



Thou Shalt Not Discriminate

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Thomas Cox's article "Thou Shalt Not Discriminate" was featured in the May 2015 issue of *Atlanta Tribune Magazine*.

Since the founding of our great nation, the ability of individuals to engage in the free expression of religion has been a right guaranteed to every American. Does the right to free religious expression prevail in the workplace as well? On the other hand, does the employer have the right to conduct the workplace in a manner that is free from the open expression of religion? Can an employer treat employees differently because of religion?

Title VII of the Civil Rights Act of 1964 prohibits covered employers from discriminating against applicants or employees on the basis of religion. Under Title VII, the term "religion" encompasses all aspects of religious observance and practice, as well as belief. In essence, the claim of religious discrimination is generally based on an alleged conflict between a job requirement and an employee's sincerely held religious belief. Additionally, unless an employer demonstrates that it is unable to reasonably accommodate an employee's religious observance or practice without an undue hardship, an employer must offer a reasonable accommodation to resolve this workplace-based conflict.

To establish a claim of religious discrimination, an applicant or employee must prove that he or she suffered an adverse employment action based on or because of religion. Because a person's religious views are not obvious based on appearance, an employee that believes he or she has been discriminated against generally has a duty to provide the employer with notice that an employment practice will interfere with the employee's religion.

Religious discrimination claims may be based on direct or circumstantial evidence of discriminatory intent. Public employees may also assert claims of religious discrimination "under color of law," as well as allege violations of the First Amendment.

In response to a claim of religious discrimination, an employer must ultimately establish that the adverse employment action in question was not based on an applicant or employee's religion, but instead was based on a legitimate non-discriminatory reason. Documentation on the reason for an adverse employment action is always useful to establish a defense.

Certain organizations may be exempt from claims of religious discrimination. Under certain circumstances, religious corporations and some educational institutions may be excluded from the reach of Title VII for religious discrimination claims. Additionally, discrimination lawsuits by ministers against a church or religious institution employing them are generally excluded under the so-called ministerial exception.

Employers facing claims of religious discrimination should coordinate with competent legal counsel, human resources and company management to ensure that the workplace is free of all forms of religious discrimination. In response to a claim, an investigation should begin promptly. Finally, the company should engage in an attempt to determine if an accommodation is available, or otherwise determine that a proposed accommodation would pose an undue hardship on the company.

In the end, remember — thou shalt not discriminate at work based on religion.