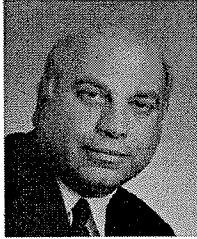


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New EEOC Guidance on Religious Discrimination

By: Louis P. DiLorenzo¹

As religious pluralism in this country has increased, so have charges of religious discrimination and questions regarding religious accommodation in the workplace. Therefore, on July 22, 2008, the Equal Employment Opportunity Commission issued a new Compliance Manual on Religious Discrimination. The Manual is composed of five main sections: (i) defining coverage — what is a covered religion and a “belief” sincerely held; (ii) explaining how employment decisions may impact disparately on a person’s religious beliefs; (iii) describing various forms of harassment; (iv) defining reasonable accommodation; and (v) defining undue hardship, common methods of accommodation and related forms of discrimination. The Manual includes examples drawn from actual cases to illustrate each point, lists suggested actions under Employer and Employee Best Practices, and a quick resource guide in a Question and Answer form. It can be accessed at the EEOC’s website under www.eeoc.gov.

Religion is very broadly defined as “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views” and does not require a belief in a god. Title VII only requires accommodation to those religious beliefs that “are sincerely held.” This qualifier does not apply to claims of disparate treatment or harassment, as in those cases, it is the motivation of the alleged harasser and not the actual beliefs of the individual alleging religious discrimination which are relevant. Determining the sincerity of a person’s religious beliefs can be problematic. The EEOC points to factors to determine sincerity: whether the employee has been inconsistent in holding the professed belief, whether the accommodation sought is particularly desirable on its own, and whether the timing is suspect. However, as the Commission notes, an individual’s beliefs and degree of adherence “may change over time, and therefore an employee’s newly adopted or inconsistently observed religious practice may nevertheless be sincerely held.” Practices and beliefs that deviate from the commonly followed tenets of the religion may nonetheless be protected if “sincerely held.” As religion is so broadly defined, the Manual warns employers to “ordinarily assume that an employee’s request for religious accommodation is based on a sincerely-held religious belief.” An employer should not make assumptions about the legitimacy of a claimed religious practice or belief.

Religion is the sole protected category under Title VII of the Civil Rights Act which requires reasonable accommodation. Employers must accommodate an employee’s sincerely held religious beliefs, observances and practices when requested, unless accommodation

would impose an “undue hardship on business operations.” Under Title VII, “undue hardship” is defined as “more than de minimus” cost or burden. An employee is obligated to make the employer aware of a need for accommodation and that it is being requested due to a conflict between religion and work. The employee is also obligated to explain the religious nature of the belief or practice at issue. Similarly, the employer should ask the employee to explain the religious practice and the work conflict. As stated by the Manual, a “failure to confer with the employee is not an independent violation of Title VII but, as a practical matter, such failure can have adverse legal consequences.” An employer is not obligated to provide an employee’s preferred accommodation. The accommodation need only be “reasonable,” and reasonableness is determined on a case-by-case basis. Courts have found undue hardship where an accommodation diminishes job efficiency, infringes on other employees’ job rights or benefits, impairs workplace safety or causes co-workers to carry the accommodated worker’s share of burdensome work. Common methods of accommodation include: scheduling changes, voluntary substitutes and shift swaps, changes in job tasks and lateral transfers.

A complex challenge to an employer is accommodating expressions of religious beliefs within the workplace: expressions such as displaying religious icons or messages, proselytizing or engaging in prayer. To determine whether such actions should be permitted, the employer must determine whether they pose an undue hardship. Expression of a religious belief can create undue hardship “if it disrupts the work of other employees or constitutes – or threatens to constitute – unlawful harassment.” In terms of religious expressions toward customers, the question as to whether the expression constitutes an undue hardship is a “fact-specific inquiry and will depend on the nature of the expression, the nature of the employer’s business, and the extent of the impact on customer relations.” It may be an undue hardship where the expression could be mistaken as the employer’s message and where it is not limited to a phrase or greeting. Employers also have a right to practice and express their own religious beliefs in the workplace. However, employer-sponsored religious services or prayers must accommodate employees who ask to be excused.

Next month, we will discuss the “religious accommodation” obligations imposed by the New York State Human Rights Law on New York employers.

Be Careful Out There!

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