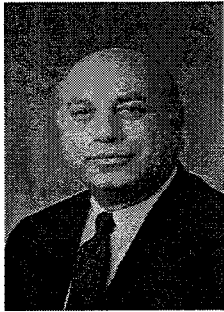


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by:
Louis P. DiLorenzo**

Religious Practice and The Workplace

Under the Civil Rights Act of 1964, Title VII, the federal law affirmatively requires an employer to accommodate an employee's religious practice needs to the extent an accommodation can be made without undue hardship on the employer's business. This has been interpreted to mean that an employer is not obligated to

provide an accommodation that involves more than a de minimus cost or a de minimus imposition on co-workers.

As the population has become more diversified, so too have religious practices and customs, and the need to be aware of the requirements of religious accommodation has become increasingly important. The Equal Employment Opportunity Commission's published statistics for the period from 1992 to 2004 shows a 77% increase in charges filed with the agency claiming religious discrimination.

Since November 2002, the New York Human Rights Law requires employers to accommodate an employee's sincerely held religious practices unless the accommodation creates an "undue hardship". The New York Human Rights Law defines undue hardship, however, as an accommodation that creates "significant expense or difficulty." Factors in determining "undue hardship" under the NYHRL include: cost in relation to size or resources of operation; number of employees who need accommodation, other factors such as multiple employment sites, geographic separateness, etc. Additionally, the law also prohibits employers from refusing to permit an employee to charge absences for religious reasons against paid leave time (other than sick leave), such as personal and vacation days.

There are, as yet, no reported cases under the heightened standard of the New York State law, but federal cases offer some guidance. In a recent New York federal case, a courier brought a religious discrimination claim after he was terminated for failing to comply with a dress code policy by wearing patches which stated, "Jesus is Lord." The court concluded that the courier had established a *prima facie* case of religious discrimination: he had a bona fide religious belief that conflicted with an employment requirement; he informed his employer of this belief; and he was disciplined for failing to comply with the conflicting employment requirement. The court found that the employer failed to satisfy its burden of showing that it could not reasonably accommodate the courier's religious needs without undue hardship. In another case, a public employer had to accommodate a supervisor's occasional workplace prayer because it was

spontaneous, voluntary, infrequent, work-related and free of evidence that it was polarizing to other employees. The wearing of a graphic anti-abortion button was found to be a protected religious activity, but the employer could ask that the pin be covered because it was offensive to other employees.

On the practical side, employers should review existing personnel policies and practices to ensure compliance with local, state and federal laws with respect to accommodating religious beliefs. A separate policy on religious discrimination and accommodation might be established, prohibiting all forms of religious bias and harassment, outlining procedures for requesting reasonable accommodations and incorporating a grievance procedure for resolving complaints of religious discrimination, harassment and failure to accommodate. The employer may establish a process, where appropriate, for voluntary swaps and substitutions to cover periods employees need to be absent to observe holy days and have available flexible work hours for required prayer and observance.

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Lawsuits Could Follow Failure to Train

Does your organization follow the law about training to prevent sexual harassment and other potential problems? A survey of attendees at SHRM's annual conference in San Diego found that although more than half of the respondent organizations are required to comply with California's new law on sexual harassment prevention training for supervisors, less than 20% have complied yet. Under that law, which went into effect on January 1, everyone in a supervisory position at an organization with 50 or more employees must receive training. The law covers any U.S. company with employees in California.

In addition to complying with California or other laws, an important reason to train in harassment prevention is to avoid future lawsuits by current or former workers, noted Michael Lotito, partner in the employment law firm of Jackson Lewis LLP, and coordinator of the firm's workplace training practice. Organizations "risk greater exposure to damaging litigation and costly settlements or verdicts by refusing to provide their managers the tools they need to avoid and resolve workplace disputes."

MACNY will again be conducting Harassment Training at the October 18th Bond, Schoeneck & King *Breakfast Briefing* series. Members are encouraged to send their managers and supervisors, who will receive a certificate to attest they have been trained in harassment.