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Labor & Employment ADVISORY ■

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EEOC Publishes Guidance on Religious Garb and Grooming Practices in the Workplace

On March 6, 2014, the U.S. Equal Employment Opportunity Commission (EEOC) published an informal guidance about employers' responsibilities to accommodate workers' religious grooming or garb practices in the workplace. The guidance reminds employers that Title VII requires them to accommodate an employee whose sincerely held religious belief or practice conflicts with the employer's dress code or preferences, unless doing so would pose an undue hardship on the employer.

Written in a question-and-answer format, the guidance notes that employers are typically required by Title VII to make exceptions to workplace policies to permit both applicants and employees to observe religious dress and grooming practices. Examples of religious dress or grooming practices include (1) wearing religious clothing or articles, such as a Muslim hijab or a Sikh turban; (2) observing a religious prohibition against wearing certain garments; or (3) adhering to shaving or hair length observances. Once an employer is aware that a religious accommodation for an employee is needed, Title VII requires the company to make such an accommodation, unless doing so would pose "more than de minimis" cost or burden on the operation of the employer's business. An accommodation may cause an undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees or requires other employees to do more than their share of potentially hazardous or burdensome work. A religious accommodation that would impose more than ordinary administrative costs would pose an undue hardship, for example (note that this is a *lower* standard than the bar for demonstrating undue hardship in connection with the Americans with Disabilities Act's (ADA) reasonable accommodation obligations).

Employee Requests for Religious Accommodations

According to the guidance, an employee or applicant who needs a religious exception to his employer's dress code or grooming policy usually must ask for one. The EEOC points out that, in most cases, an applicant or employee will not know to ask for an accommodation until the employer makes him aware of the workplace requirement that conflicts with his religious practice. The applicant or employee does not need to use any "magic words," such as "accommodation" or "Title VII," to make the request. There are instances where, even absent a request for an accommodation, it is obvious that an employee's religious practice conflicts with a work policy. In those circumstances, an employer must still grant an accommodation, even absent a specific request from the employee.

Questions about the Sincerity of an Employee's Religious Belief

Title VII's accommodation requirement only applies to religious beliefs that are "sincerely held." The guidance states that, if an employer has a "legitimate reason" to question the sincerity of an applicant's or employee's religious beliefs or the religious nature of a particular practice for which an accommodation has been requested, the employer may ask the applicant or employee for information reasonably needed to evaluate the request. However, the EEOC also notes that an employer should not assume that an employee's religious observance is not sincere just because the observance deviates from commonly followed tenets of the religion or because the "religious" nature of an employee's practice changes over time.

Lawful Ways to Accommodate Employees

The guidance also discusses the ways in which an employer can make accommodations for its religious applicants and employees. For example, it explains that it is unlawful for an employer to assign an applicant or employee who needs an accommodation to a non-customer-contact position because of actual or feared customer preference. Assigning an employee to the back room instead of the front desk because she wears a Muslim hijab, for example, is unlawful. Such an act would violate Title VII's prohibition on limiting, segregating or classifying employees based on religion. Moreover, customer preference is not an "undue hardship," according to the EEOC.

The EEOC also notes that employers should be careful not to rely on concepts such as "image" or "marketing strategies" to deny a requested religious accommodation. Such a decision by the employer may amount to relying on customer preference in violation of Title VII, or otherwise be insufficient to demonstrate that making an accommodation would cause an undue hardship on the employer's business.

The guidance explains that an employer can, however, accommodate an employee's religious dress or grooming practice by offering to have the employee cover the religious attire or item while at work. But, if doing so would violate the employee's religious beliefs, it would not constitute a reasonable accommodation and would be in violation of Title VII. An employer can also retain its usual dress and grooming expectations for its other employees even if it makes an exception to its dress code as a religious accommodation for a religious employee. In addition, where a dress or grooming practice is a personal preference rather than part of a religious observance, it is not protected by Title VII.

According to the guidance, an employer may bar an employee's religious dress or grooming practice because of workplace safety, security or health concerns, so long as the practice actually poses an undue hardship on the operation of the employer's business. In other words, when evaluating requests for religious accommodations, health and safety concerns are part of the undue hardship analysis that employers should consider. (This analysis is different from the undue hardship analysis under the ADA, in which an employer's safety concerns are analyzed *separately* from any potential undue hardship posed by a requested accommodation for a disabled employee.) The guidance points out that, in many cases, there may be an available accommodation that would allow the employee to adhere to his religious practices and still permit the employer to avoid undue hardship. In those instances, the employer must provide such an accommodation.

Employer Liability for Retaliation and Religious Harassment

The guidance also reminds employers that they can be held liable for both retaliation and religious harassment under Title VII. First, it notes that it is unlawful for an employer to retaliate against an applicant or employee who

engaged in protected activity, such as requesting a religious accommodation or opposing a practice the applicant or employee reasonably believes is unlawful under Title VII.

Next, the guidance warns that unlawful religious harassment may occur when an employee or applicant is required to abandon, alter or adopt a religious practice as a condition of employment. In addition, religious harassment may occur if an employee is subjected to unwelcome statements or conduct, such as offensive remarks or physical mistreatment, based on religion. If the harassment is so frequent or severe that it creates a hostile work environment or if the harassment results in an adverse employment action, it is unlawful under Title VII. This is so no matter if the harasser is the victim's supervisor, a supervisor in another department, a co-worker or even a non-employee client or customer. An employer is liable for such harassment where it knew or should have known about the harassment and failed to take prompt and appropriate corrective action.

Conclusion

Overall, the EEOC's guidance reminds employers to remain aware that they are required by federal law to accommodate the religious dress and grooming practices of their applicants and employees. Managers and human resources personnel should also be made aware of employers' religious accommodation requirements under Title VII. This is especially important as the number of religious discrimination charges continues to rise. In 2013, the EEOC received 3,721 charges of alleged religious discrimination, more than double the 1,709 charges it received in 1997.

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