RELIGIOUS DISCRIMINATION AND ACCOMMODATION UNDER TITLE VII

A. Under Title VII of the Civil Rights Act of 1964, it is unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)

Example: A managerial employee belonged to the "World Church of the Creator," an organization that advocated white supremacy and followed a central text called "The White Man's Bible." A newspaper ran an article on the organization and featured a picture of the employee wearing a t-shirt commemorating a man who targeted African-American, Jewish, and Asian people in a two-day shooting spree. The employee's supervisors saw the article and became concerned about his ability to supervise and evaluate non-white employees in an objective fashion. The employee was demoted via a letter citing the newspaper article and the employee's membership in the organization. The court found that the letter demonstrated an acknowledgment of the employer's discriminatory intent. *Peterson v. Wilmur Communications* (E.D. Wisc. 2002).

1. "Religion" is defined broadly under Title VII; "includes all aspects of religious observance and practice, as well as belief . . ." 42 U.S.C. § 2000e(j)

2. According to the EEOC's implementing regulations: "In most cases whether or not a practice or belief is religious is not at issue." 29 C.F.R. § 1605.1

3. If the religious nature of a particular practice is called into question, the EEOC uses the following standard to resolve the question: "The Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong and which are sincerely held with the strength of traditional religious views." 29 C.F.R. § 1605.1

   Example: A county transit authority conducted a promotion with a hamburger restaurant. One of the bus drivers was a strict vegetarian who believed it was wrong to kill animals. Citing his ethical beliefs, the driver refused to hand out coupons for a free burger; he was discharged for insubordination. The EEOC found that the driver sincerely held his vegetarian beliefs with the strength of traditional

religious views, even though his vegetarianism was not related to his religious beliefs. *Anderson v. Orange County Transit Authority* (Cal. Superior Ct. 1996).

4. Although the definition of "religion" is broad, it is not necessarily true that all activities relating in any way to religious observance and practice are protected by Title VII.

   Example: A grocery store employee who taught a religious education class at her church requested that she be allowed to leave work early to help decorate for her students' Christmas play. The employer denied her request because numerous other employees with more seniority had requested to be off at the same time. After the employee left work without permission, she was discharged. The court rejected her claim of religious discrimination, finding that the employee's activities -- arriving at the church early to set up for the play and to greet the children as they arrived -- did not constitute a religious observance. *Wessling v. The Kroger Co.* (E.D. Pa. 1982).

   Example: Orthodox Jewish employee's religious beliefs prohibited any work from sundown Friday to sundown Saturday. Employer allowed her to leave work two hours early each Friday as an accommodation, but employee sought additional time so that she could pick up a special kind of bread from a Jewish grocer for use in the Sabbath meal. The employer refused to allow the extra time. Because the employee could have bought the bread on Thursday nights (the employee considered this an inconvenience for her and her family), the court found that the extra time sought was a personal preference, not a religious belief, and was not protected by Title VII. *Dachman v. Shalala* (4th Cir. 2001).

5. The "religiousness" determination is made as of the time the employee requests an accommodation or claims that the discrimination occurred.

   Example: Approximately three years after he was hired, an employee became a Seventh Day Adventist. The employee was unable to reach an accommodation that would prevent Saturday work, and he was fired for excessive absences. Several months later, after he had taken a new job, he "lost faith" and began working on Saturdays. The court held that

this loss of faith did not mean that his previous beliefs were insincere, and his religious discrimination lawsuit against the first employer could proceed. *EEOC v. IBP, Inc.* (C.D. Ill. 1993)

6. Whether the employee is affiliated with a mainstream religion, or any organized religion at all, is not a factor according to the EEOC: "The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief" is not determinative. 29 C.F.R. § 1605.1

   Example: An employer excused its employees from Sunday work if they provided written verification that they were attending church. One employee professed to be a Christian, but was not a member of any organized religion; he believed Sunday was a day of rest and worship, and he watched religious programming on television every Sunday morning. The employer refused to excuse him from Sunday work under its policy and discharged him when he refused Sunday work. After the EEOC argued that the employee's religious practices were no better or worse than any other religious practices, the parties negotiated a settlement. *EEOC v. Tyson Foods, Inc.* (W.D. Ark. 2000).

7. Similarly, under the EEOC regulations it is not relevant whether or not an employee's religion requires the particular practice for which an employee seeks accommodation.

   Example: A Baptist employee believed that a certain passage of the Bible required him to attend every service that his church held, though the church itself did not impose this requirement upon its members. The court held that because the employee sincerely held his belief, it was irrelevant that the church did not mandate the employee's practice. *EEOC v. Arlington Transit Mix, Inc.* (E.D. Mich. 1990).

8. Ohio law contains a more general prohibition of religious discrimination, in Chapter 4112 of the Ohio Revised Code. Ohio's courts have generally followed federal cases interpreting Title VII.

B. Employers must reasonably accommodate an employee's needs for religious observance unless doing so would cause "undue hardship" to the employer's business. 42 U.S.C. § 2000e(j)

1. An employer must have sufficient notice of the employee's need for accommodation.

Example: Employer automatically terminated any employee who had 16 absences within 12 months. After one employee missed 12 days and received written warnings, she informed the employer that she would need more time off for religious observance but did not specify any dates. Employee then left town for two weeks to attend a religious gathering; she informed employer of her absence with a letter that she sent on her way out of town. The court rejected her religious discrimination claim, finding that she failed to give the employer sufficient notice of her need for accommodation. *Johnson v. Angelica Uniform Group, Inc.* (8th Cir. 1985).

2. Burden of reasonable accommodation is ultimately on the employer, but employees must actively cooperate with the employer in trying to resolve the conflict between religion and work.

Example: A maternity ward did not provide elective abortions, but emergencies occasionally occurred that required the staff to terminate pregnancies to save the life of the mother. A Pentecostal nurse refused to participate in those procedures. In response to her objections, the hospital offered an alternate position and also invited her to speak with the HR department about other options. The nurse did not accept the transfer or apply for another position, but submitted a letter discussing her religious beliefs in general. The nurse was later discharged after refusing to assist in two emergency procedures. The court found that she had failed to cooperate in finding an accommodation and could not recover for religious discrimination. *Shelton v. University of Medicine & Dentistry of New Jersey* (3d Cir. 2000).

Example: Marriage and family counselor for EAP provider refused to counsel clients on any subjects -- including homosexuality and extramarital affairs -- that went against her religion. The employer offered her the option of applying for several non-counselor positions, but the employee declined to participate in the application process because she wanted to

continue counseling. The court reversed a jury verdict for the employee, finding no Title VII violation based on her inflexible demand to "pick and choose" counseling subjects and her refusal to cooperate in the attempted accommodations. *Bruff v. North Mississippi Health Services, Inc.* (5th Cir. 2001).

3. Job transfers have been found to constitute reasonable accommodations, regardless of the preferences of the employee.

   Example: Telemarketing employee's atheist beliefs conflicted with her job duties of taking telephone orders for religious materials. The employer transferred the employee to its Psychic Readers Network telephone group, a position that the employee also found objectionable for other reasons. This transfer was deemed a reasonable accommodation by the court. *McIntyre-Handy v. West Telemarketing Corp.* (E.D. Va. 2000).

4. "Shift swapping" is another possible means of accommodating religious conflicts, but employers do not necessarily satisfy their obligations under Title VII simply by allowing employees to trade shifts with other employees on their own.

   Example: An employer assigned mandatory overtime that conflicted with an employee's Sabbath. When the employee complained about the conflict, the employer's only response was to allow the employee and his union to work out a shift-swapping arrangement with other employees. Those efforts failed, and the employee was fired for failing to work the Sabbath shift. The Court of Appeals reversed a summary judgment for the employer, finding that "[m]erely granting employees permission to find volunteers to swap shifts . . . does not definitively constitute 'reasonable accommodation' as a matter of law in all cases. *EEOC v. Robert Bosch Corp.* (6th Cir. 2006).

5. The United States Court of Appeals for the Sixth Circuit has held that an employer may violate Title VII if an employee's only way of avoiding Sabbath work on a regular basis is to use all or potentially all of the employee's vacation. *Cooper v. Oak Rubber Co.* (6th Cir. 1994).

   The court did, however, recognize that "use of vacation time legitimately may be required to allow an employee to avoid work on religious holidays

or, *in combination with other methods*, to allow an employee to regularly avoid working on the Sabbath." (Emphasis added)

6. EEOC's position where multiple potential accommodations exist is that employers "must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities." 29 C.F.R. § 1605.2(c)(2)(ii)

The Supreme Court, however, has explicitly rejected this interpretation: "We find no basis in either the statute or its legislative history for requiring an employer to choose any particular reasonable accommodation. By its very terms the statute directs that any reasonable accommodation by the employer is sufficient to meet its accommodation obligation." *Ansonia Board of Education v. Philbrook* (1986).

C. "Undue hardship" to the employer's business is a relative standard; anything beyond a *de minimis* cost to the employer will generally be considered an undue hardship.

Example: Male truck driver's religious beliefs prevented him from making overnight runs with female drivers. Although the employer made no attempt to accommodate the employee's beliefs, the court nonetheless found undue hardship in the burdens that would potentially result if the employer's other drivers had to substitute for his shifts. *Weber v. Roadway Express, Inc.* (5th Cir. 2000).

Example: Applicant believed that social security numbers were the "mark of the beast" as described in the Book of Revelation. When he refused to provide his SSN to a potential employer -- as required by the IRS -- he was not hired. The court held that the potential violation of federal law constituted an undue hardship on the employer, as did the employee's suggestions of obtaining a waiver of the IRS requirement or restructuring the employer's business to hire him as an independent contractor. *Seaworth v. Pearson* (8th Cir. 2000).

Example: Orthodox Jewish pharmacist was not hired because his religious beliefs prohibited him from selling condoms, as he might have had to do occasionally at the pharmacy counter in the rear of the store. The drugstore argued that it might lose sales or annoy customers by sending condom purchasers to the front of the store to check out. The court denied the drugstore's motion for summary judgment, finding the claimed hardships too speculative. *Hellinger v. Eckerd Corp.* (S.D. Fla. 1999).

1. "A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship." 29 C.F.R. § 1605.2(c)(2)

2. The United States Supreme Court has held that Title VII does not require employers to violate agreed-upon seniority systems in collective bargaining agreements.

   Example: An employee regularly requested that he swap his weekend shifts so that he could observe his Sabbath. Because these requests conflicted with the seniority system in the employer's union contract, the United States Supreme Court held that the employer was not required to accommodate the employee further than it already had. "[T]he seniority system itself represented a significant accommodation to the needs, both religious and secular, of all [the] employees." *Trans World Airlines, Inc. v. Hardison* (U.S. S. Ct. 1977).

3. However, a seniority system may not relieve an employer of the accommodation duty if the system allows accommodation without causing an undue hardship.

   Example: Employee sought a schedule with her Saturday Sabbath off. The employer refused, citing its seniority-based shift bidding system. The court held that the system was not a complete defense to the employee's religious discrimination claim, and required the employer to determine whether a reasonable accommodation could be made without causing undue hardship. *Balint v. Carson City* (9th Cir. 1999).

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