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Labor and Employment Law Update

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Employer Alert: The Washington Supreme Court Mandates New Obligations for Employers Under State Law to Accommodate Employees' Religious Beliefs

In a dramatic shift in Washington state law on accommodating religious beliefs, the Washington Supreme Court's decision in *Kumar v. Gate Gourmet, Inc.* recognized, for the first time, that the Washington Law Against Discrimination (WLAD) imposes an obligation on employers to provide reasonable accommodations for employees' bona fide religious beliefs. The *Kumar* decision overruled an earlier appellate court decision holding that the WLAD does not recognize a "failure-to-accommodate" theory for religious accommodations. Thus, the *Kumar* decision has recognized a state law failure-to-accommodate claim where none previously existed.

Facially Neutral Meal Policy Gives Rise to a Class Action Claim Under the WLAD for Failure to Accommodate Religious Beliefs

Gate Gourmet provides meals for train and airplane meal service. For security reasons, the company meal policy prohibited employees from bringing their own food into the workplace and from leaving the premises during their 30-minute meal breaks to obtain food elsewhere. Instead, the company provided two meal options to its employees — one vegetarian and one meat-based. Certain employees alleged that the company-provided meals contained ingredients they could not eat due to their religious beliefs. For example, certain employees alleged that the "vegetarian" meals were actually made with animal by-products, which violated their religious beliefs. Similarly, other employees asserted that for religious reasons they could not eat the beef-pork meatballs provided in the company meals. When the employees raised their concerns about the meatballs to Gate Gourmet, the company allegedly temporarily switched to turkey meatballs, but subsequently switched back to the beef-pork meatballs without notifying the employees, and then refused to make any additional changes to the company-provided meals. The plaintiff-employees filed a class action lawsuit against the company, alleging, among other claims, that the company's meal policy violated the WLAD by forcing employees to either consume foods that violated their religious beliefs or go without eating during their meal breaks.

The Supreme Court Announces a Cause of Action Under the WLAD for Failure to Accommodate Religious Beliefs

Our Supreme Court in *Kumar* considered and rejected the holding of an earlier court of appeals case, *Short v. Battle Ground School District*. The Court of Appeals in *Short* had previously concluded that there is no cause of action under the WLAD for reasonable accommodation of

religious beliefs. The Supreme Court disagreed and held that, even though the plain language of the WLAD does not specifically require employers to accommodate religious beliefs, and the Washington State Human Rights Commission (WSHRC) has not promulgated rules requiring accommodation, the WLAD has an implied requirement that employers must reasonably accommodate their employees' religious belief.

To establish a failure-to-accommodate claim under the WLAD, an employee must show that: (1) he or she had a bona fide religious belief, the practice of which conflicted with employment duties; (2) he or she informed the employer of the beliefs and the conflict; and (3) the employer responded by subjecting the employee to threatened or actual discriminatory treatment.

The Supreme Court also confirmed that an employer may defend such a claim by showing that it offered the employee a reasonable accommodation or that an accommodation would be an "undue hardship" for the employer. Although the term "undue hardship" is not defined, the Supreme Court recognized that, with respect to accommodation of religious beliefs, an accommodation that requires an employer to bear more than a *de minimis* cost may be considered an undue hardship. And an undue hardship may be something other than a financial burden — e.g., legal obligations or the interests of other clients or of other employees.

What Does This Decision Mean for Employers?

Many employers are already subject to Title VII's requirement that covered employers provide reasonable accommodation for religious beliefs. The decision in *Kumar* does, however, change the landscape in Washington. First, Title VII applies only to those employers with 15 or more employees, whereas the WLAD applies to employers with eight or more employees. Thus, smaller employers (fewer than 15 but more than eight employees) will now have to address whether they must provide reasonable accommodation for religious beliefs. Further, because the WLAD (unlike Title VII) does not require employees to exhaust their administrative remedies before filing a lawsuit, employees may be able to file failure-to-accommodate religious belief claims against their employers without first filing a charge with the Equal Employment Opportunity Commission or WSHRC.

What Should Employers Do Now?

As always, employers should keep their eyes and ears open for any comments or actions by employees that might be reasonably construed as a request for accommodation of a religious belief. In particular, requests for and approval of religious accommodations, such as allowing an employee to take regular breaks during working hours to observe times of prayer, allowing an employee to take certain days off to observe days of rest or other religious events, or allowing an employee to be excused from a particular dress code, are becoming more common.

Employers should also take special care when drafting policies and implementing procedures that may have a disparate impact on certain religions. Additionally, when faced with a request for an accommodation based on religious beliefs, an employer should not rely on the rigid application of an otherwise facially-neutral policy to deny such a request. Instead the employer should engage in the interactive process with the employee to determine whether the employer can identify and provide a reasonable accommodation for the employee's religious belief that

does not result in undue hardship to the employer. Employers should also consider designating, appropriately training, and identifying for employees an individual in the organization to whom employees should bring requests for accommodation.

For more information, please contact the Labor and Employment Practice Group at Lane Powell: employlaw@lanepowell.com