



Gibson, McClure, Wallace & Daniels, LLP



ing in the Workplace

As we move toward the holiday season, it bears repeating that Title VII and the Texas Labor Code prohibit not only discrimination based on race, color, national origin, and sex, but religious discrimination as well. This summer the EEOC updated its *Compliance Manual* with a section providing guidance and instructions for investigating and analyzing allegations of religious discrimination. This could signal a new enforcement emphasis by the EEOC. Clearly, the United States is experiencing an increase in religious diversity, and these Charges are on the rise. Claims of religious discrimination may take many forms – disparate treatment in hiring, assignments, discipline, promotion, or benefits; harassment or hostile environment; failure to accommodate religious beliefs or practices; and retaliation for protected activity. The new section instructs EEOC investigators to proactively investigate and analyze these Charges for all types of religious discrimination, even if the employee only raises one claim. Thus, they can be very costly to employers.

Not surprisingly, the EEOC’s approach is broad. Title VII generally defines “religion” to include all aspects of religious observance, practice, and belief, unless an employer demonstrates that reasonably accommodating an employee’s or applicant’s religious observance or practice would cause undue hardship for the employer’s business. The EEOC construes “religion” to encompass not only traditional, organized faiths, but also new, uncommon beliefs that are not fundamental to any formal church or sect, even if they seem illogical or unreasonable to others. Further, while Title VII requires employers to accommodate only “sincerely held beliefs,” the EEOC takes the position that beliefs are “religious” for Title VII purpose if they are “religious” in the employee’s own scheme of things – not only theistic beliefs, but also moral or ethical beliefs about what is right and wrong – if they are sincerely held with the strength of traditional religious views. However, social, political, or economic views and mere personal preferences do not qualify as beliefs for Title VII protection. Obviously, whether or not a belief is “religious” or “sincerely held” requires a fact-specific inquiry. Therefore, managers and supervisors should be sensitive to employees’ religious concerns and not assume that an employee’s belief is insincere simply because some of his practices deviate from common religious observances.

Employers are often placed in the difficult position of deciding what kind of employee conduct is “religious,” and therefore entitled to reasonable accommodation under Title VII. Protected religious practices may include traditional activities such as attending worship services, praying, and wearing religious clothing or symbols, and less traditional expressions such as dietary rules and proselytizing – as well as an employee’s choice to refrain from any such activities. Thus, a Catholic employee’s request to attend church services on Good Friday, a Muslim employee’s request to wear a headscarf, and an atheist’s request to be excused from a religious invocation all implicate religious beliefs or practices, which an employer may have to accommodate. However, one employee may engage in a particular practice, such as dietary restrictions, for religious reasons while another engages

in a similar practice for purely secular reasons. For example, employees may complain that an employer's dress code forbidding visible piercings and tattoos impinges upon their belief in body art as a form of self expression. Again, it all depends upon whether the body art is a symbol of a moral or ethical belief system, or merely a personal preference. The *Compliance Manual* instructs that determining whether or not a practice is "religious" turns on the employee's subjective motivation, so this too must be a situational, case-by-case decision.

Religious holidays frequently give rise to situations calling for such decisions. In general, employers should accommodate employees' religious observances if it can be accomplished with little or no expense or disruption to the employer's business. Reasonable accommodations could include schedule changes, voluntary swapping of shifts or assignments, slight modification of dress policies, and display of religious symbols in non-public areas. For example, some employees' religious beliefs do not allow them to celebrate any holidays, including birthdays, and they should be excused from participating in holiday-themed activities such as singing or exchanging gifts. Similarly, slight scheduling changes may reasonably accommodate employees' requests for time to pray, meditate, or attend holiday services. In some cases, non-Christian employees have complained that the employer should remove wreaths, trees, and other Christmas decorations, or alternatively should add symbols associated with other religions. The EEOC *Compliance Manual* acknowledges that courts have not required employers to remove Christmas decorations in such situations – largely because decorations such as wreaths, trees, and reindeer have become secular, as opposed to religious. Nor have employers been required to add decorations denoting other religions. However, employers are counseled that "sensitivity to the diversity of their workplaces promotes positive employee relations."

Some accommodations pose a greater problem for employers because they would disrupt the business operation. Frequently accommodation requests involve work schedules, dress and grooming codes, prayer breaks, or means of religious expression at work. A reasonable accommodation may be any adjustment that will allow an employee to comply with religious beliefs, but will impose no more than *de minimis* cost or burden upon the employer. This determination involves not only the monetary cost, but also job efficiency, safety concerns, and impact upon the rights or workload of other employees and will, therefore, depend upon an individual employer's circumstances. Generally, employers are not required to accommodate one employee's religious expression – such as displaying symbols or proselytizing – where it would constitute harassment of co-workers. You may have seen recent news articles about problems at a meat packing plant in the midwest where Muslim workers requested a prayer break each day at sunset during Ramadan. Because they worked on a rapid assembly line, it was too costly and disruptive to shut the line down or to allow multiple short breaks. Management's efforts to reschedule the dinner break or shorten the affected shift were met with protests by other workers, and finally some 200 Muslim workers walked out.

The EEOC has also issued a *Best Practices* guide for eliminating all categories of religious discrimination in the workplace. In general, its suggestions impose upon employers a very proactive role in identifying and accommodating employees' religious beliefs and practices. Nevertheless, some are worth noting. For example, the guide encourages employers to conduct anti-harassment training for managers and employees, including a discussion of religious expression and the need for all employees to be sensitive to the beliefs or non-beliefs of others. It further recommends that employers develop standard internal procedures for individually assessing religious accommodation requests. These simple measures reflect a common-sense approach to coexisting in the diverse population of the American workforce and may keep employees' doctrinal differences from becoming costly discrimination charges. The complete *Best Practices* guide is available online at www.eeoc.gov/policy/docs/best_practices_religion.html.