

Holy cow! Religious discrimination claims are on the rise

Religious discrimination claims have steadily increased over the past 15 years. In 2007, the EEOC received 2,880 religious discrimination charges, a 13 percent increase from the 2,541 charges received in 2006, and more than double the amount filed in the early 1990s. These numbers will likely continue to rise now following the EEOC's 2008 release of a new compliance manual on Religious Discrimination. Intended to address the myriad issues associated with a marked increase in religious diversity in U.S. workplaces, the publication of new guidelines signals the EEOC's intent to focus on religious discrimination claims and crack down on those employers that fail to get on board. This may mean more on-site investigations, probable cause findings, and highly publicized lawsuits.

Title VII, the federal law that prohibits religious discrimination, not only forbids disparate treatment in hiring, promotion, pay, discipline and discharge, but also imposes an affirmative obligation upon employers to accommodate the religious beliefs and practices of their employees. This article is not concerned with those claims that involve an employee who believes he was treated worse than an employee belonging to a different religion. Those claims can be best prevented in much the same way you minimize risk for race, sex or age discrimination claims: consistency, communication, and coordination between human resources and management. Instead, we will focus on what employers, particularly manufacturers, should do to help avoid religious accommodation claims.

Accommodation requests typically relate to work schedules, dress and grooming rules, or religious expression or practice while at work. To comply with the law, employers may

have to make a special exception from, or adjustment to, a particular work requirement so that an employee (or applicant) can practice his or her religion. Every request need not be granted, but an employer must be able to show that the proposed accommodation would impose a more than *de minimis* cost or burden on the company.

Perilous waters ahead

Not surprisingly, religious accommodation requests present some particularly difficult challenges to employers. The following cases illustrate how litigation often results when religious beliefs intersect with operational needs in the modern workplace:

- Minnesota-based Gold'n Plump entered into a consent decree with the EEOC in November 2008, in which the chicken

processor agreed to add a paid break during each shift to accommodate Muslim employees who wish to pray. The Company also agreed to pay \$215,000 to workers who were terminated for taking prayer breaks. The EEOC accused Gold'n Plump of violating Title VII by terminating workers who prayed during their work shifts. In a separate lawsuit, the EEOC alleged that an employment agency used by Gold'n Plump improperly required applicants for jobs at Gold'n Plump to sign forms acknowledging that they might be required to handle pork. The Work Connection separately agreed to stop using the pork handling consent form.

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- In Colorado, a JBS Swift & Co. meatpacking plant terminated 100 Muslim workers who walked off the job after the Company allegedly refused to grant them time to pray during the holy month of Ramadan. The Company reportedly reneged on an informal agreement to allow them time to break their daylong fast at sundown after non-Muslim workers protested.
- The EEOC filed suit against the Grand Central Partnership, a New York City non-profit that provides sanitation, public safety and other services to business in the Grand Central area. The organization was accused of discriminating against a number of its Rastafarian employees because of their dreadlocks. The workers complained that they were disciplined for failing to cover their dreadlocks, while the organization maintained that it attempted to accommodate their employees' beliefs, even providing oversized caps to them.
- Serranos, a Mexican restaurant chain based in Arizona, recently prevailed on appeal in a case brought by the EEOC on behalf of a former manager who claimed the company failed to accommodate her religious beliefs by forbidding her from teaching a Bible study class to several of her subordinates. Company policy prohibits managers from socializing with non-managerial employees outside of business hours. Notably, Serranos offered the manager several options, including a transfer, before terminating her employment.

What you need to know now

There are several key concepts that employers must take into account when dealing with religious accommodation issues.

- **First**, although employers are required to accommodate only those religious beliefs that are sincerely held, the EEOC states that the sincerity of an employee's belief is usually not in dispute. As such, the EEOC suggests that

employers should ordinarily assume the employee's accommodation request is for a sincerely held belief. Before attempting to question an employee further, you must have some objective basis for doubting the religious nature or the sincerity of a particular belief.

- **Second**, employers should check their preconceptions at the door. If an employee's belief is sincerely held, it matters not that the belief appears illogical or does not fit within your understanding of a particular religion. The EEOC stresses that even those beliefs that appear "incomprehensible" or "incorrect" are protected by the law. This means that you must try to accommodate a Catholic who requires time off to attend mass on Friday (rather than Sunday) as well as the Wiccan who seeks time off to celebrate the Samhain Sabbat.
- **Third**, personal preferences and social functions affiliated with religious entities need not be accommodated. The EEOC recognizes that employers need not modify a dress code because an employee with visible tattoos and piercings claims they reflect her belief in body art as self-expression, just as time off does not have to be granted to an employee wishing to prepare food for a church social. Of course, this does not guarantee enterprising employees will not try to find a way to cloak themselves in the protections afforded by the law, as evidenced by an employee of a retail chain who claimed to be a member in the Church of Body Modification in an effort to exempt himself from tattoo and piercing regulations at work.
- **Fourth**, even though an employee or applicant must make you aware of the need for an accommodation, there is no "magic words" requirement. The individual need not mention Title VII or say they need an accommodation. As long as the employee gives you enough information to make you aware that there is a conflict between their beliefs or practices and their job, they have done all that the EEOC expects of them. Once they have done so, you are

on notice and the burden shifts to you to act. As an employer, you should recognize that both your employees and your first line supervisors may be uncomfortable discussing religion. As discussed below, having the right policies and training initiatives in place can help significantly in decreasing the chance that such issues are overlooked.

- **Fifth**, once on notice, employers should be proactive, conferring with the employee in an effort to gather whatever information may be needed to evaluate the request and identifying workable solutions. Just like reasonable accommodation requests under the ADA, employers should strive to keep the lines of communication open, fostering a back-and-forth dialogue (often referred to as the interactive process). Employers need not provide the specific accommodation sought by the employee, but the accommodation will not pass muster if it merely lessens rather than eliminates the conflict, if eliminating the conflict would not pose an undue hardship. The EEOC instructs that the determination of undue hardship must be made on a case-by-case basis. This means there is no pat answer and each situation must be handled independently and without prejudice.

Preventative maintenance

While there is no foolproof formula for preventing discrimination claims, a proactive employer can take a number of steps to minimize the risk that employees will file charges (or lawsuits) and put themselves in a position to better defend against those complaints that are filed. Some steps that you should consider include:

- Issue a stand-alone religious accommodation policy. Issuing such a policy communicates your commitment to EEO compliance to your employees, managers and even any government agencies that may come calling. And in the event you ever find yourself in front of a jury defending against a religious accommoda-

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tion claim, opposing counsel cannot use the absence of such a policy as evidence that you do not take such matters seriously. As a practical matter, having such a policy increases the likelihood that employees will come forward with an accommodation request, rather than assuming that you are aware of the need, that they will bring the request to right person, and that the request will be handled properly.

- Adopt a set of procedures or steps to be followed in handling each accommodation request. The goal is to ensure that requests are handled consistently throughout the company and that those involved in responding to a request know what to do and whom to contact.
- Include religion and religious accommodations as a topic in an upcoming supervisor training program. It need not be the only topic and your supervisors do not need to come away subject matter experts. Rather, your goal should be to train them to be aware of the protections afforded by Title

VII, to understand the risks associated with non-compliance, and that they serve as your eyes and ears on the shop floor, meaning that their job is simply to spot issues and bring them to the attention of senior management or human resources.

- Develop and utilize a standardized form to record requests, the steps taken to respond to the request and identify potential accommodations, all communications with the employee about the request, the accommodation offered, the reason it was offered and the outcome. ■

SURVEILLANCE

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Today's economic climate has provided numerous, unprecedented challenges to factories and other manufacturing facilities. Video surveillance can provide solutions to many of these challenges.

With raw materials more valuable than ever, theft is at historic levels — especially at manufacturing and storage facilities. Also, many companies hold large assets in terms of manufacturing processes and other trade secrets that must be protected.

The world economic crisis has caused tough times for people throughout the world. These tough times can lead people to desperate measures. As a company, it is more vital than ever to protect your assets

Ideal locations for video surveillance:

- **Visitor entrances**
- **Secured entrances/exits**
- **Shipping and docking areas**
- **Inventory and storage areas**
- **High employee traffic areas**
- **Parking area**

— your people, your inventory, your facilities, your company's reputation.

Benefits include:

- **Prevent inventory loss** — Security cameras can discourage theft when outwardly displayed, and if there is theft, the footage history can be viewed to identify and prosecute any offenders. A video surveillance system will pay for itself by reducing inventory write-downs due to 'unexplained missing inventory'.
- **Safety** — Cameras can be located in the riskier areas to ensure employees follow safety processes. Additionally, security cameras can help reduce workers' compensation claims against your company. Finally, cameras located at entrances and exists will guard against robbery and related events.
- **Quality control** — Video surveillance cameras can work as an additional measure to ensure your quality control processes are working. Video footage can be used in training exercises to show the correct, and at times, incorrect ways to complete assigned work.
- **Remote monitoring** — your surveillance system's digital video recorder can be connected to your network to be securely viewed and archived at any of your locations.
- **Financial management** — leas-

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