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Religious Accommodation in the Workplace: Can We Strike a Balance?

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An increasing diverse workforce and 24/7 manufacturing demands are contributing to religious conflicts between employee and employer. Today workers are increasingly requesting not work on certain days of the week in observance religious holidays, displaying religious articles in their cubicles and even requesting to use the companies' conference room for prayer meetings. How does a company address these requests? After conducting research, included are some useful recommendations to help employers understand how to handle these requests.

Increasing religious diversity and expanded production schedules is causing employees to collide with employers over their Title VII and First Amendment rights. Employees today are displaying pictures of Jesus in their cubicles, talking about religion to their co-workers, wearing clothing that displays their religious beliefs, and asking for time off for religious observances.

To what extent do employees have the right to be accommodated with respect to their religious beliefs? What if an employee requests to have a break for a 5 minute prayer, 3 times a day, and needs to leave the assembly line? What if an employee asks to use the conference room to hold a prayer meeting at lunchtime?

Potentially these religious activities may infringe on the productivity of a company. To what extent do employers have the right to limit religious activities at the workplace? What rights do employers have when deciding if employees have gone too far in exercising their freedom of religious expression?

Title VII of the Civil Rights Act protects employees against discrimination. Are employees discriminated against when they are restricted from exercising their freedom of religious expression at work? What if the employee requesting to use the conference room wanted to play chess, would the chess group be treated the same as the religious group? How do we decide what is an appropriate balance between the rights of the employer and the rights of the employee?

This question is an important one because this issue is becoming more prevalent partly because 24/7 business collides with increasingly diverse religious practices. In 2005, the EEOC received 2,340 charges of religious discrimination and recovered $6.1 million for the injured parties. Employers will be faced with lawsuits for violating Title VII by refusing to provide reasonable accommodation to an employee's religious accommodation request. These fines, which could be costly to the employer, could include back pay, job reinstatement and other costs.

All citizens have the right to express their religious beliefs. How can an employer accommodate these rights without compromising their company's goals? The managers of the company do not want to negatively affect morale by infringing on employees rights. A company hires its employees to meet their company's goals. Private employers must be able to enforce policies and procedures in compliance with all applicable private employment regulations. Public employers must also be able to enforce policies and procedures in compliance with all applicable government regulations. How does a company keep an acceptable balance of workers' rights, equality among the treatment of employees, and remaining or becoming profitable?

Employers, business owners, management, union leaders, supervisors, workers, legislators, employee rights groups, and all others directly related to business should be concerned with this issue. Additionally, employers need to know

how to handle these religious accommodation requests effectively.

TITLE VII – WHAT DOES IT REALLY MEAN?

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § § 2000e et seq., prohibits discrimination in employment on the basis of religion. Specifically an employer may not "fail or refuse or hire or discharge any individual, or otherwise …discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individuals …religion." 42 U.S.C.§ 2000e-2(a)(1), Title VII provides that "the term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he or she is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j), in brief, it is "an unlawful employment practice… for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of its employees and prospective employees." *Trans World Airlines, Inc.* v. *Hardison,* 432 U.S. 63, 74 [14 FEP Cases 1697] (1977).

An employer could be found in violation of Title VII's prohibition against discrimination based on religion for taking adverse action against an employee who failed to comply with a job requirement that conflicts with the worker's bona fide religious beliefs. In such a case, the employer could defend such a charge by showing that accommodating the employee's religious needs would cause an undue business hardship.

Because Title VII defines "religion" as "all aspects of religious observance and practice, as well as belief," unconventional religious beliefs of individuals, as well as traditional beliefs held by large religious groups, are protected if they are sincerely held, courts have ruled. Moreover, employees do not have to belong to an organized religious sect to have their sincerely held religious beliefs protected by the statute.

Although most religious bias problems involve employees seeking to observe their Sabbaths or other religious holidays, Title VII's ban on religious discrimination applies to all conduct motivated by religion, not just Sabbath or holiday observance. For example, Title VII's protection extends to an employee's desire to dress or maintain a particular physical appearance, such as having a beard, in accordance with religious beliefs. A practice does not have to be specifically required or forbidden by an employee's religion to be protected.

Title VII is intended to give the employee the right to have gainful employment and not be discriminated against in any form by an employer or potential employer due to his religious beliefs or practices. In turn, an employer has a right to still run their business while observing employees' rights. An employer is required by law to reasonably accommodate a religious request unless the request presents undue hardship on the business.

Reasonable Accommodation

There has been a great amount of research on the topic of religious accommodation and religious expression in the workplace. Today religion takes on a different meaning than it did 20 years ago. A more religiously diverse population has meant an increase in the number of ways employers are asked to accommodate different religious practices, customs, and beliefs.

An employer has a duty to accommodate an employee's religious practices or beliefs when the employee makes a qualified request of accommodation. For an employee to qualify for an accommodation, the employee must demonstrate; 1) A bona fide religious belief or practice that conflicts with a work requirement, 2) the agency was informed of the conflict, and 3) a work requirement would force him to abandon a fundamental aspect of belief or practice.

According to the *Federal EEO Advisor* (2006), "Agencies (employers) need to be careful here because the employee does not have to belong to an organized religion and can even request an accommodation for something that

traditionally goes against his religion. What the person has to show is that the practice adheres to his sincere moral and ethical beliefs as to what is right or wrong."

Two terms which are not clearly defined are *reasonable accommodation* and *undue hardship*. There is much confusion regarding how the courts have interpreted these terms in Title VII, often higher courts overturning the lower court's ruling.

Some examples of reasonable accommodation would be rearranging shift schedules, offering the employee to "swap" with another employee, offering part time work, lateral transfers, or change of job assignments.

A refusal to accommodate can only be justified by the employer, when the employer can show that the accommodation would cause undue hardship from each available alternative method of accommodation. The term reasonable presents the first difficulty in interpreting Title VII. What is reasonable to one person may not be reasonable to another person.

Accommodation is not always required to be granted when an employee makes a request, and might not be granted if the accommodation would require more than a de minimis cost. According to *Lindsay and Bach (*2006), "An employee is not necessarily entitled to the accommodation that he or she would prefer even if that accommodation could be offered without undue hardship." The Supreme Court has held that Title VII requires "the employer to offer some form of accommodation, and if that accommodation is sufficient, that ends the employer's obligation."

It is true that employers are generally hesitant to offer accommodation to religious requests in fear of favoritism or that many other employees will ask for the same request. The *Federal EEO Advisor* (2005), states "the EEOC rejects the argument that accommodating one employee could create an undue hardship because other employees also might request a religious accommodation. If an employee has a bona fide religious belief that conflicts with work the agency must make a good faith effort."

Failure to accommodate may be costly to employers. In March 17, 2005, Dell agreed on a settlement for 31 Muslim employees to receive one month back pay, reinstate their jobs, and accommodate their requests for prayer, at a plant in Nashville, Tennessee, when they walked out a month earlier. This agreement also included training for supervisors and managers on religious accommodation practices and policies (*PR Newswire, 2005*).

Some employers find themselves walking the reasonable accommodation tightrope. There have been cases where an employer has accommodated an employee and other employees claimed harassment. Some employees feeling harassed because an employee is holding prayer meetings and the other employees want to know why they are not attending. Employees proselytizing at work can make other workers feel uncomfortable. "If the promotion of religion becomes offensive to co-workers, it must stop. Tell them to find another place to do it", says Abramson, partner at Hogan & Hartson.

Employers have a legal obligation under Title VII to make sure other employees are not feeling harassed by another employee proselytizing them. Employees have Title VII rights which protect them from being subjected to religious harassment at work.

Undue Hardship

Defining undue hardship is also very difficult. The courts have defined undue hardship as any burden greater than de minimis, as established in a Supreme Court decision, in *TWA v. Hardison*, 14 FEP Cases, 1697 (U.S.1977). The court determined, requiring the employer to bear more than de minimis cost in order to give the employee, who is member of Worldwide Church of God Saturdays off is undue hardship within meaning of Title VII. Therefore the employer could not be required to allow the employee to work a four-day week, either by replacing the employee with supervisory personnel or personnel from other departments or by transferring the worker from different shift and paying them premium wages. Requiring the employer to bear additional costs to give the employee Saturday off when no such costs are incurred to give other workers days off that they want, would involve unequal treatment on basis of their religion.

The court recognizes overtime wages or additional wages to be paid for a religious accommodation greater then de minimis, therefore not a required accommodation. However, if these costs are short term, the court is more apt to recognize these costs as de minimis and therefore an acceptable resolution.

Undue hardship does not only occur in relation to cost, it is also considered in cases of seniority or promotion. Undue hardship would also be possible where a variance from a bona fide seniority system is necessary in order to accommodate an employee's religious practices, when doing so would deny another employee his job or shift preference guaranteed by that system. Again, failure for an employer to accommodate because the employer is fearful other employees will request an accommodation is not evidence of undue hardship.

"Even if they can show undue hardship, employers would be well advised to make a reasonable accommodation", says Michelle Glickson, associate of Nixon Peabody. "Be thoughtful, be creative, and see if there is a way to make everyone happy. Also showing a willingness to communicate is often crucial in some cases."

However, employers need to be careful that the accommodation does not infringe on other employees. If another employee is constantly hearing about Jesus from another employee, they may feel discriminated against. Employers need to be careful not to over accommodate a religious request.

Employees requesting a religious accommodation can sometimes involve safety issues. For example, an employer in Southeastern Massachusetts requires certain employees not have any facial hair for safety reasons. The company keeps hazardous chemicals in inventory to use in their production line. An employee's face mask cannot fit properly if the employee has any facial hair. In this situation, if an employee had a religious request to grow or maintain facial hair, the employer could deny the request because of safety procedures. The courts view violating safety procedures as a valid reason to deny accommodation.

EXAMINING SOME RELIGIOUS ACCOMMODATION COURT CASES

Many employment law cases regarding religious accommodation have required the courts to render a decision on their interpretation of Title VII and the First Amendment. As previously discussed, religious accommodation requests present themselves in many different forms. Such as, an employee requesting not to work on Sunday, an employee requesting a conference room to be used for prayer meetings, employees requesting to wear clothing that the company forbids the employee from wearing, employees requesting to display religious material in office areas, as well as many other religious requests.

Private and public employers are not required to treat religious expression requests from employees similarly. First Amendment Freedom of Religion principles only apply to government employees. The freedom of religious expression case cited in this paper (Berry v. Department of Social Services, 2006) is referring to a government employee exercising his freedom of religious expression. The court rulings on free speech rights apply only to public employers and employees.

Discussing Religion with Clients and Use of Conference Room for Prayer Meetings

In *Berry v. Department of Social Services,* 97 FEP Cases 1833 (9th Cir. 2006), was a case involving First Amendment and Title VII rights. Department of Social Services is a governmental employer and First Amendment rights are applicable, these rights are not applicable to private employers and employees. Daniel M. Berry filed a lawsuit alleging that his employer, the Tahoma County Department of Social Services, violated his rights under the First Amendment of the United States Constitution and Title VII of the Civil Rights Act of 1964, by prohibiting him from discussing religion with his clients, displaying religious items in his cubicle, and using a conference room for prayer meetings. Mr. Berry understood that it was the company's policy for employees to be forbidden to talk about religion with clients and the agencies. Initially Mr. Berry acquiesced to this

policy. Mr. Berry went so far as to think he could not even talk about religion from the time he arrived at work until the time he left. "He testified that one day his daughter called him on the phone and she was sick, he wanted to pray for her, but did not think it was allowed." He asked his supervisor about the policy and his supervisor explained that it only applied to the clients. Mr. Berry was still uncomfortable with the restriction and requested to be relieved from the policy and said it conflicted with his religious beliefs. In January 2002, he received a counseling memorandum instructing him to "adhere to the Departments policy about absolute avoidance of religious communications with participants and/or other persons (such as Child Care Providers) that you have contact with as part of your employment."

Mr. Berry had organized a monthly employee prayer meeting and requested the company conference room during the prior year. This conference room was also used for birthday parties and baby showers and such. The prayer meetings were voluntary and held at lunchtime. The Director of the Department informed Mr. Berry that he could not use the Red Bluff Room for these meetings. Mr. Berry continued with these meetings and used the Red Bluff Room, but did so unofficially. In April 2001, the Director sent Mr. Berry a letter reiterating that "prayer meetings could not be held in the Bluff Room." Mr. Berry was also informed that he could not pray in the break room during regular lunch hours and that he and his group could go outside and pray on the departmental ground.

In the fall of 2001, Mr. Berry contacted a civil rights organization to see whether he could legally keep a bible on his desk and decorate his cubicle with faith related items. In early December 2001, Mr. Berry put a Spanish Bible on his desk and hung "Happy Birthday Jesus" sign in his cubicle. On December 6, 2001, Mr. Berry received a letter of reprimand instructing him that he could not display religious items that were visible to clients. He was instructed to remove his Bible from view and remove "Jesus" from the sign. Mr. Berry then complied by removing the sign and kept his Bible in his desk.

Mr. Berry filed charges with the EEOC, then later he requests a right to sue letter from the EEOC, and ultimately on May 1, 2002, he filed suit. The complaint sought injunctive and declaratory relief, claiming the Department was required, under the First Amendment of the Constitution and Title VII, to accommodate Mr. Berry's religious beliefs by allowing him to 1) share his religious beliefs with clients where they "initiate the discussion or are open and receptive to such discussions", 2) use the conference room for voluntary group prayer meetings, and 3) display religious objects in his cubicle.

The district court applied the *Pickering* balancing test[1] to the Departments limitation of Mr. Berry's speech with clients. In *Pickering v. Board of Education*, 391 U.S. 563 (1968), the court commenced with the recognition that teachers as public employees, do not relinquish their First Amendment rights they would otherwise enjoy as citizens. The Court also recognized that a "State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with the regulation of the speech of the citizens in general."

The Court's opinion reviews the line of cases dealing with employee speech that began with Pickering; it summarized those cases in the following way: The Court's decisions, then, have sought both to promote the individual and societal interests that are served when employees speak as citizens on matters of public concern and to respect the needs of government employers attempting to perform their important public functions. Underlying our cases has been the premise that while the First Amendment invests public employees with certain rights, it does not empower them to "constitutionalize the

[1] A test used by the courts to balance the rights of public employees' under the First Amendment. This test was reaffirmed in *City of San Diego v. Roe*, 543 US 77 80 (2004) ("[A]government employee does not relinquish all First Amendment rights otherwise enjoyed by citizens just by reason of his/her employment.) See also *Connick v. Myers*, 461 US 138, 142 [1 IER Cases 178] (1983) ("For at least 15 years, it has been settled that a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression.")

employee grievance." Connick v. Myers, 461 U.S. 138, 142 [1 IER Cases 178] [(1983)].

In this case, the court applied the *Pickering* test to the Department's restriction on Mr. Berry's speech with clients. The court determined the restriction is reasonable. The court states, "Any discussion by Mr. Berry of his religion runs a real danger of entangling the Department with religion. This danger is heightened by Mr. Berry's admission that unless restricted, he will share his faith with others and pray with them. Although Mr. Berry states he will only do so "when appropriate", he does not explain how he determines when sharing his religion is appropriate. Furthermore, any legal consequences from Mr. Berry's discussion of religion with clients will fall upon the Department, as much as, if not more than, Mr. Berry. We conclude that under the balancing test, the Department's need to avoid possible violations of the Establishment Clause[2] of the First Amendment outweighs the restrictions of Mr. Berry's religious speech on the job."

Regarding the request to display religious objects in Mr. Berry's cubicle, the Department argues that allowing posting of religious material on the interior space of the building in question would give the appearance of government endorsement of religious messages. According to the employer, such endorsement would, of course, be unconstitutional[3].

The court holds that the restriction on the display of religious items is reasonable. The court concluded that the Department's need to avoid an appearance of endorsement outweighs the curtailment on Mr. Berry's ability to display religious items in his cubicle, which is frequented by the Department's clients.

Mr. Berry claims the Red Bluff Room was open to other non-business related meetings and therefore allowing individual employees to use the room for prayer would not be seen as endorsing religion. He contends that the room had been used for such activities as "Junior Mints", "social organizations", "rodeo theme picnics", baby showers, and birthday parties. The district court noted, "There is no evidence in the record here demonstrating that the Red Bluff Room is used for anything other than official business meetings and business related social functions, such as employee birthday parties, of the sort ordinarily allowed by employers in meeting areas. There is no evidence of the County ever having allowed any religious or political group to meet in the space or announcing its intention to allow such a meeting. Indeed, there is no evidence that the room has been made publicly accessible at all. Thus, the conference room falls into the category of public property which is "not intended to be a forum for the public expression of ideas and opinions." *May v. Evansville–Vanderburgh School Corp*, 787 F 2nd 1105, 1113 (7th Cir. 1986). The court concluded that the Department's decision to deny Mr. Berry's proposed use of the Red Bluff Room, a non public forum, for prayer meetings did not violate his rights under the First Amendment.

Mr. Berry also argued religious discrimination under Title VII. He argued that the Department failed to accommodate his religious beliefs by refusing to let him converse with the clients about religion, refusing to let him display his bible on his desk, and by refusing to let him display religious signs in his cubicle.

The court ruled that Mr. Berry was required to set forth a prima facie case as follows; 1) he had a bona fide religious belief, the practice of which conflicts with employment duty, 2) he informed the employer of the belief and conflict, and 3) the employer discharged, threatened, or otherwise subjected him to an adverse employment action because of his inability to fulfill the job requirement. Once his prima facie case was established, the burden would shift to the employer to prove that it initiated good faith efforts to accommodate reasonably the employee's religious practices or that it could not reasonably accommodate the employee

[2] The Establishment Clause, also known as the free exercise clause, as written in the First Amendment, the government may neither establish any religion nor prohibit the free exercise of religious practices.

[3] It is unconstitutional for the government to endorse or have implied endorsement to any religious party, see *County of Allegheny v. ACLU*, 492 U.S. 573, 592-601 (1989).

without undue hardship. The court agreed that Mr. Berry did satisfactorily establish a prima facie case.

One complication that the courts have is that "undue hardship" is not clearly defined within Title VII language. The courts have had to determine undue hardship on a case by case basis. The court concluded that allowing Mr. Berry to discuss religion with the Departments clients or display religious items in his cubicle would violate the Establishment Clause of the First Amendment[4]. Therefore, the court determined the criteria for undue hardship was met.

Requesting Time Off on the Sabbath

Case 1. In order to better understand the scope of religious accommodation cases, we can look at the case of *Baker v. Home Depot*, 97 FEP 1569 (2nd Cir. 2006). Home Depot first employed Baker in March 2001, as a sales associate in the wall and floor department in Auburn, Massachusetts. In August 2001, Baker moved from Massachusetts to New York to be closer to his finance. He transferred to the Henrietta New York Home Depot store. In his interview, he explained that he could not work Sundays because of his religious beliefs.

On September 1, 2002, Colleen Vorndran became the store manager. About one month later, Vorndran inquired why Baker was not scheduled to work on Sundays. Baker explained that his religious beliefs forbade him from working on Sundays. Vorndran told Baker, he "needed to be fully flexible and if he could not work on Sundays then he could not work here". Baker was scheduled to work on Sunday, October 13, 2002. He called the store that day and reported the he "would not be in for religious reasons". Vorndran altered the schedule for Baker to be off on Sunday mornings after verifying with him that he wanted to attend church. Baker refused the offer and declined to work at all on Sundays citing his religious beliefs. During that conversation Vorndran also offered part time employment, Baker could have Sundays off but would not be guaranteed a forty hour week. Baker declined again, stating he needed benefits and full time employment. Baker was then scheduled to work on Sunday October 20, 2002. He again called in to explain he would be absent for religious reasons on that day. On October 29, 2002, Baker was terminated due to unexcused absences.

Home Depot's position was "It is essential to the business needs of the store to have all full time associates fully available to work flexible schedules on any day of the week. Allowing an associate to have Saturday or Sunday off would simply not meet the needs of the store, nor would it be fair to the other full time associates."

The District court found that Home Depot's offer to Baker of a work schedule excluding Sunday mornings constituted a reasonable accommodation of Baker's religious beliefs and granted summary judgment. The court ruled where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. An accommodation is said to cause an undue hardship whenever it results in "more than a de minimis cost" to the employer.

As the earlier case illustrated, the employee needs to satisfy the requirements for a prima facie case for the burden to shift to the employer. In this case, the court concluded Baker did satisfy the 3 part requirement for a prima facie case.

The Court of Appeals ruled that "Federal district erred in finding as a matter of law that employer's offer to schedule employee, who was discharged for refusing to work on Sunday due to his religious convictions, to work in afternoon or evenings on Sundays, which would allow him to attend religious services, was reasonable accommodation, where shift change would not permit him to observe his religious requirement to abstain from work totally on Sundays, accommodation that does not eliminate conflict between employment requirement and religious practice is not reasonable." The higher court continues "Federal district court on remand to consider employer's argument that accommodating employee, who was discharged for refusing to work on Sunday due to his religious convictions would place an undue

[4] The Establishment Clause prohibits government (not private employers) from taking actions which would constitute an "establishment of religion."

burden upon it, where such defense is not fully developed in record and federal district court did not address it. Therefore, we vacate the judgment of the District Court and remand the case for such further proceedings consistent herewith as the District Court may deem appropriate. We express no opinion other than that which underlies our determination to vacate."

As this case illustrates, rulings and determination by the courts are very complex and not easily predictable. In this case, the lower courts ruled in favor of the company, but then the higher courts were unsure and remanded back to the lower courts for them to take another look.

Case 2. In *Cook v. Chrysler Corp* 60 FEP Cases, 647 (8th Cir. 1992), Jesse Cook was an assembler at Chrysler's St. Louis plant from 1976 to 1986, when he was terminated because of excessive absences. Mr. Cook is a 7th Day Adventist and requested not to work from sundown every Friday to sundown every Saturday because of his religious beliefs. The terms and conditions of Cook's employment are determined in part by a national collective bargaining agreement.

Cook informed his supervisor of the need for accommodation of his religious beliefs. Cook proposed a shift change, working on Sunday instead of Friday. His supervisor contacted the union shop steward and the labor relations supervisor in an effort to find an accommodation. Cook missed every Friday night and was late every Saturday night. He was disciplined after the sixth and seventh absences, pursuant to the six-step procedure for discipline. He was then informed by Chrysler they would not accommodate him by changing his shift. Cook continued to miss work on Fridays and was eventually fired.

Cook brought suit against Chrysler and the UAW alleging he was terminated by Chrysler on the basis of religion. The district court entered judgments after a bench trial and found that Chrysler's efforts to accommodate Cook satisfied the requirements of Title VII.

Section 701(j) of Title VII provides that employers must "reasonably accommodate" the religious beliefs or practices of their employees unless doing so would cause the employers to suffer undue hardship, *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 75,14 FEP Cases 1697 (1977).

In this case, the court concluded, all accommodation proposals by Cook involved significant costs to Chrysler. The proposal that Cook be allowed excused absences every Friday meant that he would be a part-time employee, but would be paid full time benefits (Chrysler showed that a typical benefit package was costly to the company; the cost of benefit package lost because of being absent twenty percent of the time is over $1500 per year). Allowing a temporary part time employee to replace Cook every Friday night meant that Chrysler had to either forego using a floater elsewhere or hire another floater. There was also evidence that it was not possible to allow Cook to substitute working on a Sunday instead of Friday because the plant was normally closed on Sunday. The Court of Appeals ruled, "For the reasons stated above, we affirm."

Religious Dress and Grooming

Federal Express settled a case where several Federal Express employees said they were wearing dreadlocks as an expression of their religious belief. Attorney General of New York, Elliott Spitzer announced on December 30, 2005, "Federal Express prides itself on being an inclusive company. The policy and practice memorialized in this agreement go a long way toward achieving this worthwhile goal."

Several employees had been terminated by Federal Express because of their refusal to cut their hair. After conducting an investigation starting in 2000, Spitzer filed a lawsuit against Federal Express in 2001, claiming violation of Title VII, because the employees were terminated for wearing their hair a certain way as a religious expression which contradicted the company appearance policy.

Federal Express agreed to revise its personal appearance policy to allow employees to request an exemption from the policy based on religious beliefs. As part of the settlement, Federal express agrees to make further adjustments to its personal appearance policy, better inform

managerial employees about responding to requests for religious accommodation, and periodically inform the Attorney General's office about its handling of requests for religious accommodation involving the wearing of dreadlocks.

Proselytizing in the Workplace

In Piggee v. Carl Sandberg College, 25 IER Cases, 129 (7th Cir. 2006), Martha Louise Piggee was a part-time instructor of cosmetology at Carl Sandburg College. Ms. Piggee gave a homosexual student two religious pamphlets on the sinfulness of homosexuality. The student was offended and complained to college officials. The college sent Ms. Piggee a letter which included a recommendation that Mrs. Piggee be given a warning to cease and desist all proselytizing in the workplace to Mr. Ruel and/or to other students. Failure to cease and desist will constitute insubordination, which can result in disciplinary action up to, and including, termination.

The following semester, the College chose not to retain her. On October 9, 2003, Piggee filed a lawsuit claiming the college had violated her First Amendment rights. The district court denied her motion for summary judgment and granted the defendants' motion for summary judgment on June 27, 2005. The court ruled, "For purposes of this discussion, that Piggee's proselytizing is speech that qualifies as a matter of public concern; (it certainly had nothing to do with how to style hair.) The real question, however, is whether the college had the right to insist that Piggee refrain from engaging in that particular speech while serving as an instructor of cosmetology."

The court ruled, "For the reasons we explained earlier, we see no reason why a college or university cannot direct its instructors to keep personal discussions about sexual orientation or religion out of a cosmetology class or clinic. We affirm the judgment of the district court."

Again, because this case involves a government employer, the college is able to regulate freedom of speech rights in the classroom setting.

BEHAVIORAL IMPLICATIONS

What are the behavioral implications of limiting or expanding religious expression and accommodation in the workplace? An employer needs to find an appropriate balance as to how to accommodate a request if an accommodation can be made. What freedoms an employer allows can impact the behaviors of the workforce. If an employer is deemed too strict on their treatment of these accommodation requests, the employees making the request will react negatively. However, if an employer is too lenient with the request, the other employees might be offended and react negatively. An employer needs to find a proper balance of accommodating the request, and remaining respectful the other employees. The goal of an employer should be to optimize the productivity of an employee and not demoralize the rest of the staff.

Simply ignoring a request is clearly not the best strategy. Good communication between an employee and their supervisor is paramount to a successful outcome to a religious accommodation request. An employer needs to have strategy that incorporates the realization that employees are the most important part of the success of a company. How a company deals with employee issues not only religious accommodation requests, but also staffing, recruiting, performance appraisals, compensation, and other human resource functions, needs to be a supportive approach. The more supportive the employer is perceived, the higher chance for success in dealing with accommodation issues as well as employee issues.

CONCLUSION AND RECOMMENDATIONS

The importance of employers trying to find a balance between accommodating employees and remaining productive cannot be understated. Religion in the workplace is a multi-faceted issue and workplace accommodation has run the gamete of requesting days off to wearing religious headdress. Under U.S. law, an employee's rights are protected by Title VII and employees are allowed a substantial degree of freedom to express their religious beliefs in the workplace. Not only must religion not play a

role in hiring, firing, or promotion, an employer must also recognize these requests must be given serious consideration. Employers should consider the employees right to express religious belief so long as such expressions do not infringe on the rights of others.

Some suggestions for an employer to consider if they have received a religious accommodation request;

- Listen to the employees' request without bias
- Take the request seriously, do not react too quickly or negatively
- Do not act dismissive to the request
- Be sincere when trying to find a reasonable accommodation
- Properly train supervisors and managers on the appropriate way to handle a religious accommodation request
- Be creative when seeking alternatives
- Be careful not to over accommodate the request, then other employees will complain of harassment
- Employer's cannot decline a request in fear of other employees requesting an accommodation
- Even though you may not be familiar with the religion or belief, it does not mean it is not real or does not exist

According to the EEO Advisor,2005, supervisors and managers need to be encouraged to seek guidance before they accept or deny a request to ensure the issue is fully considered and the agency acts in a consistent manner Additionally, if supervisors have questions they should seek help form their human resource department, the EEO, or their legal counsel.

In the City of Dubuque, they have noticed that small businesses and non-profit agencies lack the information about the civil rights enforcement process. The City is providing free training to help small businesses and non-profit organizations comply with civil rights laws. Business owners, management and/or employees are the intended audience of this training. The training will include information on civil rights law, information on Americans with Disabilities Act, religious accommodation, harassment and hostile work environment. (*US States News*, 2006).

In conclusion, if the employer is sincere in his communication with the employee, there is a much better chance the outcome will be positive. When an employee has a religious request, the employer must reasonably accommodate unless there is an undue hardship. This leaves room for much misinterpretation of reasonable accommodation and undue hardship.

Understanding the differences in regulations that apply to public and private employers is also very important. The employer needs to be mindful of the different laws that apply to different types of religious accommodation requests.

Issues of religious accommodation should always be given serious consideration before the employer responds. Employers should proactively develop policies to address religious accommodation requests. Employers need to agree on a sound approach on handling these requests to be prepared if such a request does occur.

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