

LIBERTY COUNSEL RELIGIOUS RIGHTS IN THE WORKPLACE

Religious Rights in the Workplace

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Federal law, commonly referred to as the Civil Rights Act of 1964 or Title VII,⁽¹⁾ prohibits most employers⁽²⁾ and unions⁽³⁾ from discriminating against their employees on the basis of religion.⁽⁴⁾ Title VII applies to any employer having fifteen or more employees for each working day in each of the twenty or more calendar weeks in the current or preceding calendar year.⁽⁵⁾ Other state or local laws may also prevent discrimination on the basis of religion and such laws may apply to employers with less than fifteen employees.⁽⁶⁾

Title VII states as follows:

It shall be an unlawful employment practice for an employer --

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual

with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, **religion**, sex, or national origin; or

(2) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.⁽⁷⁾

Title VII then defines "religion" as follows:

The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.⁽⁸⁾

Under Title VII, **an employer is required to accommodate an employee's sincerely held religious belief** unless the employer can prove that the accommodation would result in an undue hardship to the employer's business.

Three Aspects of a Title VII Claim

The three aspects of a Title VII claim involve the employee's sincerely held religious belief, the employer's accommodation of that belief, and the employer's defense that it cannot accommodate the belief because the accommodation would result in an undue hardship.

Sincerely Held Religious Belief

Title VII prohibits discrimination based upon an employee's religious belief. This discrimination applies not only to hiring and firing but to all terms, conditions, and privileges of employment. Under Title VII the term "religion" is broadly defined to include "all aspects such as religious observance and practice, as well as belief."⁽⁹⁾ **The Equal Employment Opportunity Commission (hereafter "EEOC"), defines religious practice to include "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. . . . The fact that no religious group establishes such beliefs or the fact that the religious group to which the individual professes to belong may not set the beliefs, will not determine whether the belief is a religious belief of the**

employee. . . "(10) Title VII protects individual religious practices even though the practice is not mandated by the religious institution to which the employee belongs. (11)

The employee should apprise the employer of this sincerely held religious belief. For example, if the employer requires the employee to work on the Sabbath or Sunday, and if the employee has a sincerely held religious belief to attend church and worship with fellow believers on that day, then the employee should advise the employer of this belief.

The employee should state the belief not only verbally but in writing, and refer to any biblical or religious-based references that form the basis of this belief. The employee should also advise the employer as to why this belief conflicts with the employer's practice. **An employee cannot claim religious discrimination if the employer is unaware of the belief being violated.**

Accommodation

Once the employee advises the employer of the sincerely held religious belief, the burden shifts to the employer to accommodate that belief. The employee should suggest accommodation

alternatives. In the example of working on the Sabbath or Sunday noted above, the employee can offer to work on an alternative day or suggest other employees who may work the Sabbath or Sunday shift.

The employer must undertake efforts to accommodate the employee's religious belief. An employer cannot establish a zero tolerance policy against accommodating religious belief and practice. The employer must take seriously its obligation to accommodate the belief.

Undue Hardship

Once apprised of the employee's sincerely held religious belief, an employer is required to accommodate the belief unless to do so would be an undue hardship on the employer's business. **An undue hardship means more than mere inconvenience. An employer cannot claim that employee morale, as a result of the accommodation, is itself undue hardship. Minimal expense is not undue hardship. Undue hardship is determined case by case.** The employer must undertake serious attempts to accommodate the employee's belief.

When To File A Title VII Claim

If an employer fails or refuses to accommodate an employee's sincerely held religious belief, the employee may file a Title VII religious discrimination claim with the EEOC. **An employee cannot seek legal recourse unless the employee first files an administrative claim with EEOC. (12)**

In most states, an employee must file a claim within three hundred days of the discrimination. (13) However, a few states provide that the claim must be filed within one hundred eighty days. (14)

Filing The Complaint

A Title VII claim is initiated by filing a complaint form with the nearest EEOC office. The nearest office can be located by calling (800) 669-EEOC. In the complaint, the employee should describe the religious belief, the employer practice which burdened or discriminated against the belief, and identify those in supervisory authority who have the power to accommodate the belief but failed or refused to do so.

The employee should accurately describe the belief and any religious references that support the belief. The employee should

state why the belief conflicts with an employer practice and describe the employer discrimination. The employee should list the names, addresses, and phone numbers of any supervisory personnel who were informed of the belief and who failed or refused to accommodate the belief or who are capable of taking action to make an accommodation. The employee should then deliver the complaint to the nearest EEOC office.

EEOC intake personnel are not necessarily well versed in religious discrimination claims.

Some may discourage an employee from presenting a claim or ask the employee to change the category of discrimination from religious to something else. The employee should insist that the intake personnel accept the complaint. The employee may refer the intake personnel to the EEOC Compliance Manual, which states that "if the charging party insists on filing a charge the charge should be taken." (15)

If your state or local agency has a law or ordinance that also addresses religious discrimination, you may be required to file a charge with the state or local agency in addition to the EEOC. (16) **Though the EEOC is supposed to file a copy of your charge with the appropriate state or local agency, (17) you should either file a duplicate copy or get the name of the local or state agency and follow up to see if EEOC in fact filed a duplicate copy. (18)**

The EEOC Proceeding

The EEOC proceeding is an administrative matter and not a court hearing. However, EEOC may require the parties to appear before an EEOC investigator. EEOC may take several steps. First, EEOC may issue a Right To Sue letter, which allows you the right to file suit in a court of law. An employee has ninety days in which to file a suit after the Right To Sue letter is issued. (19)

An employee may request a Right To Sue letter if the charge has been pending before the EEOC more than one hundred eighty days.

Second, EEOC may issue a No Cause letter. Generally, EEOC will advise the employee in

advance that a No Cause letter will be issued. In this situation, an employee should request that the EEOC instead issue a Right To Sue letter so that if the employee decides to later file suit, the court will not have any knowledge of the EEOC's reasoning that there was no cause to the complaint.

Finally, EEOC may find in the employee's favor and issue a Cause determination letter. Instead of being simply a mediator at this stage, EEOC takes the employee's position and requests the employer to accommodate the religious belief. However, EEOC has no power to act on its own. If the employer refuses to accommodate the employee's belief, EEOC can either discontinue any further efforts or file suit in its own name against the employer. If EEOC files suit against the employer in its own name, the employee has the right to obtain separate counsel and intervene as a co-plaintiff against the employer. If an employee obtains counsel and is successful against the employer in a court action, the employer may have to pay the employee's attorney's fees. (20)

Summary Of A Title VII Claim

- Federal law prohibits employers with fifteen or more employees for each working day in each of the twenty preceding calendar weeks in the current or preceding calendar year, as well as unions, from discriminating against an employee's sincerely held religious belief.
- An employee should apprise the employer of the sincerely held religious belief.
- An employer is required to accommodate the employee's sincerely held religious belief unless to do so would result in an undue hardship on the employer's business.
- In most states an employee must file an administrative complaint with EEOC within three hundred days of the religious discrimination, but in some states the time period is shortened to one hundred eighty days.
- File a complaint form with the nearest EEOC office (800) 669-EEOC.
- Particularly describe the religious belief, the employer discrimination against the belief, and identify any supervisors engaged in the discrimination or who have authority

to make decisions that would accommodate the belief.

- The employee should describe various options that are available to the employer to accommodate the belief.
- If the EEOC intake officer refuses to accept the complaint, ask the EEOC employee to consult the EEOC Compliance Manual, Field Notes 112-1(1.7)(issued 1/88).
- EEOC will either issue a Right To Sue letter, a No Cause letter, or a Cause letter.
- If the EEOC has not acted within one hundred eighty days of the charge, the employee may ask the EEOC for a Right To Sue letter.
- If the EEOC advises that it will issue a No Cause letter, ask the EEOC to refrain from issuing such letter and instead issue a Right To Sue letter.
- EEOC may file suit after issuing a Cause letter, at which time the employee may retain separate counsel and intervene as a co-plaintiff with the EEOC.
- If EEOC does not file suit on behalf of the employee, the employee may receive a Right To Sue letter and obtain counsel to

file suit in court, and if successful, the employer may have to pay the employee's attorney's fees.

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