently released additional guidance on religious discrimination under Title VII of the Civil Rights Act of 1964. [EEOC's Religious Garb and Grooming in the Workplace: Rights and Responsibilities](#). Under Title VII, employees may not be discriminated against because of their religion, or denied reasonable accommodations linked to their “sincerely held” religious practices, unless doing so causes the employer an “undue hardship.” To prove undue hardship, employers must show more than a de minimis cost or burden. Further, employees may not be segregated, or harassed, based on their religion. In addition, retaliation against employees who file a claim of religious discrimination, participate in EEOC proceedings, or otherwise oppose religious discrimination is prohibited.

While religion can impact various workplace issues, such as working on the Sabbath, working on a religious holiday, and the need for prayer breaks during work hours, the EEOC's new guidance focused primarily on accommodating religious garb and grooming needs.

When dealing with a dress or grooming issue, the EEOC instructs employers to assume that any request for accommodation is based on a sincerely held religious belief. If the employer has an objective basis to doubt the employee's sincerity, it may seek additional corroborating information. Employers may not, however, demand unnecessary or excessive evidence. If the accommodation is denied on the basis that the belief is not sincerely held, the employer should be able to show one or more of the following support its position:

- The employee has behaved in a manner markedly inconsistent with the professed belief;
 - The accommodation sought is a particularly desirable benefit likely sought for secular reasons;
- or
- The timing of the request makes is suspicious.

For instance, just before the start of the season, an employee who is a big college football fan asks for every Saturday off to observe his Sabbath, even though he never asked for Saturdays off during the entire time he has been employed. In this case, all three elements would be met, unless the employee can legitimately show he has a newfound belief, which supports his request.

Because of the evolving nature of religion, and each person's involvement in it, employers are cautioned that even when the belief is new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or illogical or unreasonable to others, it may be a sincerely held, and thus protected, belief.

If the request is based on a sincerely held belief, reasonable accommodation must be made, unless it causes an undue hardship. Key elements of the new guidance make clear:

- An employee's need for periodic accommodation, like wearing a headscarf just during Ramadan, must be accommodated;
- Employers must accommodate an employee's religious dress or grooming custom, even if it is inconsistent with the employer's dress or appearance policy;
- An employer need not provide the same accommodation to other employees not holding the same religious beliefs;
- Customer or co-worker preferences or concerns may not be taken into consideration;
- Employers may not assign an employee to a non-customer contact position because of a customer's perceived or actual objection to the employee's garb, appearance, or religion;

- Employees need not speak any “magic words” to place an employer on notice of the need for an accommodation. Like requests for FMLA leave or ADA accommodations, employers will be considered to be constructively notified when sufficient statements are made that would place a reasonable person on notice of the need for coverage under the law; and
- Employers may not retaliate against employees for seeking reasonable religious accommodations.

In today’s more diverse workplace, employers must be sensitive to the religious based needs of its employees, and be more open minded when asked to consider reasonable accommodations.

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