

Legal INSIGHTS

with Jeffrey W. Larroca



Religion in the Workplace: The Top 5 Pitfalls

The Civil Rights Act of 1964 protects individuals seeking a job and in the workplace from discrimination based on race, gender, color, national origin and religion. In the first four categories, the law requires no accommodation for an individual. Indeed, there are no accommodations for individuals to allow them to be more effectively Caucasian, female or Puerto Rican. If you're white, female or from San Juan, you just are.

However, if you are a Muslim or an Orthodox Jew or Catholic, there are many facets of your faith that may require some accommodation in the workplace.

In this manner, religion is very different than the other protected categories. So while an employer is certainly barred from refusing to hire an individual because of their faith, the employer's responsibility does not end there. Below are the five categories:

I. Accommodation Must Be Considered

Many employers make the mistake of presuming that as long as religion is not taken into consideration in the employment relationship, they are in full compliance with the law. Employers must reasonably accommodate employees' sincerely held religious practices unless doing so would impose an undue hardship on the employer. The Supreme Court has defined an undue hardship in this context as meaning that an employee need not incur more than minimal costs in or-

der to accommodate an employee's religious practices. The Equal Employment Opportunity Commission (EEOC) has interpreted the Supreme Court's ruling as follows:

An accommodation would pose an undue hardship if it would cause more than a *de minimis* cost on the operation of the employer's business . . . 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 . . . 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.

Upshot: when an employee asks for no work on the Sabbath, it is not enough to say "everybody works on that day at this business." The analysis above is required.

II. Faith Can Come At Any Time

Often times, an employee takes a job

with the explicit proviso that he or she is available to work weekends. While it would be impermissible and unwise for an employer to ask an applicant if they had a religious obligation that prevented them from such work, it is standard and unobjectionable to ask an employee "can you work Saturdays and Sundays?"

However, if they say "yes, sure," many employers make the mistake of assuming that the employee is thereafter locked down. However, like Paul on the road to Damascus, an employee may be an agnostic on Wednesday and a believer on Tuesday. As such, when the same employee comes in and says, "I can't work Saturdays anymore because of religious obligations," the employer cannot rely on the first declaration of availability to deny the request. Instead, the employer must go through the EEOC's analysis set forth above and determine whether the requested accommodation is an undue burden.

III. There Can Be a Church of Bruce Springsteen (or something like it)

Suppose you have an employee who asks for the next week off for religious obligations, and when you inquire as to the nature of those obligations, she states that she is a member of the Church of Bruce Springsteen and that a primary obligation of the church is that adherent "must see the Boss whenever he is within 250 miles." This, of course, means that the employee needs time off to see the

E Street Band in D.C., Baltimore and Philadelphia. Before laughing the request off, however, employers should do their homework. Again, let's go to the EEOC's guidance:

Title VII protects all aspects of religious observance and practice as well as belief and defines religion very broadly for purposes of determining what the law covers. For purposes of Title VII, religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others . . . Religious beliefs include

theistic beliefs (i.e. those that include a belief in God) as well as non-theistic "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." . . . Religion typically concerns "ultimate ideas" about "life, purpose, and death." Social, political, or economic philosophies, as well as mere personal preferences, are not "religious" beliefs protected by Title VII.

Is The Church of Bruce Springsteen professing "ultimate ideas" about "life, purpose and death?" I don't know. I made it up. Or did I?

<http://www.wnyc.org/shows/soundcheck/2011/mar/09/church-bruce/>

Either way, do not reject it out of hand.

IV. Dress Codes

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toos on his wrists. The EEOC said that although Rangel worked at Red Robin for approximately six months without complaint from customers, co-workers or his immediate supervisors, a new manager saw the tattoos and fired Rangel for not concealing them.

V. Do Not Single Religion Out

Religious employees may pray during the day. They may read from the Bible or the Koran. They may put religious icons in their cubicle or proselytize by engaging others in one-on-one discussions regarding religious beliefs, distributing literature, or using a particular religious phrase when greeting others. And because some people don't like to be preached at, or feel that religion and the workplace do not mix, employers may have friction. What to do? In the past, some employers tried to make their workplaces religion-free, arguing, in a sense, that by prohibiting all religious expression, they were discriminating against none. But these same employers did not bar employees discussing the Super Bowl, nor did they disallow the use of meeting rooms for softball team meetings. Again, employers are not required to accommodate every form of religious expression. The undue hardship defense is always available. However, they do need to be careful that they are not singling a particular religion out.

In the end, religious accommodation can take many forms, from schedule changes, to the use of available space for prayer, to allowance of particular forms of dress. While the sky is not the limit, employers should understand that any snap judgment is probably a poor one when it comes to religion in the workplace. ●

Source: http://www.eeoc.gov/policy/docs/qanda_religion.html

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