

EEOC Issues New Compliance Manual Section on Religious Discrimination, Offering Guidance on Ways to Prevent, Recognize and Eliminate Religious Discrimination in the Workplace

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**Breaking Developments In Labor and Employment Law
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On July 22, 2008, the United States Equal Employment Opportunity Commission (“EEOC”) issued a new Compliance Manual Section regarding workplace discrimination on the basis of religion. This new Section includes what the EEOC calls a “comprehensive review of the relevant provisions of Title VII of the Civil Rights Act of 1964 and the EEOC’s policies regarding religious discrimination, harassment and accommodation.” The EEOC also issued guidelines on best practices for both employers and employees, and a question and answer fact sheet.

Religious discrimination charge filings with the EEOC have doubled over the last 15 years. The EEOC issued these new guidelines in response to this increase in charges, as well as increased religious diversity, and in response to requests from employers and agency personnel who investigate and litigate claims of religious discrimination. This new information is a valuable primer for employees and employers alike, who are looking for a better understanding of workplace religious discrimination.

The EEOC has provided three very useful new tools:

1. Section 12 to the EEOC Compliance Manual: Religious Discrimination. This is the most in-depth of the three new documents. This new Section of the Compliance Manual (“Section 12”) provides an exhaustive overview of religious discrimination in the workplace, outlines who is covered by Title VII and offers easy-to-understand definitions of key terms such as “religion,” “religious beliefs,” “religious observances or practices” and “sincerely held.” Section 12 also provides multiple “real world” examples that will help employers deal with everyday situations in their own businesses.

Section 12 addresses some of the thornier issues that employers may face:

- Can an employer make decisions based on customer preferences? For example, what if a customer says he is uncomfortable interacting with an employee who wears traditional Muslim attire?
- What can you do with employees who proselytize or otherwise try to convince coworkers to join a certain religion?

- When are insensitive comments enough to create an actionable hostile work environment?
- How do you handle reasonable accommodations? For example, what do you do about an employee who requests a non-regular work schedule because of his or her religious beliefs, but you would otherwise not let other employees work this type of modified schedule?
- What can you do if you question the sincerity of an employee's religious beliefs?

Of particular interest to employers, Section 12 suggests numerous ideas and alternatives for reasonably accommodating employees' religious beliefs. In addition, Section 12 lists dozens of employer "best practices" tips for preventing, identifying and stopping religious discrimination in the workplace.

2. Best Practices for Eradicating Religious Discrimination in the Workplace. These "Best Practices" guidelines pick up where Section 12 leaves off, providing a succinct list of tips for employees and employers alike. These guidelines offer helpful advice, such as the following:

- Employers should consider adopting flexible leave and scheduling policies and procedures that will often allow employees to meet their religious and other personal needs. Such policies can reduce individual requests for exceptions.
- Employers can reduce the risk of religious discrimination claims by carefully and timely recording the accurate business reasons for disciplinary or performance-related actions and sharing these reasons with the affected employees.
- While supervisors are permitted to engage in certain religious expression, they should avoid expression that might – due to their supervisory authority – reasonably be perceived by subordinates as coercive, even when not so intended.

3. Questions and Answers: Religious Discrimination in the Workplace. This condensed version of Section 12 is a quick reference guide for employers who want an overview of some of the basics regarding Title VII and religious discrimination.

What this Means for Employers

Section 12 provides an opportunity for employers to familiarize themselves with the EEOC's perspective on Title VII's prohibition against religion discrimination, as well as the EEOC's suggestions on how to eradicate religious discrimination in the workplace. Employers should also consider comparing the "Best Practices" listed in these guidelines to their own policies and procedures to increase the likelihood that their policies will pass muster with the EEOC, especially in light of the significant increase in religious discrimination charges. Implementing some or all of the EEOC's "Best Practices" may well reduce the likelihood of facing discrimination claims or, in the event of an EEOC charge or litigation that alleges religious discrimination, enhance the employer's opportunity for a favorable outcome. Finally, employers can use any combination of these new guidelines to assist their managers, supervisors and employees in understanding their rights and obligations under Title VII as it relates to religious discrimination.

All of these documents are available at www.eeoc.gov.

For more information, please contact the Labor and Employment Law Practice Group at Lane Powell:

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