



Appeals Court Rejects Retaliation Claim Based On Religious Accommodation Request

Insights

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In a case of first impression, a federal appeals court just found that an applicant's request for a religious accommodation did not constitute protected activity under Title VII for the purpose of establishing a retaliation claim. Under the 8th Circuit's November 13 ruling, the appropriate avenue to challenge an employer's denial of a religious accommodation request under Title VII is by filing a disparate treatment claim, not through a retaliation cause of action. What can employers take from the *EEOC v. North Memorial Health Care* decision?

Rejected Religious Accommodation Request Leads To Litigation

Plaintiff Emily Sure-Ondara, a Seventh Day Adventist and RN, applied for a position in the "Advanced Beginner" residency program at North Memorial Health Care, a hospital in Minnesota. During the interview process, Sure-Ondara learned that the position would require her to work eight-hour shifts every other weekend, a schedule established by the employer's collective bargaining agreement with the Minnesota Nurses Association. However, she did not inform North Memorial that her religion would not permit her to work from sundown on Fridays to sundown on Saturdays.

The hospital made Sure-Ondara a conditional job offer and she accepted the position. But while completing the pre-hire paperwork, she disclosed that she would need to be accommodated in scheduling because of her religious beliefs. After several internal discussions and discussions with Sure-Ondara, North Memorial rescinded its employment offer, concluding that it would not be possible to provide the requested accommodation under the circumstances. The hospital instead invited her to apply for other positions.

Sure-Ondara filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) alleging religious discrimination and retaliation, and the agency issued a reasonable cause finding of retaliation. The EEOC later brought suit on Sure-Ondara's behalf alleging retaliation based on the rescinded job offer, but did not include a religious discrimination (disparate treatment) claim in its lawsuit. The lower federal court granted summary judgment in favor of North Memorial, dismissing the case, and the EEOC appealed the decision to the 8th Circuit Court of Appeals.

Requesting A Religious Accommodation Is Not "Opposition" To An Unlawful Practice

After reviewing Title VII's prohibitions against religious discrimination and its separate anti-retaliation provision, the 8th Circuit Court of Appeals—which hears federal cases arising out of courts in Missouri, Minnesota, Arkansas, Iowa, Nebraska, North Dakota, and South Dakota—turned

to EEOC's retaliation claim and found that the EEOC failed to identify a form of employment discrimination that Sure-Odara "opposed."

The appeals court found that Sure-Odara simply requested an accommodation rather than complaining that defendant "unlawfully refused to accommodate her religious beliefs." The court further found that the defendant had a non-discriminatory practice of considering religious accommodation requests on a case-by-case basis, and that Sure-Odara's Title VII remedy for defendant's failure to provide the requested religious accommodation "was a disparate treatment claim under §2000e-2(a) for failure to reasonably accommodate."

In sum, the 8th Circuit agreed with the lower court's finding that "merely requesting a religious accommodation is not the same as opposing the allegedly unlawful denial of a religious accommodation," affirming the dismissal of the retaliation claim.

However, the Court of Appeals recognized that a Title VII retaliation claim could be asserted in other contexts involving requests for religious accommodation. Examples cited by the 8th Circuit included situations where an employer has a policy of not accommodating religious practices and an employee is terminated for opposing such a practice, or where an employer denied an accommodation request on the grounds that it was not based on a religious practice but then takes a materially adverse action against the individual because of the request.

What Does This Decision Mean For Employers?

The 8th Circuit Court of Appeal's decision narrows the legal avenues under which an employer's failure to provide a religious accommodation can be challenged under Title VII—at least for employers within its jurisdiction (Arkansas, Missouri, Iowa, Nebraska, Minnesota, South Dakota and North Dakota). However, the court recognized that Title VII retaliation claims can still arise in the religious accommodation context, but not where an employer simply denies a requested accommodation.

The 8th Circuit's decision does not impact your Title VII obligation to accommodate applicants or employees absent undue hardship when your policies or practices create a conflict with an employee's or applicant's religious belief or practice. If you have questions about how best to handle a religious accommodation situation, please contact your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific federal appeals court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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Greg Grisham

Partner

901.333.2076

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