



EEOC Emphasizes the Importance of Providing Appropriate Accommodations for Religious Attire and Grooming Practices in the Workplace

NEWSLETTER
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Linda P. Wills
Partner, Houston
619.881.3317
linda.wills@wilsonelser.com

As religious diversity in the United States increases, and in light of the ever-present role of religion in international political tensions, religious discrimination claims have increased in recent years. Charges filed with the U.S. Equal Employment Opportunity Commission (EEOC) asserting religious discrimination have consistently exceeded 3,000 each year since 2008 and totaled 3,721 in the EEOC's fiscal year 2013, per the *EEOC Charge Statistics*.

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A component of the prohibition against religious discrimination under Title VII is a requirement that a covered employer reasonably accommodate an employee's religious belief to the extent that doing so does not create an undue hardship on the employer. The obligation of an employer to reasonably accommodate an employee's religious belief is less onerous than a request for an accommodation of disability. An employer is not required to accommodate a religious belief if to do so would impose more than a *de minimis* burden on the employee. For example, it has been recognized that an employer is not required to grant a request for an accommodation that shifts a material burden to co-workers, impairs workplace safety, violates a seniority system or imposes more than a *de minimis* cost on the business. *Continued*



GUIDANCE

While employers are generally aware of the obligation not to discriminate against an employee or applicant based on religion, the obligation of an employer to provide religious accommodation in the workplace is a more challenging obligation for supervisors to administer in the day-to-day work environment. To assist employers in understanding the obligations as to accommodations requests as they relate to modification of dress code and grooming policies, the EEOC recently issued two publications addressing obligations of employers with respect to religious dress and grooming under Title VII.

On March 6, 2014, the EEOC issued guidance in question-and-answer format entitled “Religious Garb and Grooming in the Workplace: Rights and Responsibilities” (Guidance), accompanied by a fact sheet outlining the employer’s obligations. The EEOC Guidance seeks to educate employers on the obligations under Title VII as to modifications to work rules required to accommodate religious dress and personal appearance. While the Guidance is not the law, and EEOC Guidance can be rejected by the courts, the Guidance clearly states the EEOC’s position. Compliance with the Guidance is an effective means of reducing the risk of claims.

The Guidance confirms that the EEOC does recognize that a request for modification of a required dress or grooming standard is properly denied based on workplace safety or health concerns. However, the EEOC emphasizes that such denial must be based on an actual safety risk, and not just an assumption that the requested exception will cause an enhanced safety risk.

In an example given by the EEOC, an employer may legitimately have a dress code requiring that pants be worn in an industrial area. However, if a female employee requests that she be allowed to wear a long but close-fitting skirt because of her Pentecostal religion, it would not be permissible for the employer to outright reject the request without actually reviewing the machinery at issue to determine whether the clothing does in fact create an actual safety risk.

Further, the Guidance clarifies that if an employer makes an exception to its dress code or uniform requirements to accommodate one employee’s religious beliefs, the exception does not need to be extended to co-workers. Therefore, if one employee is allowed to wear a long skirt for religious reasons, the employer does not need to allow others to wear skirts.

A key focus of the EEOC’s new Guidance is an emphasis on the long-standing rule that customer preference can never be a justification for discrimination as to a protected class under Title VII. As such, an employer may not deny an accommodation requested because of customer preference. An EEOC example cites a coffee shop worker who, as part of his Sikh religion, wears a turban while working at the front counter. In the EEOC’s example, construction crew customers began avoiding the coffee shop when the worker in question was working, under the belief that the worker was a Muslim, which made them uncomfortable in light of the September 11 attacks. In the EEOC’s example, the manager notifies the employee that he is being terminated because certain customers are avoiding the coffee shop while he is working. The EEOC emphasizes that this would be an illegal termination in violation of Title VII. Further, it would be a violation of Title VII’s prohibition on religious discrimination to transfer the employee to a position where he is not visible to customers. And, it would be a violation of Title VII not to allow the religious dress.

As a follow-up to several well-publicized cases addressing clothing retailer dress codes seeking to establish a preference as to a particular “look,” the EEOC emphasizes that the employer must make an exception to accommodate the employee’s religious practice. It would be appropriate to have a dialog to determine how this can reasonably be accommodated and ideally be consistent with the employer’s dress codes. For example, the religious clothing could perhaps be worn in a specific color, or with the uniform shirt coupled with a skirt instead of shorts or pants.

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As to grooming requirements, the EEOC emphasizes that if a policy requires that employees be clean shaven and facial hair is a religious tenet, the employer must accommodate the request. However, if the requirement of a clean shave is present for safety reasons and there are no reasonable safe alternatives that would allow the facial hair, the dress code can be enforced. It is also the employee's obligation to inform the employer that the modification is requested for religious reasons and not just a matter of personal preference.

TRAINING

The Guidance covers a wide range of situations and is a helpful outline for use by employers in training frontline managers. Most managers are more adept at uniformly enforcing workplace policies and would benefit from training on how to recognize and respond appropriately to a request for a religious accommodation, including when to seek assistance from safety advisers, human resources representatives or legal counsel.

The obligations of employers to manage the workplace and comply with the requirements under Title VII to accommodate religious beliefs are becoming

increasingly complex. "Religious beliefs" entitled to protection under Title VII also include the absence of religious belief. For example, a non-religious-based employer cannot make an employee wear religious articles, such as a cross, if the employee objects on the grounds of non-belief.

Employers should train frontline management and those conducting job interviews to recognize and respect requests for religious accommodations and to seek assistance when in receipt of a request that is not quickly and easily granted to ensure compliance with the obligations under Title VII. Further, religious accommodation issues and the need for co-workers to be respectful of other employees' religious beliefs in the workplace should be included in an employer's ongoing workplace professionalism and anti-harassment training.

Proper policies that evolve with changes in the law and business needs are crucial in today's work environment. Wilson Elser's Employment & Labor practice members are available to assist in the preparation of policies and training for the evolving workforce.

Members of Wilson Elser's Employment & Labor practice, located throughout the country, provide one convenient point of contact for our clients. Please contact any of the following partners to access the experience and capabilities of this formidable team.

Contacts:

National Practice Chair
Ricki Roer
ricki.roer@wilsonelser.com
212.915.5375
Northeast

By Region:

Midatlantic
Robert Wallace
robert.wallace@wilsonelser.com

Southeast
Sherril Colombo
sherril.colombo@wilsonelser.com

Midwest
David Holmes
david.holmes@wilsonelser.com

Southwest
Linda Wills
linda.wills@wilsonelser.com

West
Dean Rocco
dean.rocco@wilsonelser.com

Steve Joffe
steve.joffe@wilsonelser.com

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