



Creed - The Mysterious Protected Group Under the Tennessee Human Rights Act

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Creed? What's that??

Query: a plaintiff sues under Tennessee law, claiming unlawful employment discrimination because of his creed: he is a vegan. What does a court do with this?

As you know, Title VII of the Civil Rights Act of 1964 (Title VII) is a federal law that prohibits discriminatory employment practices on account of an individual's race, color, religion, sex, or national origin. Many states have their own similar statutes, the interpretation of which closely follow that of Title VII and the other federal employment statutes.

However, unlike Title VII, some of these state statutes also may prohibit discriminatory employment practices on the basis of other, additional classifications. For example, the Tennessee Human Rights Act (THRA) applies to employers with eight or more employees within the state and prohibits discrimination based on race, color, religion, sex, age, national origin, and creed. Tennessee is not alone in extending protections under its fair employment laws to an individual based on creed—a handful of other states also prohibit discriminatory or retaliatory action on the basis of *creed*, e.g., Colorado, New Jersey, New York, Washington, Wisconsin, and Wyoming. Some states include creed in the state's statutes by combining it with religion in one way or another. For example, California law provides protection from harassment or discrimination in employment because of "religious creed."

As previously mentioned, federal laws such as Title VII and the ADEA do not contain protections on the basis of creed. There may not be much hope of eventually getting a United States Supreme Court decision to guide Tennessee as to the interpretation of the term "creed" in fair-employment provisions.

Of the other states that also extend protection to individuals on the basis of creed, the few that provide definitions for the term are among those that combine creed with religion. For example, under Colorado Revised Statutes, Title 24, Art. 34, which prohibits employment discrimination on the basis of creed, the statute defines both "creed" and "religion" "as a religious, moral or ethical belief which is sincerely held and includes all aspects of religious observance and practice."

California's Fair Employment Practices Law prohibits employment discrimination on the basis of "religious creed" and later defines, among other terms, the term "religious creed" and "creed" to "include all aspects of religious belief, observance, and practice, including religious dress and grooming practices."

Washington's Laws Against Discrimination make it unlawful for employers to discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin or the presence of any sensory, mental, or physical disability.

While Washington includes "creed" in its employment-discrimination laws, it notably excludes "religion."

Since the law has not yet established what "creed" means, as far as prohibiting employment discrimination on that basis, employers have little guidance in this area. If an employee presents a non-religious but sincerely held belief, will that be enough to be considered a "creed" by the courts? With only a gut feeling to go by, we think it likely that Tennessee courts will lean toward the view that "creed" and "religion" are synonymous terms; thus, veganism, for example, since it does not constitute a religious belief, would not be a protected group under the THRA. However, to play it safe, employers should refrain from passing judgment or making derogatory comments regarding an employee's expressed beliefs. The hard part will come when an employer is faced with a situation that may appear he is terminating an employee due to his creed. Sooner or later, the courts will be ruling in such cases. While we tend to think that Tennessee will decide that creed equals religion (for THRA purposes), the last time we checked, the courts were not giving us a vote on the question. So, employers, proceed with care!

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