Religion in the Workplace

G&A Webinar
January 2016
Introduction

- Title VII protections from discrimination and harassment
- Employer obligation to provide religious accommodation
- In 2014, 3,549 or 4% of charges received by the EEOC involved religion
- Religious issues in the news
- EEOC Employer Compliance Manual
Agenda

1. What Is Religion?
2. Discrimination
3. Harassment
4. Accommodation
WHAT IS RELIGION?

Religious Preference US 2014

- Agnostic: 4.0%
- Atheist: 3.1%
- Jewish: 1.9%
- Other: 1.8%
- Muslim: 0.9%
- Buddhist: 0.7%
- Hindu: 0.7%

Protected Religion Includes:

- Any moral or ethical belief system concerning “ultimate ideas” about “life, purpose, and death”.
- Traditional, organized religions (Christianity, Judaism, Islam, Hinduism, and Buddhism etc.)

Jenny Truong, *Explain and analyze the interactions between Muslims, Jews and Christians*: Wikispaces.
Protected Religion Includes:

• Religious beliefs that are
  ➢ new,
  ➢ uncommon,
  ➢ not part of a formal church or sect,
  ➢ only subscribed to by a small number of people,
  ➢ illogical or unreasonable to others.

• Theistic beliefs as well as non-theistic “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”
“Sincerely Held”

• Employers only required to accommodate religious beliefs that are “sincerely held.”

• the “sincerity” of an employee’s stated religious belief is usually not in dispute - unless...
  ➢ employee has behaved in a manner markedly inconsistent with the professed belief
  ➢ the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons
  ➢ the timing of the request renders it suspect

• an individual’s beliefs – or degree of sincerity or adherence – may change over time
“Real” religion?

• Morgana asks for time off on October 31 to attend the “Samhain Sabbat,” the New Year observance of Wicca, her religion.

• Her supervisor refuses, saying that Wicca is not a “real” religion but an “illogical conglomereration” of “various aspects of the occult, such as faith healing, self-hypnosis, tarot card reading, and spell casting, which are not religious practices.”
Can You Question?

- Bob, who had been a dues-paying member of the CDF union for fourteen years, had a work-related dispute with a union official and one week later asserted that union activities were contrary to his religion and that he could no longer pay union dues. The union:
  
A. Must accommodate Bob’s request to stop paying dues because of his religious objection.

B. May require Bob to provide additional information showing that his claim is religious and sincerely held.

Mike McElfresh, What about dues?: The 103 Advantage
The union:

B. May require Bob to provide additional information showing that his claim is religious and sincerely held.

The union has a “bona fide doubt” about whether this is really a matter of religion, or sincerely held belief, so it is entitled to ask about facts and circumstances of the employee’s claim.
DISCRIMINATION

Recruitment, Hiring, and Promotion

• “Employers that are not religious organizations may neither recruit individuals of a particular religion nor adopt recruitment practices, such as word-of-mouth recruitment, that have the purpose or effect of discriminating based on religion.”

• “Title VII permits employers that are not religious organizations to hire and employ employees on the basis of religion only if religion is “a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.”
Bona Fide Occupational Qualification

- Title VII permits employers to hire and employ employees on the basis of religion if religion is “a bona fide occupational qualification [“BFOQ”] reasonably necessary to the normal operation of that particular business or enterprise.”
- Religious organizations don’t need BFOQ
- Other businesses will have a very difficult time using BFOQ for religion.
Discipline and Discharge

• Title VII also prohibits employers from disciplining or discharging employees because of their religion.
• Title VII prohibits discrimination on a protected basis “with respect to . . . compensation, terms, conditions, or privileges of employment,”

• For example, setting or adjusting wages, granting benefits, and/or providing leave in a discriminatory fashion.
Customer Preference

- If an employer takes an action based on the discriminatory preferences of others, including co-workers or clients, the employer is unlawfully discriminating.
Example

- Harinder, who wears a turban as part of his Sikh religion, is hired to work at the counter in a coffee shop. A few weeks after Harinder begins working, the manager notices that the work crew from the construction site near the shop no longer comes in for coffee in the mornings.
- When he inquires, the crew complains that Harinder, whom they mistakenly believe is Muslim, makes them uncomfortable in light of the September 11th attacks.
- The manager tells Harinder that he has to let him go because the customers’ discomfort is understandable.
Court Awards Over Half Million Dollars Against Consol Energy/Consolidation Coal In Religious Discrimination Lawsuit

• Beverly R. Butcher, Jr. had worked as a general inside laborer at the companies' mine in Mannington, W.V., for over 35 years when the mining companies required employees to use a newly installed biometric hand scanner to track employee time and attendance.

• Butcher repeatedly informed company officials that submitting to biometric hand scanning violated his *sincerely held religious beliefs* as an Evangelical Christian. He also wrote a letter to company officials explaining his beliefs about the relationship between hand-scanning technology and the "Mark of the Beast" and the Antichrist discussed in the New Testament's Book of Revelation, and requesting an exemption from the hand scanning based on his religious beliefs.

• In response, the mining companies refused to consider alternate means of tracking Butcher's time and attendance and informed him he would be disciplined up to and including discharge if he refused to scan his hand, according to the lawsuit. EEOC charged that Butcher was **forced to retire** because the companies refused to provide a reasonable accommodation for his religious beliefs.
HARASSMENT
Religious Coercion That Constitutes a Tangible Employment Action

- Title VII is violated when an employer or supervisor explicitly or implicitly coerces an employee to abandon, alter, or adopt a religious practice as a condition of receiving a job benefit or avoiding an adverse action.
Hostile Work Environment

- Based on religion
- Unwelcome
- Severe or pervasive
Sources of Harassment

• Supervisors/managers
• Co-workers
• Non-employees
Preventing Harassment Claims

• Policy
• Procedure for reporting and investigating complaints
• Training

Eric B. Meyer, 39 Reasons why your employee handbook may violate the law: TLNT.
Proselytizing

• Accommodation vs. Harassment
  ➢ It would be an undue hardship for an employer to accommodate proselytizing by an employee if it constituted potentially unlawful religious harassment of a co-worker who found it unwelcome, or if it otherwise interfered with the operation of the business.
  ➢ Undue hardship if employee’s message easily confused to be the employer’s message.
Tattoos

- Kemetic tattoos
- Swastika tattoos

Pinterest, Ankh tattoo: Pinterest.
One Communications Corp. Will Pay $66,000 to Settle EEOC Religious Harassment Lawsuit

• The EEOC charged that the vice president of sales regularly subjected account executives Collin Buten, Alan Gordon and Marc Reinstein to harassment because of their religion, Judaism, at the company’s facility in Conshohocken, Pa.
• Even though the employees complained to management about the harassment, which included anti-Semitic remarks, the company failed to take effective remedial measures to stop the offensive conduct.
• The religious harassment was so intolerable that Gordon was forced to quit.

EEOC Press Release 11-18-2010
Is there a place for God in the workplace?: HRM New Zealand

ACCOMMODATION
Religious Accommodation

• Adjustment to the work environment that will allow the employee to comply with his or her religious beliefs.

• Needed when an individual’s religious beliefs, observances, or practices conflict with a specific task or requirement of the job or the application process.

• Accommodation requests often relate to work schedules, dress and grooming, or religious expression or practice while at work.
Examples of Accommodation Requests

• A Catholic employee requests a schedule change so that he can attend church services on Good Friday.
• A Muslim employee requests an exception to the company’s dress code allowing her to wear a headscarf.
• A Hindu employee requests an exception allowing her to wear her bindi (religious forehead marking).
• An atheist asks to be excused from the religious invocation offered at the beginning of staff meetings.
• An adherent to Native American spiritual beliefs seeks unpaid leave to attend a ritual ceremony.
• An employee who identifies as Christian but is not affiliated with a particular sect or denomination requests accommodation of his religious belief that working on his Sabbath is prohibited.
Steps of Accommodation

1. Notice of the Conflict Between Religion and Work
2. Discussion of Request
3. Determine whether Accommodation requested is “reasonable” – is there an ”Undue Hardship”?
Determining Undue Hardship

- Case-by-Case Determination
- More than "De Minimis" Cost
- Seniority Systems and Collectively Bargained Rights
- Co-worker/Client Complaints
  - “Have a blessed day” greeting
  - “Jesus Saves” sign
  - Anti-abortion poster
- Security Considerations
- Social Security Number
- Customer Fears or Prejudices
Customer Fears or Prejudices

- Nasreen, a Muslim ticket agent for a commercial airline, wears a head scarf, or hijab, to work at the airport ticket counter.
- After September 11, 2001, her manager objected, telling Nasreen that the customers might think she was sympathetic to terrorist hijackers.
- Nasreen explains to her manager that wearing the hijab is her religious practice and continues to wear it. She is terminated for wearing it over her manager’s objection.

Terrence Law & Lisa Johnson, *The legal and ethical environment of business*, v 1.0: Flat World Knowledge
Common Accommodations

- Scheduling Changes
- Voluntary Substitutes and Shift Swaps
- Change of Job Tasks and Lateral Transfer
- Modifying Workplace Practices, Policies and Procedures
- Excusing Union Dues or Agency Fees
- Permitting Prayer, Proselytizing, and Other Forms of Religious Expression
Lateral Transfer

- An electrical utility lineman requests accommodation of his Sabbath observance.
- Because the nature of his position requires being available to handle emergency problems at any time, there is no accommodation that would permit the lineman to remain in his position without posing an undue hardship.
- The employer can accommodate the lineman by offering a lateral transfer to another assignment at the same pay, if available.
- If, however, no job at the same pay is readily available, then the employer could satisfy its obligation to reasonably accommodate the lineman by offering to transfer him to a different job, even at lower pay, if one is available.


EEOC example 45
Modifying Workplace Practices, Policies and Procedures

• Dress and Grooming Standards
• Use of Employer Facilities
• Tests and Other Selection Procedures
Joseph R. Massey II is a practicing Hebrew Pentecostal, a Christian denomination, and abstains from working from sunset Friday to sunset Saturday based on his sincerely-held religious beliefs.

The Federation told Massey he had to work certain Saturdays.

Massey explained he could not work Saturdays due to his religious faith and suggested alternatives such as working on Sundays or working late on week nights other than Fridays.

EEOC charged that the Federation refused to provide any reasonable accommodation and instead fired Massey because he could not work Saturdays due to his religious beliefs.
Employer Sponsored Programs

• Some employers have integrated their own religious beliefs or practices into the workplace, and they are entitled to do so.

• If an employer holds religious services or programs or includes prayer in business meetings, Title VII requires that the employer accommodate an employee who asks to be excused for religious reasons.

• Excusing an employee from religious services normally does not create an undue hardship because it does not cost the employer anything and does not disrupt business operations or other workers.
Prayer at Meetings

- Michael’s employer requires that the mandatory weekly staff meeting begin with a religious prayer.
- Michael objects to participating because he believes it conflicts with his own sincerely held religious beliefs.
- He asks his supervisor to allow him to arrive at the meeting after the prayer.

Peggy Bowes, How to practice Christianity at work: Beliefnet.
Holiday Decorations

- Each December, the president of XYZ corporation directs that several wreaths be placed around the office building and a tree be displayed in the lobby.

- Several employees complain that to accommodate their non-Christian religious beliefs, the employer should take down the wreaths and tree, or alternatively should add holiday decorations associated with other religions.

- Title VII does not require that XYZ corporation remove the wreaths and tree or add holiday decorations associated with other religions.

EEOC example 52
QUESTIONS?

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