



## EEOC Issues Revised Compliance Guidance on Religious Discrimination

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On July 22, 2008, the Equal Employment Opportunity Commission ("EEOC") issued a new compliance manual section regarding religious discrimination, harassment and retaliation in the workplace under Title VII of the 1964 Civil Rights Act ("Title VII"). The number of religious discrimination charges filed with the EEOC more than doubled from 1992 to 2007. This note provides a brief overview of what employers should be aware of regarding what constitutes "religion" within the meaning of Title VII, according to the EEOC's new Guidance, as well as under Washington's Law Against Discrimination (WLAD). For detailed information and the text of the EEOC's new Guidance, please see: <http://www.eeoc.gov/policy/docs/religion.html>.

### Religion

Title VII protects all aspects of religious observance and practice as well as belief. Religion is very broadly defined. Under Title VII, religion includes not only traditional, organized religions, but also religious beliefs that are new, uncommon, not part of a formal church, only subscribed to by a small number of people, or that seem illogical or unreasonable to others. An employee's belief or practice can be "religious" under Title VII even if the employee is affiliated with a religious group that does not espouse or recognize that particular individual's belief or practice. Title VII also protects persons who profess no religious beliefs. However, social, political, or economic philosophies, as well as mere personal preferences, are not "religious" beliefs protected by Title VII.

### Disparate Treatment

Title VII prohibits disparate treatment based on religion. Disparate treatment violates the statute whether the difference in treatment is motivated by bias against or preference toward an applicant or employee due to her/his religious beliefs, practices, or observances. Disparate treatment may occur in hiring, promotion, discipline, and compensation, as well as differential treatment with respect to religious expression; customer preference; security requirements; and bona fide occupational qualifications.

### Accommodation

Once an employee makes the employer aware both of the need for accommodation and that it is being requested due to a conflict between religion and work, Title VII requires the employer to provide reasonable accommodation unless doing so would pose an "undue hardship." The undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation poses a "more than de minimis" cost or burden. Examples of accommodation include: scheduling changes, voluntary substitutes, shift swaps, changing an employee's job tasks or providing a lateral transfer, making an exception to dress and grooming rules, accommodations relating to payment of union dues or agency fees, use of the work facility for a religious observance and accommodating prayer, proselytizing, and other forms of religious expression.

### Harassment

Title VII prohibits religion-based harassment. Harassment occurs when employees are required or coerced to abandon, alter, or adopt a religious practice as a condition of employment; or subjected to unwelcome statements or conduct that is based on religion and is so severe or pervasive that the individual being harassed reasonably finds the work environment to be hostile or abusive.

## **Retaliation**

Title VII prohibits employers from taking an adverse employment action against an employee because an individual has engaged in protected activity. Protected activity includes opposing a practice the employee reasonably believes is made unlawful by one of the employment discrimination statutes or filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the statute. Requesting religious accommodation is also considered a protected activity.

## **Washington Law Against Discrimination**

In addition to the protections of Title VII, [RCW 49.60.180](#) prohibits discrimination in employment in Washington. Employers may not: (1) refuse to hire a person; (2) discharge or bar a person from a job; (3) discriminate in compensation or other terms or conditions of employment; or (4) print, circulate, or use any discriminatory statement, advertisement, publication, job application form, or make any inquiry in connection with prospective employment that is discriminatory on the basis of an individual's creed (religion). In Washington, creed is defined broadly and includes observance, practice, and belief. The WLAD applies to employers with eight (8) or more employees, whereas Title VII requires 15 or more employees. The WLAD is enforced through the Washington State Human Rights Commission and private litigation.

## **Employer Guidance and Best Practices**

The "best practices" guidance from the EEOC recommends that Employers:

- Establish objective written criteria for evaluating candidates for hire or promotion and apply criteria consistently to all candidates
- Record the accurate business reasons for disciplinary or performance related actions and share these reasons with the affected employees
- Implement an anti-harassment policy that covers religious harassment, explain what is prohibited, describe procedures for bringing harassment to management's attention, and include assurance that complainants will be protected against retaliation
- The procedures should include a complaint mechanism that includes multiple avenues for complaint; prompt, thorough, and impartial investigations; and prompt and appropriate corrective action
- Allow religious expression among employees to the same extent that they allow other types of personal expression that are not harassing or disruptive
- Inform employees that the employer will make reasonable efforts to accommodate the employees' religious practices
- Individually assess each request for accommodation and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate

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