

# CLASS ELEVEN- RELIGIOUS DISCRIMINATION

# RELIGIOUS DISCRIMINATION UNDER TITLE VII

“Religion” includes all aspects of observance and practice, as well as belief.

Religious observance and practice:

- Does not need to be subject to a particular religious group or organization
- Includes personal and religious beliefs that are not necessarily “traditional”

Religious beliefs - Sincere and meaningful belief not confined in terms of source or content, to traditional religious views. Example: atheism

# REASONABLE ACCOMMODATION UNDER TITLE VII

- Act has a duty to accommodate an employee's religious practices or beliefs unless and employer would experience an undue hardship or burden.

Factors used by the courts and EEOC to determine whether an employer has met its burden:

- 1) Whether employer has made an attempt to accommodate
- 2) Size of employer's workforce
- 3) Type of job involved in conflict
- 4) Cost of accommodation
- 5) Administrative efforts involved in accommodation

**NOTE:** Employer does not have to make the most reasonable accommodation. All that is required under the law is that an accommodation is made.

# ACCOMMODATIONS MADE BY EMPLOYERS

Types of accommodations made by employers may include:

- Creation of flexible work schedules
- Assignment of a voluntary substitute with similar qualifications
- Consideration of a lateral transfer or change of jobs within the company
- Schedule alternative testing dates and times

**NOTE:** Employer not required to give any time off to attend religious services with pay. They may also impose restrictions on religious attire, and the wearing of religious jewelry, for safety and other reasons.

# UNDUE HARDSHIP AS AN EMPLOYER'S DEFENSE TO A REASONABLE ACCOMMODATION

Concept as to what constitutes undue hardship varies, depending on:

- Size of company
- Company's financial strength
- Corporate structure

EEOC guidelines on undue hardship same as for a finding of accommodation. Some factors include:

- 1) Nature and type of employer
- 2) Type of position from which accommodation has been requested
- 3) Cost of accommodation
- 4) Impact of accommodation on other employees.

# PROVING RELIGIOUS DISCRIMINATION

- 1) Sincere belief, observance or practice that conflicts with an employment requirement
- 2) Belief, observance or practice is religiously based
- 3) Plaintiff has informed employer of above
- 4) Religious observance or practice was a motivating factor for plaintiff's discharge or other adverse decision.
- 5) See *Beadle v. Hillsborough Co. Sheriff's Dept.*, 29 F.3d 589 (11<sup>th</sup> Cir. 1994).

# DISPARATE TREATMENT AND RELIGIOUS DISCRIMINATION

Courts apply the burden shifting model

- 1) Plaintiff has sincere religious beliefs
- 2) Plaintiff is qualified for a particular position
- 3) Employee suffered an adverse employment decision
- 4) Employer selected another person for position who did not hold plaintiff's religious beliefs

# TYPES OF RELIGIOUS HARASSMENT

## Quid Pro Quo

- Conditioning of an economic job benefit when employee submits to employer's religious observances or practices.
- Punishing employee for failure to comply

## Hostile Environment

- Employee must show that the employer's remarks were unwelcome
- Harassment motivated by supervisor's religious beliefs
- Employee's reaction to supervisor's religious observances or practices affected a tangible part of his/her employment



## Need to Connect Anti-Religious Remark to Plaintiff's Own Employment

- In one case, plaintiff alleged that her supervisor told her not to hire strongly religious people because workers needed a “little larceny in their hearts.” The court held that, since there was no discrimination on the basis of plaintiff's own religion, there was no case. *Jerome v. Midway Holding*, 2007 U.S. Dist. Lexis 24102 (D.Ariz).

# Accommodations Relating to Religious Holidays

- One case held that it was unlawful to compel an employee to use up annual leave to take off religious holidays. See *Cooper v. Oak Rubber Co.*, 15 F.3d 1375 (6<sup>th</sup> Cir. 1994).
- One possible alternative is to allow employees to take leave without pay as an alternative to using up annual leave. See *Krop v. Nicholson*, 506 F.Supp.2d 1170 (M.D. Fla. 2007).

# Exemption for Religious Institutions

- Under 42 U.S.C. 2000e-1, religious institutions are exempt from Title VII in the sense that they can give preference to persons of a particular religion. See *Saeemodrae v. Mercy Health Services*, 456 F.Supp.2d 1021 (N.D. Iowa 2006). Also, under present law, religious organizations that restrict the clergy to men are acting within the law.

# Employees Cannot Force Religion Upon Others in the Workplace-Slide 1

- Although employees have freedom to practice their religions outside the workplace, the employer can impose reasonable limits upon religious observance within the workplace.
- Example: a public school, who is supposed to exhibit religious neutrality, can prohibit a teacher from appearing in class in (next slide)

## Employers Cannot Force Religion Upon Others in the Workplace-Slide 2

religious garb. U.S. v. Bd. of Educ for the School  
Dist. Of Philadelphia, 911 F.2d 882 (3d Cir.  
1990).

Example: an employer can prohibit an  
evangelical Christian from discussing his  
beliefs with clients or holding prayer meetings  
on the business premises. Barry v. Dept. of  
Social Services, 447 F.3d 642 (9<sup>th</sup> Cir. 2006).