Legal INSIGHTS

with Jeffrey W. Larroca

The Limits Of Religious Accommodation

Title VII of the Civil Rights Act of 1964 prohibits discrimination by most employers on the basis of race, national origin, gender, color and religion. Numerous state, county and municipal statutes echo the federal law's prohibition, and for the most part, it is a fairly uncomplicated proposition. Employers are not allowed to treat applicants or employees in a disadvantageous manner because of their protected status. If you're African-American or white or female or Jewish, those facts should not enter into an employer's decisions with regard to your employment.

The prohibition against discrimination based on religion, however, comes with a twist. While federal law mandates that an employer be fair in its consideration of an applicant or employee without regard to race, color, sex, national origin and religion, for the latter, employers are required to do more. It is not enough for an employer to say, "I didn't take the fact that the employee was Catholic or Jewish or Muslim into consideration" with regard to a particular hiring or on-the-job decision. Rather, the law requires employers to accommodate the religious practices of applicants and employees as long as the accommodation does not create an undue hardship.

Most such accommodations are standard and uncontroversial. For example, an employee may want to use an empty conference room to pray during their break. Another employee may want a schedule or shift change to avoid working certain hours. As stated by the Equal Employment Opportunity Commission (EEOC), "when an employer has a dress or grooming policy that conflicts with an employee's religious beliefs or practices, the employee may ask for an exception to the policy as a reasonable accommodation. Religious grooming practices may relate, for example, to shaving or hair length. Religious dress may include clothes, head or face coverings, jewelry, or other items." Thus, a third employee may request laxity in grooming or dress standards.

But what if an employee requests an entirely different accommodation, one that creates a clash between the religious convictions of the employee and the mission or business operation of the employer? Moreover, what if the religious belief for which accommodation is requested is anathema to the employer? Let's say, for example, that an employee at a medical facility objects to treating patients who are gay and lesbian, predicates that objection on a religious belief, and thereafter requests the "accommodation" of being relieved of such duties?

The EEOC's guidance on undue hardship is instructive:

> **When does an accommodation pose an "undue hardship?"**
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> An accommodation would pose an undue hardship if it – would cause more than de minimis cost on the operation of the employer's business. Factors relevant to undue hardship may include the type of workplace, the nature of the employee's duties, the identifiable cost of the accommodation in relation to the size and operating costs of the employer, and the number of employees who will in fact need a particular accommodation.
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> Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's business. For example, courts have found undue hardship where the accommodation diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work. Whether the proposed accommodation conflicts with another law will also be considered. To prove undue hardship, the employer will need to demonstrate how much cost or disruption a proposed accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather should rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.[1]

Getting back to our medical professional. In such circumstances, employers must go through the analysis set forth by the EEOC. The employer must perform an internal review, asking "if the employer were to exempt the medical professional from treating gays and lesbians, how might that affect the nature of the employee's duties and the goals of the employer to help patients in need?" Or, "would denial of such services on the basis of sexual orientation constitute a violation of the law?" The employer should also ask, "will the exemption affect the workload of other medical professionals?" The point being, while it may seem absurd for an employer to have to consider a request from one of its employees that they be exempted from performing basic functions of their jobs, employers must still go through the analysis to protect themselves from a failure to accommodate claim, lest they become the next North Mississippi Medical Center.

In *Bruff v. North Mississippi Health Services, Inc.*, Sandra Bruff was hired as a counselor by North Mississippi Medical Center for its Employee Assistance Program (EAP). Bruff counseled a woman who, among other things, asked for help in improving her relationship with her female partner. Bruff declined to counsel the woman, advising that homosexual behavior conflicted with her religious beliefs, but offered to continue counseling her on other matters. The woman complained and management met several times to determine if Bruff's request could be accommodated by shifting responsibilities among three EAP counselors. Eventually it was determined such an accommodation was not feasible. Bruff was separated from her job, sued, and a jury found that the North Mississippi Medical Center had discriminated against Bruff because of her religious beliefs. The jury awarded her $32,738.44 in back pay; $326,000.00 in compensatory damages; and $1,700,000.00 in punitive damages. The defendant appealed.

The verdict was reversed. The court considered the defense of undue hardship and held that "requiring the Center to schedule multiple counselors for sessions, or additional counseling sessions to cover areas Bruff declined to address, would also clearly involve more than de minimis cost." Nonetheless, had the Center failed to analyze the burden, the verdict may well have been upheld. The lesson being: no matter how unreasonable the request may seem, do the analysis.

[1] http://www.eeoc.gov/policy/docs/qanda_religion.html

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