

DON'T GIVE YOUR EMPLOYEES THE MARK OF THE BEAST

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Here's some advice you probably didn't think you needed, employers: you should avoid, at all costs, giving or threatening to give your employees the biblical Mark of the Beast. And if they think you are doing so, you should accommodate them if possible. An employer in West Virginia ignored this advice and recently found itself on the wrong side of a \$150,000 jury verdict. As with all employment-law matters, the case gets even more interesting when you learn more details, so if you want to be sure you know how to avoid this particular stumbling block, read on.

Scanning In

Consol Energy is a coal mining and natural gas company based out of Pittsburgh, with operations throughout the Appalachian region. Starting in 2012, the company sought to implement a more efficient way to track its employees' comings and goings for payroll purposes, and announced that all workers would be subjected to "biometric scanning."

It sounds scarier than it actually is: the scanning simply means that a small device would evaluate a person's hand geometry and store the information to identify them in a unique way. Rather than punching in and punching out with a clock, or logging in and out of a computer system, employees simply would have to wave their hand over a scanner when entering or leaving a worksite for tracking and attendance purposes.

The problems arose when Consol announced this change at its Robinson Run Mine in West Virginia. Beverly Butcher Jr. had worked that mine for 35 years and by all accounts was a solid worker. He immediately objected when he learned

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about the new biometric scanning system, claiming that submitting to the scanning would be like submitting to the Mark of the Beast and therefore was objectionable to him on religious grounds.

For those of you who haven't read the Bible's Book of Revelation recently, one passage talks about the apocalypse and describes a powerful dragon emerging from the sea and enslaving the world. According to Revelation 13:16, the dragon "forced all people, great and small, rich and poor, free and slave, to receive a mark on the right hands or on their foreheads... which is the name of the beast or the number of its name....That number is 666."

Butcher wrote a letter to management asking not to be subjected to the scanner, admitting that he knew that the hand scanner would not actually give him a number or a mark, but that "it is a device leading up to that time when it will come to fruition."

Consol Energy assured him that the hand scanner was passive and wouldn't imprint anything on him, but that did not convince him. The company next pointed out that the biblical passage described the mark being placed on the right hand and told him that he could use his left hand when scanning in and out of the mine, but he still refused. Finally, as a matter of last resort, the company produced a letter from Recognition Systems Inc., the manufacturer of the biometric system, assuring him that their product "does not, in fact, assign the Mark of the Beast."

The letter did not convince him and he still refused. Instead, he offered to continue to write down his hours by hand as he always had, but the company would not allow it. As a result, Butcher retired in protest, about five years earlier than he had planned. And that might have been the end of the story, except....

Why Are They Different?

Several months later, Butcher learned that several of his former coworkers were exempted from the biometric scanner because they had missing fingers and the machines wouldn't work on them. Instead, they were allowed to enter their employee numbers on a keypad to track their comings and goings. This is exactly the kind of accommodation that Butcher had been seeking, and he was incensed to learn that it was being offered to people just because of physical reasons but not to him for spiritual reasons. He enlisted the

assistance of the Equal Employment Opportunity Commission, and a religious discrimination lawsuit was filed on his behalf.

After several years of litigation, the case went to trial in early 2015. The company attempted to portray Butcher's beliefs as irrational, going so far as to question him and his family about their inherent distrust of supermarket scanners. But the key question in the trial was not whether his religious beliefs were correct, but whether they were sincerely held. If so, and if they could be easily and reasonably accommodated, they should have been.

The focus of every religious accommodation case is whether the employer can provide a reasonable accommodation without incurring an undue hardship. And as you can imagine, the strongest argument for Butcher was that Consol Energy proved that they could easily accommodate their workers without undue hardship by establishing an alternative tracking method that did not require scanning. The jury was not asked to interpret the Bible, but instead whether the employer could have accommodated him. The jury ruled in his favor and awarded him \$150,000, and a judge will soon decide whether to award him even more in economic damages. Consol has announced that it will appeal the verdict.

And In The End...

The lesson for employers – besides not attempting to enslave the world – is not to judge an employee's religious beliefs but instead look at them from the accommodation perspective. If it is easy to offer a shift change, or a modification to the dress code, or a flexible schedule, or some other alteration to your standard practices and policies, you should allow the accommodation, without regard to whether you agree with their faith practices.

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