March 28, 2019

Navigating Requests for the Accommodation of Uncommon Religious Practices

Employers are generally aware of their obligation to accommodate the needs of employees who participate in "mainstream" religions. They may be unprepared, however, to appropriately respond to employees' requests for accommodation relating to lesser-known religions or practices—including but not limited to those who wear a religious kirpan (a small, dull and sheathed miniature sword worn in the Sikh faith) or who take time off on Samhain, the Wiccan High Holy Day that falls on Halloween. As a result, employers may deny such requests, resulting in religious discrimination and failure-to-accommodate claims.

An employer's obligation to provide reasonable accommodation for employees' religious needs arises under Title VII of the Civil Rights Act of 1964 and many state anti-discrimination laws. These laws have broad definitions of what constitutes a religion. In fact, the absence of religion, or being an atheist, is also protected under the law. Employers must accommodate applicants' and employees' "sincerely held religious beliefs," including beliefs of less common religions or beliefs that are not part of a formal sect or church, unless the accommodation would cause the employer an undue hardship. Once an employer is aware of the religious conflict, the employer must engage in a dialogue with the employee and determine whether it can provide a reasonable accommodation to the employee.

Some requests for religious accommodation may not even seem religious in nature. For example, in a recent case brought by the Equal Employment Opportunity Commission (EEOC) in a Massachusetts federal court, a hospital employee filed suit alleging religious discrimination after she was discharged for refusing to receive a flu shot. The hospital has an established policy requiring its employees to receive the flu shot annually, and the employee objected to getting the shot on alleged religious grounds. The hospital has requested the court dismiss the case, arguing that the employee's refusal to get the flu shot was based merely on a personal choice to decline the shot rather than on any sincerely held religious belief. Unlike a sincerely held religious belief that is protected under the law, a personal preference does not trigger a duty to accommodate. While this case is currently pending, the same issue was also recently before the U.S. Court of Appeals for the Third Circuit, the federal appeals court that covers New Jersey. In that case, the court decided the hospital employee's objection to getting a flu shot was based not on a protected religious belief but rather on a medical belief that the flu shot "could do more harm than good." The court concluded therefore that the objection was not religious in nature and not protected by Title VII.

In another case brought by the EEOC, an evangelical Christian employee in West Virginia requested an accommodation allowing her not to use her employer's new biometric hand-scanner system because she claimed it conflicted with her religious beliefs. The scanner system was put in place to track employee attendance and work hours; employees would check in to their shifts by scanning their right hand, which was linked to their identification number. The employee in that case protested that based on her religion and biblical teachings, the use of the hand-scanning system could brand her as a follower of the Antichrist and could be a "Mark of the Beast." The employer denied this request, resulting in the employee retiring earlier than planned. The case ultimately proceeded to trial; a jury found the employer violated Title VII because it failed to accommodate the employee's religious beliefs, and awarded her close to $600,000 in damages. In affirming the trial court's decision, the U.S. Court of Appeals for the Fourth Circuit explained that the employer's "apparent belief that it could rely on its own understanding of scripture to limit the scope of the accommodation it offered [the employee] was mistaken." Evidence was also presented at trial that the employer had excused other employees from using the hand scanner due to physical hand injuries and had allowed them to input their identification numbers into a keypad instead.

These cases reinforce that employers must seriously consider employees' requests for religious accommodation, even when those requests are uncommon. Before denying a request, an employer may ask for additional information from the employee

to assist in the review of the request. Employers should review their policies to ensure they inform employees about the religious accommodation process. Employers must also remember that these religious accommodation obligations apply to applicants for employment as well. Finally, training is key so managers can identify when an employee is making a request for a religious accommodation and know how to respond.

Would you like to receive our *Employment and Labor Quarterly Update?* Sign up here.

Authors



Theresa A. Kelly

Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com