Work-Faith Conflicts And The EEOC

Insights
4.01.11

(Labor Letter, April 2011)

It's been nearly two years since the Equal Employment Opportunity Commission (EEOC) issued a compliance manual update on religious discrimination. Religious discrimination involves disparate treatment, harassment, retaliation or refusal to reasonably accommodate religious beliefs or practices. At the time of the release of Section 12 of the new Compliance Manual on "Religious Discrimination" on July 22, 2008, the EEOC announced that it "issued this section in response to an increase in charges of religious discrimination, increased religious diversity in the United States, and requests for guidance from stakeholders and agency personnel investigating and litigating claims of religious discrimination." Since 2000, religion-based charges filed with the EEOC increased from 1,939 to 3,386 in 2009.

Employers seem to be especially challenged by the duty to accommodate and the EEOC appears to be particularly interested in pursuing enforcement of the accommodation requirement. An EEOC regional attorney observed in a Commission press release: "This should not be a difficult question for employers to address in a constructive manner." Yet, a federal district court judge presiding over EEOC litigation in Florida noted in a July 2009 ruling against the EEOC that the law regarding what an employer may or may not do in handling accommodation requests "is undeveloped and far from settled."

Let's take a look at where we are today.

Statutory Background
Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer to fail to reasonably accommodate the religious practices of an employee or applicant unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.

Religion is defined very broadly for purposes of Title VII. Theistic beliefs that are new, uncommon, or not part of a formal church are included as well as non-theistic moral or ethical beliefs as to what is right and wrong which are held with the strength of traditional religious views. This gives rise to the possibility of a "religion of one."

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Those who profess no religious belief are also entitled to accommodation, but social, political or economic philosophies and mere personal preferences are not protected by Title VII. Whether an observance or practice is religious depends on the employee's motivation. For example, dietary restrictions may be engaged in for either religious or secular reasons.

The EEOC acknowledges conflicts between judicial decisions and EEOC guidance on religious accommodation. The courts and the Commission often comment upon the fact-specific nature of the reasonable accommodation analysis. Determining whether or not a practice or belief 1) is religious, 2) is a sincerely held belief, and 3) whether a reasonable adjustment to a work requirement can be made without undue hardship may be a daunting task at times.

This three-prong accommodation analysis is triggered by the employee informing the employer that a religious accommodation is needed due to a conflict between work and religion. But the employee need not explicitly ask for a religious accommodation. If you have a good reason to suspect an accommodation request is not made for religious reasons, you may look into the circumstances. The EEOC's written guidance cautions that this should be a limited inquiry. What that means isn't clear. In contrast, EEOC trial attorney Meaghan Shepard stated "It is not an employer's place to formulate its own interpretation of an employee's religious beliefs and base its accommodation decision on misguided and uninformed conclusions about that employee's religion." This seems to suggest that a detailed inquiry would be called for, in order to avoid making an accommodation on "misguided and uninformed conclusions."

The EEOC considers a reasonable accommodation to be one that eliminates the work-religion conflict and does not adversely affect the employee's terms, conditions or privileges of employment. Thus, an employer is not required to provide the employee's preferred accommodation if there are other reasonable options. An employee's Saturday Sabbath observance may be accommodated by offering Sunday work hours even though the employee requested weekends off. A religious objection to certain work assignments may be accommodated by a transfer instead of simply relieving the employee of the assignments as requested. And you are not required to grant an accommodation request that is merely related to a religious practice. For example, a parent's request to attend the rehearsal for her children's church play does not qualify for an accommodation.

The greatest area of conflict emerging within the courts, and between the courts and the EEOC, is with respect to dress and grooming policies. On the one hand, the EEOC and some courts hold that denying an employee's request for a policy exception for religious dress or grooming, based on health, safety and security situations is unacceptable. On the other hand, some courts have approved employer prerogatives regarding "public image" as a sufficient showing for undue hardship for denying a religious accommodation. The EEOC considers the latter tantamount to customer-preference bias in violation of Title VII.

An employer never has to provide a religious accommodation that would pose an undue hardship. The undue hardship defense to providing a religious accommodation requires a showing that the

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

accommodation poses a "more than de minimis" cost or burden. This is a different, and lower standard for the employer to meet than under the Americans with Disabilities Act.

Still, employers must carefully consider accommodation requests based upon sincerely held beliefs. The EEOC fact sheet for religious discrimination advises that an undue hardship claim is permissible if the accommodation "requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation."

EEOC Enforcement Of Religious Accommodation

Recent EEOC enforcement actions have focused on traditional organized religions notwithstanding the significant increase in religious pluralism in the workplace. The cases described below were filed or settled by the EEOC within the last several months.

Sundays off. A retail employer denied an employee's two written requests for a religious accommodation not to be scheduled to work on Sunday, the sabbath for Baptists. The EEOC filed suit.

Saliva Drug Test. The EEOC sued an employer who refused to allow an employee to undergo alternative forms of random drug testing after the employee told the company that the beliefs and practices of his Santeria religion forbade him from submitting to a saliva test.

Halloween Carnival. The EEOC sued an ambulance service that fired an emergency medical technician for declining to take part in a community Halloween Carnival on behalf of the company because as a Jehovah's Witness she did not celebrate or participate in holiday celebrations.

Red Shirt Fridays. A retail franchise that required employees to wear red shirts on Fridays as a show of support for the armed forces, fired an employee after denying his request to be excused from complying because he was a Jehovah's Witness. The suit filed by the EEOC settled with a payment of $21,500 to the former employee.

Mennonite Head Scarf. A security company paid $49,556 in May 2010 to settle an EEOC suit filed in March 2010 for firing a security guard rather than accommodating her religious practice of wearing a head scarf.

Sabbath. The Seventh Day Adventist Sabbath runs from sundown on Friday to sundown on Saturday. The EEOC sued a construction company for discharging employees who refused to work on Saturday for religious reasons.

Temporary Sunday Schedule. The EEOC filed suit when a Christian employee's accommodation of Sundays off was temporarily modified for two months.

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Pilgrimage. The EEOC reached a $70,000 settlement of a lawsuit on behalf of a practicing Muslim who was denied the use of earned vacation time for an extended vacation to make a pilgrimage to Mecca.

Grooming. A newly-hired driver's Rastafarian religious beliefs prohibited him from cutting his hair or shaving his beard to comply with the grooming policy. The EEOC sued the trucking company for terminating him and the case was settled for $46,000.

The EEOC tends to be aggressive in court. A sandwich shop server was terminated under a no-facial-jewelry policy after she began wearing a nose ring which she said was a practice of the Nuwaubian religion. She did not comply with the employer's request for documentation of the religious nature of the practice. The case went to trial and the jury found that the nose ring was not based on a sincerely held religious belief.

Despite the verdict in favor of the employer, the EEOC still wanted the trial judge to award punitive damages and issue an injunction of the employer's practice of asking employees for documentation supporting requests for religion-based waivers arguing that requiring employees to prove that a practice is required by their faith is itself a violation of Title VII. The court denied both the injunction and any punitive damages award.

Finally, the EEOC sued a temporary employment agency for failing to refer a Muslim woman for work at a commercial printing company because she refused to remove her khimar. The printing company's dress policy prohibited permanent and temporary workers from wearing headwear and loose-fitting clothing to prevent apparel from getting caught in the machinery's moving parts and injuring workers. Agreeing with the lower court, the appellate court held that requiring the printing company to make an exception to its safety-driven dress policy would impose an undue hardship on the printing company's business.

Our Advice

You can help reduce the risk of religious accommodation claims by using these tools:

- inform employees that reasonable efforts will be made to accommodate religious beliefs and provide specific instructions for obtaining a religious accommodation in the employee handbook;
- train managers on handling religious accommodation requests, including using an interactive process and considering effective alternatives to the particular accommodation requested if it would pose an undue hardship;
- avoid assumptions about what constitutes a religious belief or practice;
- avoid narrow or inflexible requirements for information to establish that an accommodation is necessitated by a religious belief or practice;
- consider adopting flexible leave and scheduling policies;
- carefully evaluate requests for exceptions to dress and grooming rules for religious reasons;

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

- allow workplace facilities to be used in the same manner for religious and non-religious activities not related to work; and
- if the accommodation request is denied, explain why it is not being granted.

Following these guidelines won't eliminate potential work-faith conflicts, but they can significantly reduce your company's legal exposure in handling them.

For more information contact the author at rpetty@fisherphillips.com or 858-597-9600.

Related People

Regina A. Petty
Chief Diversity Officer & Partner
213.330.4500
Email

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.