

HOLIDAY TIPS TO AVOID RELIGIOUS DISCRIMINATION IN THE WORKPLACE

The end of the year and the accompanying holidays often bring requests by employees for time off for religious observances and requests to display religious symbols at work.

Religion in the workplace can bring up some of the most challenging issues employers have to face. By understanding a few key points, however, employers can increase their chances of successfully addressing legal concerns.

TITLE VII REQUIREMENTS AND TRENDS

Title VII of the Civil Rights Act of 1964, a federal law that applies to employers with 15 or more employees, prohibits employers other than religious institutions from discriminating on the basis of religious beliefs in hiring, firing, and other terms and conditions of employment. Title VII also prohibits harassment based on religion.

Employers must also be mindful of applicable state statutes. For example, the North Carolina Occupational Safety and Health Act, which applies to most North Carolina employers regardless of size, prohibits discriminating against employees based on "religious affiliation." The South Carolina Human Affairs Law, which prohibits discrimination based on religion, applies to employers with 15 or more employees.

According to U.S. Equal Employment Opportunity Commission (EEOC) statistics, Title VII religious discrimination claims have increased 30% since 2000.

TIME OFF FOR RELIGIOUS OBSERVANCES

While Title VII does not require employers to grant requests for time off for religious holidays, the law does require that employers make reasonable accommodations for employees' religious observances and practices, unless the accommodation causes undue business hardship.

In the context of religious-belief accommodation, undue hardship refers to something that would require more than general administrative costs, violates a valid seniority system or collective bargaining agreement, or requires denying other employees' shift and job preferences.

Accommodations that do not constitute undue hardship to the employer include voluntary substitutions or employee "swaps," flexible work schedules, floating or optional holidays, staggered work hours, and allowing employees to make up lost time.

If an employee's request for special scheduling considerations causes an undue hardship, the employer can deny the request. However, before denying the request, the employer should fully explore alternatives.

An employer is generally not required to pay an employee for time off taken for religious observance.

DISPLAY OF RELIGIOUS SYMBOLS

There are some religious displays employers anticipate during the holidays, including religious books, pictures, sayings, or calendars on employees' desks or in their office space. Additionally, employees may choose to wear a cross, the Star of David, or other religious symbols. Private employers must generally permit such displays. Employers should not, however, treat an employee who displays the symbols of one religion more favorably than an employee who displays different religious symbols.

The unwelcome expression of an employee's religious communications or actions toward other employees may be considered unlawful harassment that an employer has a legal obligation to address. Employees do not, however, have an unfettered right to be free from contact with any religious displays while at work. At least one court has observed recently that an employer has "no legal obligation to suppress any and all religious expression merely because it annoys a single employee."

Additionally, according to the EEOC, employers generally "may not place more restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency." This means employers cannot ban religious expressions at work while allowing other non-business related expressions of belief, such as political posters. Employers can prohibit most non-business related expressions of belief on company time, however, as long as they apply the prohibition consistently and adhere to the requirements of other laws, including the National Labor Relations Act.

EEOC guidance also states that employers cannot force an employee "to participate—or not participate—in a religious activity as a condition of employment." To this end, employers should not require employees to attend a company-sponsored religious activity.

THE BOTTOM LINE

Clearly, issues involving religion in the workplace are complex. Resolving these issues requires understanding Title VII and state anti-discrimination laws and balancing the employer's needs with an employee's religious practices.

I-9 ALERT: EMPLOYERS MUST BE USING NEW FORM BY DECEMBER 26, 2007

On November 26, 2007, the U.S. Citizenship and Immigration Services (USCIS) announced that employers must transition to the recently revised Employment Eligibility Verification Form (I-9) no later than December 26, 2007. Employers who fail to use the revised form by that date will be subject to applicable penalties.

All employers are required to complete an I-9 Form for each employee hired in the United States.

The new I-9 Form makes changes to the kinds of documents a new employee must provide in order to prove his or her identity and employment eligibility.

USCIS has also issued an updated "Handbook for Employers, Instructions for Completing the Form I-9."

The revised form removes five documents from the list of acceptable proof of identity and employment eligibility in column "A" on the forms. It adds one new document to the category.

The new form also indicates that employees are not obligated to provide their Social Security number in Section 1 unless the employer participates in E-Verify, USCIS' electronic employment eligibility verification system.

In addition, the revised form gives greater prominence to the antidiscrimination statement.

The revised I-9 is available from USCIS at <http://www.uscis.gov/files/form/I-9.pdf>.

A USCIS fact sheet with questions and answers on the new form is available at <http://www.uscis.gov/files/pressrelease/FormI9FS110707.pdf>.

The updated "Handbook for Employers" is available from USCIS at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>.

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