



## Employers Must Accommodate Religious Beliefs," Says Washington Supreme Court

by Nate Bailey

The Washington Supreme Court recently announced that the Washington Law Against Discrimination (WLAD) requires employers to accommodate employees' religious beliefs. The Court's recent decision in *Kumar v. Gate Gourmet, Inc.* marked the first time Washington's high court has directly considered whether the WLAD requires employers to make religious accommodations. The Court's May 22, 2014 ruling is a significant change for employers because it overturned a 2012 court of appeals decision, which had held that the WLAD imposed no such duty.

In *Kumar*, the plaintiffs were a class of employees representing various religions. For security reasons, their employer, Gate Gourmet, prohibited them from leaving its premises for lunch and from bringing their own food. Instead, the employer provided two lunch options to all of its employees each day: one vegetarian and one meat-based. The plaintiffs notified the employer that their religions prevented them from eating certain meats and certain animal by-products that were present in the vegetarian option. The employer briefly altered its menu to accommodate the plaintiffs but later switched back to offering only the allegedly offensive options. The plaintiffs sued the employer, claiming that it had failed to accommodate their religious beliefs and that its lunch policy had a disparate impact on religious persons. The trial court dismissed the case on the pleadings, relying on the 2012 court of appeals decision, and the Supreme Court accepted review directly from the trial court.

The Court considered several compelling arguments against reading a duty to accommodate into the WLAD's prohibition against religious discrimination. First, the Court considered whether the legislature had expressly excluded religious accommodations from the WLAD. In contrast, Congress amended Title VII to explicitly require employers to provide religious accommodations. Second, the Court considered whether federal caselaw reading a religious accommodation requirement into Title VII should be persuasive given that the WLAD outlawed religious discrimination 15 years before the federal government passed Title VII. Third, the Court considered whether the Washington Human Rights Commission had interpreted the WLAD as not requiring religious accommodations by failing to promulgate rules on the issue. The Court was not persuaded by any of these arguments.

The Court noted that Title VII had also implicitly required employers to accommodate employees' religious practices before Congress amended the statute. The Court thus reasoned that the WLAD similarly implied a duty to accommodate religious beliefs. The Court also compared the cause of action for disparate impact discrimination, which the WLAD unquestionably prohibits, to a cause of action for failure to accommodate. Both are aimed at preventing facially neutral employment policies that hit protected classes the hardest. The Court concluded that there could be no reason to allow a cause of action for disparate impact but not require employers to accommodate employees in order to avoid that disparate impact in the first place. And in line with Washington's, and the nation's, trend toward providing greater and greater protections for employees, the Court noted that the state's courts have always construed the WLAD's protections broadly.

The Court laid out the elements of a *prima facie* religious accommodation case: (1) the employee has a bona fide religious belief, the practice of which conflicted with job duties; (2) the employee informed the employer of the beliefs and the conflict; and (3) the employer responded by subjecting the employee to discriminatory treatment. Once the employee makes a *prima facie* case, the burden then shifts to the employer to show that it offered the employee a reasonable accommodation or that an accommodation would constitute an "undue hardship." The Court was not asked to rule on what would constitute an undue hardship, but it strongly hinted that Washington would follow federal law, under which an "undue hardship" is any accommodation that would require more than a *de minimis* cost. This is a much more employer-friendly standard than the definition of "undue hardship" for purposes of accommodating disabilities. The Court also noted that, like with disabilities, employers need not provide the specific accommodation requested by the employee "even if the employer could provide that accommodation without suffering any undue hardship." The decision was not all bad news for employers.

In the bigger picture, this decision should serve as a reminder that employers should strive to have anti-discrimination and anti-harassment policies that go further than required by current state and federal laws. After all, Gate Gourmet's conduct in the instant case complied with a 2012 court of appeals decision. Yet now Gate Gourmet is forced to defend a cause of action it reasonably believed did not exist. Given that the trend is toward greater and greater protection, employers who stay in front of legal requirements will find themselves less vulnerable to the changing legal landscape.

More specifically, *Kumar v. Gate Gourmet, Inc.* should motivate all employers covered by the WLAD to take requests for religious accommodation seriously. Even smaller employers that are not covered by the WLAD may ultimately be bound by this holding. For instance, the Seattle Municipal Code prohibits discrimination by employers with as few as one employee. And just like the Washington Supreme Court looked to federal caselaw for guidance, the Seattle Office of Civil Rights often looks to Washington caselaw. Thus all employers would be wise to (1) add language to their employee handbooks regarding religious accommodation and (2) look for ways to accommodate their employees' religious beliefs.

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