



Do You Have To Accommodate An Employee Who Worships The Flying Spaghetti Monster?

Insights

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Employers are generally aware of their duty to accommodate an employee's religious beliefs. Whether that means rearranging work schedules, permitting modifications to dress codes, permitting prayer breaks, or any number of other alterations, you know that the law requires you to be flexible when it comes to religion. But what if your employee claims he is a "Pastafarian" who worships the Flying Spaghetti Monster? A recent case from Nebraska might shed some light on your religious accommodation obligations.

A Twenty-First Century "Religion" Involving Spaghetti And Pirates

You might not be familiar with FSMism. After all, it's a fairly new "religion" that just emerged in the past 10 years. In response to a 2005 Delaware court case involving whether public school children should be taught the theory of "intelligent design" as an alternative to evolution, the Kansas State Board of Education began considering whether to require its students be taught intelligent design. This theory maintains that life on Earth displays sufficient complexity to suggest a "master intellect" designed it, and that evolution cannot account for all that is found on the planet.

A 24-year old physics graduate student named Bobby Henderson wrote a satirical open letter to the Kansas State Board professing his belief that the master intellect behind intelligent design could as easily be a "Flying Spaghetti Monster" as any Judeo-Christian deity. In explaining gravity, for example, Henderson wrote, "What if it is the Flying Spaghetti Monster, pushing us down with his Noodly Appendages, that causes this force?"

Henderson's tongue-in-cheek letter took a life of its own after being widely distributed on the internet. In 2006, Henderson published the *Gospel of the Flying Spaghetti Monster*, a spoof on religion and the concept of intelligent design. In it he describes his own "carbohydrate-based" religion where congregants dress like buccaneers and communicate in "pirate-speak," religious holidays are observed each and every Friday with the consuming of ample amounts of beer, and followers are called "Pastafarians."

A Demand For Spaghetti And Meatballs

At least one government entity, fearful of discriminating against those who want to worship as they believe, has already accommodated a follower of FSMism. In November 2015, the Massachusetts Registry of Motor Vehicles permitted a woman to wear a spaghetti colander on her head in her driver's license photo after she requested a religious accommodation of her FSM beliefs.

driver's license photo after she requested a religious accommodation of her hair buns.

Which brings us to Nebraska and Stephen Cavanaugh's claim for accommodation. Cavanaugh isn't an employee; instead, he is a guest of the Nebraska State Penitentiary in Lincoln. He was invited to stay at the facility for four to eight years after being convicted of attempted first-degree assault after chasing a married couple with a hatchet in 2012. Nevertheless, his claims for accommodation carry some weight when it comes to employers and the duty to accommodate workers.

Cavanaugh filed a federal civil rights lawsuit against prison officials after he claimed he was repeatedly denied religious accommodations. Although the prison system recognizes 20 different religions (including Rastafarianism and Satanism), Cavanaugh was upset that it does not (yet) count worship of the Flying Spaghetti Monster as a recognized faith.

Cavanaugh was a bit vague in his lawsuit as to the specific accommodations he was seeking. He said he wanted to meet for worship services and classes, to receive communion, and to wear religious clothing. In examining the *FSM Gospel*, it appears that Cavanaugh wanted to be able to wear a pirate costume in prison, have the right to drink beer on Fridays, and to receive "a large portion of spaghetti and meatballs" as communion. His lawsuit sought \$5 million in pain and suffering.

Judge: "No Pasta For You!"

On April 12, 2016, a federal court judge dismissed Cavanaugh's lawsuit and ruled that FSMism is not a "religion" according to constitutional principles or federal statutory law. The judge described FSMism as a "parody" – while advancing important topics worthy of serious argument and debate, it was not protected as a religion. The only religious practices worthy of protection under federal law include those that are considered "sincerely held beliefs."

The court pointed to several indicia that generally accompany belief systems that are considered "religions." A religion addresses fundamental and ultimate questions having to do with deep and imponderable matters; it is comprehensive in nature and not a series of isolated teachings; and it is often recognized by certain formal and external signs.

While FSMism looks very much like a religion following these tests, the judge pointed out that the *FSM Gospel* is actually a parody designed to look like a religion. The court pointed out that to rule otherwise could lead others to simply follow guidance from any other fiction or non-fiction book and seek accommodations accordingly.

There is no telling whether Cavanaugh will appeal this decision, but for now, he will not be collecting \$5 million from the Nebraska State Penitentiary, and he will not be served heaping piles of spaghetti any time soon (at least for the next one to four years, barring parole).

What Can Employers Take From This Case?

Although this case involved a prisoner seeking accommodations from his correctional facility, an analogy can be found with your employees and your workplace rules (without inferring that your employees consider themselves prisoners). Title VII (the main federal antidiscrimination statute) and

various state statutes require you to accommodate workers who might need a workplace alteration because of their religious beliefs.

Under federal law, you must make adjustments to your work environment to allow your employees to comply with their religious beliefs, so long as they don't result in an unreasonable burden. These accommodations typically relate to work schedules, dress and grooming rules, and religious expression or practice at the workplace. If you are involved in religious accommodation issues, you will usually spend most of your time dealing with questions about whether the accommodation can be made and the impact the request might have on your business, and not whether the religion itself is covered as an actual belief.

The Equal Employment Opportunity Commission (EEOC) says that "religion" is broadly defined under Title VII, including theistic and non-theistic moral and ethical beliefs as to what is right and wrong. The beliefs can contain unique views, and the EEOC even describes Wiccan practices and the Kemetic religion (grounded in ancient Egyptian sun worship) as worthy of protection in its 2008 Compliance Manual on religious discrimination and accommodation.

To date, there have been no reported court decisions involving worship of the Flying Spaghetti Monster and workplace accommodations, and it is not known whether the EEOC has taken a public position on whether FSMism would be considered a religion under Title VII. However, even the EEOC has its limits. If the agency follows the Nebraska court's guidance in the *Cavanugh* case, it appears unlikely that you will be forced to let your workers to dress and speak like pirates around the workplace as part of the Pastafarian religion.

But what if an employee approaches you with an accommodation request based on some other belief system with which you are not familiar? The EEOC would have you consider the request and not dismiss it out of hand simply because it does not involve one of the major religions. The agency says you should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief, but if you have an objective basis for questioning the religious nature of the belief, you would be justified in seeking additional supporting information.

The EEOC says you can make an inquiry into the facts and circumstances of the employee's claim that the belief or practice at issue is religious, and that the belief or practice gives rise to the need for the accommodation, so long as your inquiries are limited to making these determinations. The information provided by an employee to satisfy your request could take many forms. For example, says the agency, written materials or the employee's own first-hand explanation may be sufficient to alleviate your doubts about the religious nature of the professed belief. Or, third-party verification might be needed through books, publications, texts, or some other form.

Regardless of the request, make sure you document your inquiries, your findings, and your decision. If necessary, consult with your legal counsel to ensure you are putting yourself in the best position to defend yourself should your decision get challenged. After all, although it appears from the *FSM*

Gospel that the Flying Spaghetti Monster is a peaceful and benevolent figure, his followers appear to be somewhat litigious when denied pasta.

If you have any questions about this case or how they may affect your business, please contact your Fisher Phillips attorney.

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