

**RELIGIOUS EXPRESSION AND PROSELYTIZING  
IN THE WORKPLACE**

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**30th Annual Labor and Employment Law Institute | August 24, 2019 | San Antonio, Texas**

# Statutes Prohibiting Religious Discrimination in Employment

Title VII makes it unlawful for an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's religion. 42 U.S.C. § 2000e-2(a)(1).

The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Likewise, Chapter 21 of the Texas Labor Code makes it is unlawful for an employer to fail or refuse to hire an individual, discharge an individual, or discriminate in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment because of such individual's religion.

TEX. LABOR CODE § 21.051.

## Protections Under Title VII

- Title VII protects all aspects of religious observance and practice as well as belief and defines religion very broadly for purposes of determining what the law covers. For purposes of Title VII, religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others.
- An employee's belief or practice can be "religious" under Title VII even if the employee is affiliated with a religious group that does not espouse or recognize that individual's belief or practice, or if few – or no – other people adhere to it.
- Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs.

EEOC Questions and Answers Pertaining to Religious Discrimination

## Nature of Religious Practices

- In most cases whether or not a practice or belief is religious is not at issue. The EEOC defines religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. See *United States v. Seeger*, 380 U.S. 163 (1965), and *Welsh v. United States*, 398 U.S. 333 (1970).
- The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee.
- The phrase “religious practice” as used in EEOC Guidelines includes both religious observances and practices as stated in 42 U.S.C. § 2000e(j).

29 CFR § 1605.1.

# Religious Discrimination and Harassment

*Religious discrimination* involves treating an applicant or employee unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs. Religious discrimination can also involve treating someone differently because that person is married to or associated with an individual of a particular religion.

*Religious harassment* in violation of Title VII occurs when employees are:

- 1) required or coerced to abandon, alter or adopt a religious practice as a condition of employment, or
- 2) subjected to unwelcome statements or conduct that is based on religion and is so severe or pervasive that the individual being harassed reasonably finds the work environment to be hostile or abusive, and there is a basis for holding the employer liable.

# Employer's Duty to Make Reasonable Accommodations

- The principles of reasonable accommodation and undue hardship are now woven into the fabric of religious discrimination law. The concept of reasonable accommodation was established initially in a 1967 EEOC guideline, which declared that employers had an obligation “to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer’s business.” See 29 CFR § 1605.1.
- Under Title VII the term religion includes all aspects of religious observance or practice, as well as belief, unless an employer demonstrates that he or she is unable to reasonably accommodate an employee’s religious observance or practice without undue hardship. 42 U.S.C. § 2000e(j).
- Texas law also imposes a duty of reasonable accommodation unless an employer demonstrates that he or she is unable to reasonably accommodate an employee’s religious observance or practice without undue hardship. TEX. LABOR CODE § 21.108.
- A requested accommodation is unreasonable if granting it would require an employer to infringe on other employees’ rights. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 79-81 (1977).

## Undue Hardship

- The “intent and effect of [the definition of ‘religion’] was to make it an unlawful employment practice ... for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees.” *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 74 (1977).
- A requested accommodation would create an undue hardship if granting it would harm the employer’s business. See, e.g., *Johnson v. Halls Merch.*, 1989 WL 23201 (W.D. Mo. Jan. 17, 1989) (The district court found it would have posed an undue hardship on the employer to permit a retail employee to regularly state to customers “in the name of Jesus Christ of Nazareth” because it offended some customers and the company lost business as a result.)

## **Prima Facie Case of Religious Discrimination**

To establish a prima facie case of religious discrimination based on an employer's failure to accommodate an employee's religious beliefs, the plaintiff must establish that (1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of this belief and requested an accommodation; and (3) he or she was disciplined or discharged for failing to comply with the conflicting employment requirement.

*Daniels v. City of Arlington, Tex.*, 246 F.3d 500, 506 (5th Cir. 2001); *Shelton v. Univ. of Med. & Dentistry of N.J.*, 223 F.3d 220, 224 (3d Cir. 2000); *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1019 (4th Cir. 1996).



## Proselytizing in the Workplace

- Because employers are responsible for maintaining a nondiscriminatory work environment, they are liable for perpetrating or tolerating religious harassment of their employees.
- Title VII violations may result if an employer tries to avoid potential co-worker objections to employee religious expression by preemptively banning all religious communications in the workplace since the statute requires that employees' sincerely held religious beliefs be accommodated as long as no undue hardship is posed.
- However, an employer is not required to forfeit his or her sincerely held religious practices and beliefs either.

## Employees' Right to Proselytize

- “All forms and aspects of religion, however eccentric, are protected except those that cannot be, in practice and with honest effort, reconciled with a business-like operation.” *Cooper v. Gen. Dynamics, Convair Aerospace Div., Ft. Worth Operation et al.*, 533 F.2d 163, 168-169 (5th Cir. 1976).
- To determine whether allowing or continuing to permit an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, employers should consider the potential disruption, if any, that would be posed by permitting this expression of religious belief.
- Expression can create undue hardship if it disrupts the work of other employees or constitutes — or threatens to constitute — unlawful harassment. Since an employer has a duty under Title VII to protect employees from religious harassment, it would be an undue hardship to accommodate such expression.

## **Religious Expression Directed Toward Co-Workers and Customers**

- Religious expression directed toward co-workers might constitute harassment where it demeans people of other religions, or where, even if not abusive, it persists even though the co-workers to whom it is directed have made clear that it is unwelcome. A case-by-case determination is necessary regarding whether the effect on co-workers actually is an undue hardship.
- The determination of whether it is an undue hardship to allow employees to engage in religiously oriented expression toward customers is a fact-specific inquiry and will depend on the nature of the expression, the nature of the employer's business, and the extent of the impact on customer relations.
- However, an employer is far more likely to be able to demonstrate that proselytizing by an employee to a customer would constitute an undue hardship to accommodate an employee's religious expression without regard to the length or nature of the business interaction.

## Employer's Right to Proselytize

- An employer can have sincerely held religious beliefs and Title VII does not require that an employer abandon his or her religion. Where the religious practices of employers and employees conflict, Title VII does not require individual employers to abandon their religion. Rather, the statute attempts to reach a mutual accommodation of the conflicting religious practices. This is consistent with the First Amendment's goal of ensuring religious freedom in a society with many different religions and religious groups.  
*EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 621 (9th Cir. 1988).
- Some employers have integrated their own religious beliefs or practices in the workplace, and they are entitled to do so.
- However, if an employer holds religious services or programs or includes prayer in business meetings, Title VII requires that the employer accommodate an employee who asks to be excused for religious reasons, absent a showing of undue hardship. Excusing an employee from religious services normally does not create an undue hardship because it costs the employer nothing and does not disrupt business operations or other workers.

# Employees' Right to Be Free from Proselytizing

- While an employer must accommodate a proselytizing employee, an employer must also protect an employee's right to be free from the proselytizing of another employee, his supervisor, or his employer.
- Employee who was openly critical of supervisor's constant proselytizing and resisted his urged conversion to Christianity was treated less favorably than Christian employees. Held: An employee that resists the proselytizing of other employees and his employer cannot be treated differently than those of whom he complains.
- “Religious discrimination under this paradigm arises where an employee alleges he or she was retaliated against because he or she was unable to fulfill a job requirement due to religious beliefs or observances. In this scenario, a prima facie case requires the employee to demonstrate that the belief or observance was religious in nature, that he called it to the attention of his employer, and that the religious belief or observance was the basis for his discharge or other discriminatory treatment.”

*Panchoosingh v. Gen. Labor Staffing Servs., Inc.*, 2009 WL 961148 (S.D. Fla. Apr. 8, 2009)

## **Conflicts Between Establishment Clause and Religious Observance of Public Employees**

The plaintiff, a public high school football coach, challenged on Title VII and First Amendment grounds his suspension for kneeling and praying at the football field's 50-yard line in view of students and parents immediately after games. The court denied his motion for preliminary injunction on his First Amendment claim, holding that he was unlikely to succeed on the merits because he was acting as a public employee, not a private citizen, when he prayed at a school function in a capacity that may have been viewed as official.

*Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813 (9th Cir. 2017)

## Religious Messages Embedded in Workplace Communications

The Northern District of Iowa held that it did not pose an undue hardship to accommodate a state government psychiatric security specialist who signed internal business e-mails to co-workers *In Christ* in accordance with his religious beliefs in proclaiming his faith in all of his endeavors. There was insufficient evidence to show the communications would cause anyone to perceive that the employer, a government agency, was endorsing Christianity in violation of the Establishment Clause or that the communications caused any disruption in the workplace.

*Mial v. Foxhoven*, 305 F. Supp.3d 984 (N.D. Iowa 2018)

## Religious Paraphernalia

The employer directed plaintiff to remove an “I ♥ Jesus” lanyard because it was not part of his uniform. Plaintiff refused to remove the lanyard, stating he would do so only if other employees were required to remove their religious paraphernalia. The employer was aware that plaintiff was a Born-Again Christian and his insistence that the lanyard was a necessary expression of his faith. The court rejected the employer’s undue hardship defense since courts have held consistently that Title VII’s religious accommodation provision does not violate the Establishment Clause.

*Hickey v. State University of New York at Stony Brook Hospital*, 2012 WL 3064170, at \*2 (E.D.N.Y. July 27, 2012)



## Religious Harassment by Supervisor

- The plaintiff, who was of the same religion as her supervisor, alleged that her supervisor subjected her to religious discrimination when she received negative performance evaluations and as a result her contract was not renewed. The court denied the employer's motion for summary judgment on the plaintiff's disparate treatment claim.
- There was undisputed evidence that plaintiff did not join a Bible study group or attend a religious retreat when invited by her supervisor, and that she told him she was not comfortable beginning each day with a prayer or devotional before work. A reasonable jury could find that the supervisor knew the religious overtures were unwelcome but nonetheless persisted in making them, that plaintiff's rejection of these overtures led him to evaluate and criticize her work harshly, and that the plaintiff's contract would have been renewed but for such criticisms.
- The court also found, however, that the supervisor's actions did not create a hostile work environment.

*Scott v. Montgomery Cty. Sch. Bd.*, 963 F. Supp.2d 544 (W.D. Va. 2013)

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