

Proselytization In The Workplace:

The Challenge Of Balancing Employee Rights

By David T. Ball

A recent Seventh Circuit decision highlights the challenge that employers face when one employee feels compelled to challenge another employee's beliefs or conduct on religious grounds. *Piggee v. Carl Sandburg College*¹ involved a cosmetology instructor at a public community college who, upon learning that one of her students was gay, placed two religious pamphlets in her student's smock during a clinical instruction session, telling her student to read the pamphlets and inviting him to discuss them with her later.

Both pamphlets were in comic-book format; the first was titled "Sin City," and the second was titled "Doom Town." Collectively, they told stories that referred to Sodom and Gomorrah and portrayed negatively AIDS research, gay pride, and ministers who preach God's unconditional love.

The cosmetology student complained to the college's administration and the college investigated the student's complaint. When the instructor confirmed what the student had alleged, the college found that the student had been sexually harassed. The college's report explained: "It has been found that..., [the instructor] has been proselytizing in the hopes of changing [the student's] sexual orientation and religious beliefs." Subsequently the college decided not to renew the instructor's contract for the next year.

The instructor brought suit, and the college was granted summary judgment. On appeal, the Seventh Circuit emphasized that the instructor's expression of her religious views regarding homosexuality to her gay student had a negative impact on the college's ability to fulfill its educational mission. It inhibited her ability to teach by undermining her relationship with that student, as well as other students who were offended by her conduct. It disrupted her student's education, as he began to avoid her "like the plague." On this basis, the Seventh Circuit affirmed the district court's decision, ruling that the college's legitimate interest in promoting its educational mission outweighed the instructor's rights to religious self-expression, including her first amendment rights as an employee at a public institution.

In the Ninth Circuit, a similar case arose in the private employment context. In *Bodett v. CoxCom, Inc.*,² a supervisor told one of her subordinates that homosexuality was a sin and that the employee should break off her relationship with another woman. The supervisor asked her subordinate to join her in prayer and at church. After the company terminated the supervisor for violating its anti-harassment policy, she filed suit alleging that she had been discriminated against on the basis of her religion in violation of Title

VII. The district court and the Ninth Circuit sided with the company on the grounds that the employee had not shown that the company's assertion that it had fired her for violating its anti-harassment policy, and not because of her religious beliefs, was pre-textual.

Though the courts are dealing with an increasing number of cases involving outright proselytization in the workplace, the contours of the law in this area are still being established. For example, though the Seventh Circuit upheld the college's termination of the cosmetology instructor on the basis that she sexually harassed her gay student by proselytizing him, the court acknowledged that "the sexual harassment policy may not have been a perfect fit for the behavior at issue here."³

With the law in this area so undefined, it is difficult to assess the exposure that an employer faces for an insufficient response to employee harassment versus the employer's exposure for disciplining rather than accommodating an employee who is proselytizing in the workplace. The challenge of balancing employee rights to a harassment-free workplace against another employee's rights to accommodation of their practice of religion is no simple matter.

The risk of significant liability is greatest when the employer makes little or no effort to accommodate employee religious practice. When problems arise, employers can reduce their exposure by soliciting and considering employee suggestions; documenting the reasons for rejecting any suggested accommodation; and allowing employees to swap work assignments or transfer locations in appropriate circumstances. Proactive measures, such as employee training sessions on religious harassment and religious accommodation, can help prevent such problems from arising in the future.

This is a challenge for employers that will not go away. It seems to be more than a coincidence that workplace proselytization is increasing at the same time that increased legal protections against discrimination and harassment on the basis of sexual orientation are being enacted. Employers need to handle workplace proselytization complaints as carefully as sexual harassment allegations if they are to succeed in avoiding the disruption caused by confrontations between workers of differing beliefs, and liability due to hasty responses.



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¹ 464 F.3d 667 (2006).

² 366 F.3d 736 (9th Cir. 2004).

³ 2006 U.S. App. LEXIS 23733, at *20.

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