

# Client Alert

Employment Department

August 12, 2008

## EEOC Releases New Guidelines Regarding Religious Discrimination

On July 22, 2008, the United States Equal Employment Opportunity Commission (“EEOC”) released a new Compliance Manual Section (“Manual”) regarding religious discrimination in the workplace. The EEOC also released a “question-and-answer” fact sheet and “best practices” booklet. The Manual identifies four bases for employer liability for religious discrimination under Title VII: disparate treatment based on religion, religious harassment, reasonable accommodation of religious beliefs and practices, and retaliation.

This new consolidation of EEOC views is especially relevant to employers given the sharp rise in religious diversity in the workplace. Religious discrimination filings with the EEOC more than doubled during the period from fiscal year 1992 to fiscal year 2007 (from 1,388 to 2,880 filings). The following are strategies that may limit your liability and reduce the chance of lawsuits.

### 1. Keep Your Policies Current.

**TIP:** Review your organization’s harassment policy to insure that it covers and includes proper channels of communication for employees to report religious harassment. In addition, make sure your policies comply with local laws, which vary from state to state.

**CASE EXAMPLE:** In *Powell v. Yellow Book USA, Inc.*, an employer was able to avoid religious harassment liability by promptly and reasonably responding to an employee’s complaint, even though the harassment by a fellow employee was egregious. 445 F.3d 1074 (8th Cir. 2006). Among other actions, the employer quickly reviewed the complaint to determine whether the alleged religious harassment violated company policy.

### 2. Make a Reasonable Accommodation if Possible.

**TIP:** If a company policy prevents an employee’s religious observance, consider whether you can reasonably accommodate the employee’s religious belief while still enforcing the spirit of the policy—even if you have a sound business reason for the policy.

**CASE EXAMPLE:** In *EEOC v. Red Robin Gourmet Burgers, Inc.*, an employee wore tattoos that demonstrated his belief in Kemeticism, an ancient Egyptian religion with very few members. 2005 WL 2090677 (W.D. Wash.) (unpublished). The employee was fired because he refused to cover the tattoos while at work, in violation of a company policy against visible tattoos. The court refused to grant summary judgment, stating that the employer could not prove that it had properly considered all possible reasonable accommodations. The case eventually settled for \$150,000.

### 3. Treat All Employees the Same, Regardless of Their Religious Beliefs or Lack of Beliefs.

**TIP:** To avoid confusion as to whether an employment decision was made on religious grounds, record any disciplinary action in writing and communicate the actual reasons for such disciplinary action to the employee in a direct manner.

**CASE EXAMPLE:** In *Dachman v. Shalala*, an employee claimed an adverse employment action was taken against her because she was an Orthodox Jew. 9 Fed.Appx. 186 (4th Cir. 2001) (unpublished). However, in part because the employer was able to provide detailed memoranda documenting the legitimate business reasons for the adverse action, the employer was able to avoid liability for discriminating on the basis of religion.

#### 4. **Avoid Liability for Religious Harassment.**

**TIP:** If you are aware that an employee objects to religion-related conduct or comments directed at him or her, or that objectively abusive or insulting conduct is occurring, take steps to stop that conduct.

**CASE EXAMPLE:** In *EEOC v. Sunbelt Rentals, Inc.*, the court found an employee could bring a Title VII claim because several co-workers made disparaging remarks about the employee's belief in Islam. 521 F.3d 306 (4th Cir. 2008). The employee had repeatedly complained to his supervisors, and the supervisors failed to take proper corrective action. The court found a basis for imposing liability on the employer because it knew about the harassment and failed to take serious actions to stop it.

#### 5. **Do Not Retaliate Against an Employee Who Requests a Religious Accommodation.**

**TIP:** Inform managers that they cannot retaliate by taking adverse employment actions against employees because of requests for religious accommodations. Managers and their employers must consider whether such accommodations are reasonable, and then grant or deny them accordingly.

**CASE EXAMPLE:** In *Ollis v. HearthStone Homes, Inc.*, the court upheld a jury's decision to impose liability on an employer that conducted "Mind Body Energy" sessions for its employees. 495 F.3d 570 (8th Cir. 2007). The court found it was reasonable for the jury to conclude the employer was liable because it terminated the employee after he complained about having to attend the sessions, which the employee claimed conflicted with his belief in Christianity.

As the above examples illustrate, a major challenge in this area is identifying circumstances in the workplace that can lead to claims of religious discrimination. What may seem like a simple issue of disciplining an employee for violating company policy may lead to a claim of religious discrimination.

Please feel free to contact the partner listed below if you wish to discuss religious discrimination or other employment issues.

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