

Religion in the Workplace: Does Faith Have a Place at the Office?

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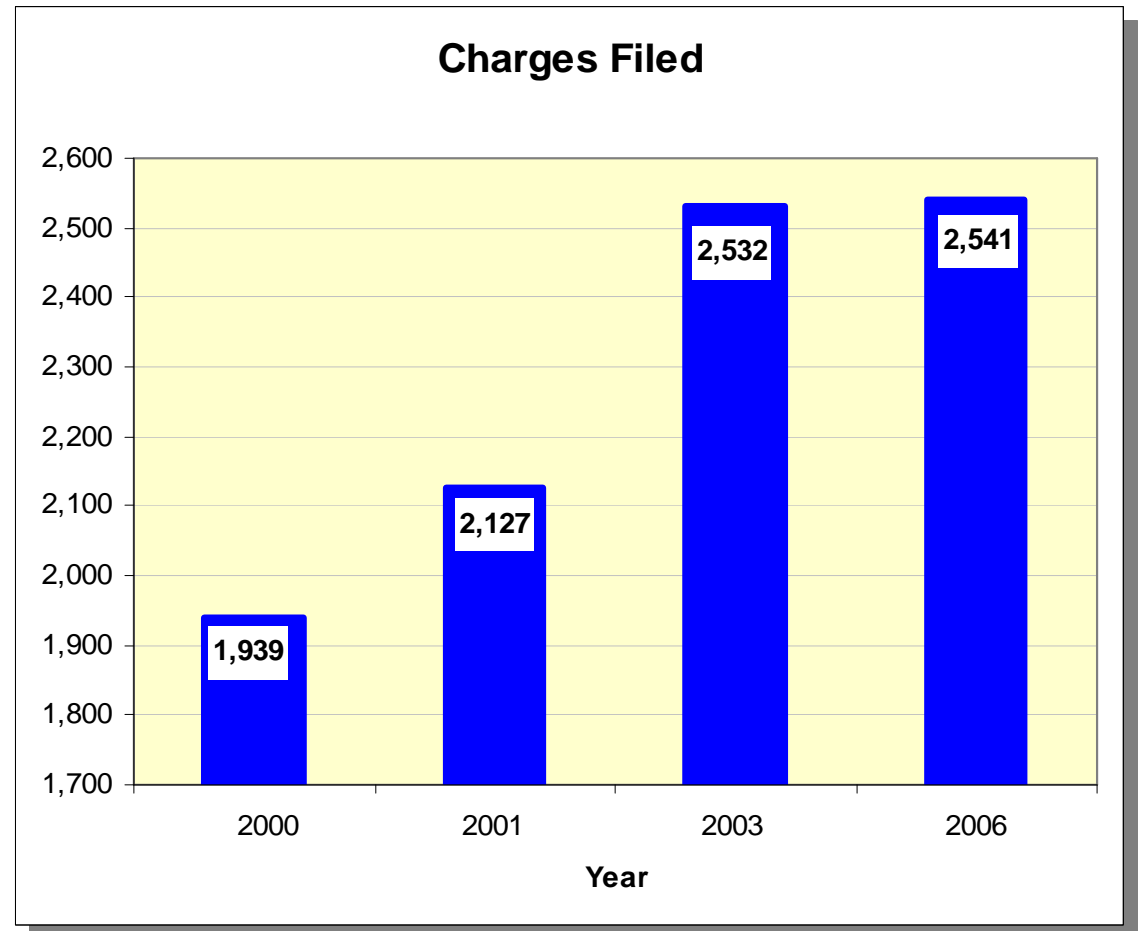
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Religious Discrimination Charges with EEOC on the Rise

EEOC Charges Filed

- ◆ 2000: 1,939
- ◆ 2001: 2,127
- ◆ 2003: 2,532
- ◆ 2006: 2,541





Dual Requirements Regarding Religion in the Workplace

- ◆ Two types of claims:

- 1) harassment/discrimination

- ◆ Prohibitions are the same as other non-discrimination laws

- 2) reasonable accommodation

- ◆ Employers must provide reasonable accommodation of employees' religion



The Statutory Framework



Title VII

- ◆ prohibits harassment or discrimination based on religion
- ◆ requires that employers accommodate employees' religion unless doing so would result in undue hardship on the conduct of the business

Washington's Law Against Discrimination (WLAD)

- ◆ prohibits harassment or discrimination based on religion
- ◆ no case requiring religious accommodation



What Is Protected as Religion?



Statutory Definition of Religion

- ◆ Title VII: “all aspects of religious observance and practice, as well as belief.”
- ◆ Ask: Does the belief function in the employee’s life as a traditional religion would?
- ◆ “Religious” if stems from the employee’s ethical, moral, or religious beliefs about what is right and wrong and is held with the strength of traditional religious convictions. Welsh v. U.S., 398 U.S. 333 (1970).
- ◆ BUT religious beliefs need not be traditional:
 - ◆ Need not be acceptable, consistent, or comprehensible.
 - ◆ Need not have a concept of a God, supreme being, or an afterlife.



Religious Beliefs Broadly Defined

Sincerity of belief appears to be determinative

- ◆ Belief need not be that of the employee's church (EEOC v. Alliant Techsystems, Inc., 78 F.E.P. 37 (W.D. Va. 1998))
 - ◆ Pastor said church did not prohibit union membership
 - ◆ Pastor and church doctrine not determinative
- ◆ Past conduct is not indicative of current belief (Copper v. Oak Rubber Co., 15 F.3d 1375 (8th Cir. 1994))
 - ◆ Employee worked on Sabbath before, then later refused
 - ◆ But employee's religious beliefs had grown



Religiously Proscribed Conduct vs. Personal Preference

Tiano v. Dillard Dept. Stores, Inc., 139 F.3d 679 (9th Cir. 1998)

- ◆ “Calling from God” to attend pilgrimage during peak holiday season
- ◆ Pilgrimage was religious belief
- ◆ Dates of travel not mandated by her religion
- ◆ No need to accommodate leave request



Racist Ideology and Religion

- ◆ The Klu Klux Klan: NOT a religion (Slater v. King Soopers, Inc., 809 F. Supp. 809 (D. Colo. 1992))

- ◆ World Church of the Creator's "Creativity": promotes white supremacy, IS a religion (Peterson v. Wilmur Communications, Inc., 205 F. Supp. 2d 1014 (E.D. Wis. 2002)).
 - ◆ In employee's own scheme of things, Creativity functions as a religion
 - ◆ Fact of no God, afterlife, or any sort of supreme being not determinative
 - ◆ Distinct from KKK
 - ◆ In practice: religion is what you make it?



Religious Harassment & Discrimination



Firing Employee for Religious Beliefs = Discrimination

“Creativity” case: Peterson v. Wilmur Communications, Inc., 205 F. Supp. 2d 1014 (E.D. Wis. 2002)

- ◆ Employee supervised non-white employees
- ◆ Employer said undue hardship
- ◆ Court held: religious discrimination to terminate him
 - ◆ No complaints filed about him
 - ◆ Must distinguish between religious beliefs and religious practices
- ◆ Undue hardship defense limited to accommodations of religious practices and does not apply to religious beliefs



Religious Accommodation



Elements of an Accommodation Claim

- ◆ Two-parts to accommodation claims:
 1. Employee must show:
 - ◆ he has a bona fide religious belief or practice that conflicts with an employment requirement,
 - ◆ he informed the employer of this belief, and
 - ◆ he was disciplined or threatened to be disciplined for failing to comply with the conflicting employment requirement.
 2. Employer must show:
 - ◆ it attempted to reasonably accommodate; or
 - ◆ accommodation would result in undue hardship on employer's business.



Reasonable Accommodation – Interactive Process

- ◆ Employer **MUST** engage in interactive process:
 - ◆ Talk with employee
 - ◆ Consider mutual proposals of accommodations
 - ◆ Evaluate proposals for undue hardship
 - ◆ Select accommodations that are reasonable
 - ◆ Try, try again



Types of Accommodation

- ◆ Anderson v. U.S.F. Logistics, Inc., 274 F.3d 470 (7th Cir. 2001)
 - ◆ Have a Blessed Day!
 - ◆ Employer offered alternatives; employee wanted all or nothing
 - ◆ Need not offer the accommodation preferred by the employee
 - ◆ Legitimate concern about customer relationships prevails



Accommodation May Result in Disparate Treatment

- ◆ Opuku-Boateng v. State of Calif., 95 F.3d 1461 (9th Cir. 1996)
 - ◆ Employee could not work Sabbath at facility which operated 24 hours every day.
 - ◆ Employee proposed alternative accommodations:
 - ◆ working other undesirable shifts
 - ◆ shift trade
 - ◆ transfer to a different facility.
 - ◆ Court held that these were all reasonable accommodations.
 - ◆ Reasonable accommodations may result in disparate treatment of other employees.



Accommodation – When Policies and Beliefs Collide

- ◆ Buonanno v. AT&T Broadband, 313 F. Supp. 2d 1069 (D. Colo. 2004)
 - ◆ **Employer Diversity Policy:** “Each person at AT&T Broadband is charged with the responsibility to fully recognize, respect and value the difference among all of us.”
 - ◆ Christian employee raised concerns about signing; promised he wouldn’t discriminate.
 - ◆ Employer failed to explore or explain policy language to employee
 - ◆ Employer failed to inquire about employee’s particular concerns



Accommodation – When Policies and Beliefs Collide

- ◆ Buonanno v. AT&T Broadband, 313 F. Supp. 2d 1069 (D. Colo. 2004)
 - ◆ Employee fired when refused to sign.
 - ◆ Court held: failure to accommodate employee's religious beliefs
 - ◆ Cost of error: \$150,000



Undue Hardship

- ◆ Undue Hardship = more than a *de minimis* cost to the employer.
- ◆ Undue Hardship includes:
 - ◆ Obligations under Collective Bargaining Agreement
 - ◆ Additional costs
 - ◆ Lost efficiency
 - ◆ Higher wages



Undue Hardship Cannot Be Speculative

- ◆ EEOC v. Alamo Rent-a-Car, 432 F. Supp. 2d 1006 (D. Ariz. 2006)
 - ◆ Muslim employee requested to wear head scarf during Ramadan
 - ◆ Head scarf was contrary to clothing policy
 - ◆ Employer would allow only when employee not in front of customers
 - ◆ Employer's "floodgate" argument too speculative



Undue Hardship Requires Investigation of Alternatives

- ◆ Opuku-Boateng v. State of Calif., 95 F.3d 1461 (9th Cir. 1996)
 - ◆ Employee requests Sabbath off
 - ◆ Employer's reliance on policies and typical practices not evidence of undue hardship
 - ◆ Court rejected undue hardship claim – employer never investigated:
 - ◆ Other employees' willingness to trade shifts
 - ◆ Whether employer's legitimate interests would still be served by assigning employee to other shifts.



Undue Hardship Where Accommodation Requires Violation of Law

- ◆ Sutton v. Providence St. Joseph Med. Center, 192 F.3d 826 (9th Cir. 1999)
 - ◆ Employee refused to give SSN
 - ◆ SSN = “mark of the beast”
 - ◆ Violation of federal law not to report SSN
 - ◆ Need not break the law



Undue Hardship Where Accommodation Requires Violation of Company Anti-Harassment Policy

- ◆ Peterson v. Hewlett-Packard Co., 358 F.3d 599 (9th Cir. 2004)
 - ◆ Diversity posters featured gay employee, employees of differing ethnicities and ages
 - ◆ Devout Christian employee posts anti-gay Biblical passages
 - ◆ Employee intended passages to be hurtful to gay co-workers
 - ◆ Employee's passages removed because violative of anti-harassment policies.
 - ◆ Repeated meetings with employee to discuss his concerns
 - ◆ Employee fired for insubordination when failed to remove postings



Undue Hardship Where Accommodation Requires Violation of Company Anti-Harassment Policy

- ◆ Peterson v. Hewlett-Packard Co., 358 F.3d 599 (9th Cir. 2004) (cont.)
 - ◆ Employee's uncompromising accommodations imposed undue hardship
 - ◆ Employee's exercise of religious beliefs tantamount to harassment
 - ◆ Irritation doesn't show undue hardship
 - ◆ But need not accommodate religion when exercise of religious beliefs is meant to demean or hurt co-workers.
 - ◆ Employer had legitimate interest in diversity



Undue Hardship Where Refusal to Perform Job Duties

- ◆ Bruff v. North Miss. Health Servs., Inc., 244 F.3d 495 (5th Cir. 2001)
 - ◆ Employee was counselor in Employee Assistance Program (EAP)
 - ◆ Refused to counsel gay patient citing religious beliefs
 - ◆ Proposed accommodation to shift responsibilities to other counselors for subset of patients not feasible
 - ◆ Evidence of undue hardship:
 - ◆ Unpredictability of patient issues
 - ◆ Limited number of counselors
 - ◆ Travel required of counselors
 - ◆ Patients need consistency



Undue Hardship – Schedules

- ◆ Balint v. Carson City, 180 F.3d 1047 (9th Cir. 1999)
 - ◆ 24/7 operation (detention facility)
 - ◆ Employee requests Sabbath off
 - ◆ Employer claimed undue hardship
 - ◆ Established shift-bidding system
 - ◆ Prohibition on trading shifts on a regular basis
 - ◆ Undue Hardship to modify seniority shift bidding system because:
 - ◆ Sabbath was one of the busiest and also least desirable days to work,
 - ◆ Modifying shift bidding system would affect co-workers' seniority rights
 - ◆ Shift trades would cause the employer to incur additional costs.
 - ◆ But, other accommodations might be feasible



Scenarios For Discussion



Scenario #1

- ◆ Employer allows various groups of employees to form official groups and to utilize employer's facilities to meet.
- ◆ Employer prohibits religious groups from using facilities.
- ◆ After complaints, the employer allows religious groups but requires that all groups have the purpose of professional development and teamwork.
- ◆ Several months later, members of an evangelical group seem to have a strong bond and not to share work with non-members.



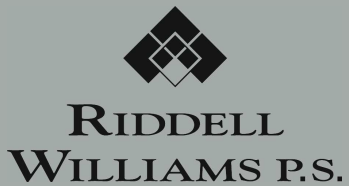
Scenario #2

- ◆ Muslim employee routinely greets co-workers, customers, and vendors with traditional Muslim greeting “Assalamu Alaikum,” which means “peace be unto you.”
- ◆ Co-workers complain that the greeting makes them feel uncomfortable.
- ◆ Customers seem bewildered and confused, but none have complained.



Scenario #3

- ◆ Christian employee's religious beliefs require that she proselytize others.
- ◆ When in lunch room on lunch break, employee tries to engage co-workers in religious discussions.
- ◆ Employee puts basket of Bibles outside office for others to take.
- ◆ Common practice in workplace for individual employees to post flyers and cartoons on office doors, including some political flyers and cartoons.
 - ◆ Some political cartoons make fun of evangelicals, among other groups.



Questions?

Please contact us any time with additional questions.

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