



## Religious Discrimination Cases Brought by EEOC On the Rise

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In nearly a decade since the September 11 terrorist attacks, the federal court system has handled an influx of religious discrimination cases brought by the EEOC. A disproportionate number of these cases stem from EEOC discrimination charges filed by Muslims, which exceed 10,000 in the past decade. The number of claims filed with the EEOC by Muslims more than doubled to 1,490 in fiscal year 2009 (which ended Sept. 30) from 697 in fiscal year 2004. The claims resulted in 803 EEOC charges. While the claims brought by Muslims outnumber those brought by members of other religious groups, the overall number of religious discrimination charges filed with the EEOC has nearly doubled in the past twelve years from 1,709 charges in 1997 to 3,386 in 2009, making religious discrimination claims the fastest growing category of charges filed with the EEOC.

Title VII of the Civil Rights Act of 1964 prohibits covered employers (those with 15 or more employees) from discriminating against employees based on their religion and requires employers to provide a reasonable accommodation to an employee's sincerely held religious belief unless such accommodation imposes an "undue hardship" on the employer's business. The "undue hardship" requirement (under which an employer must show that the requested accommodation imposes "more than a *de minimis*" burden on its business) is less stringent than the undue hardship standard under the Americans with Disabilities Act. Nonetheless, an employer must exercise discretion when responding to an employee's request for a religious accommodation.

In July 2008, the EEOC issued revised guidelines to help employers understand their obligations to accommodate employees' religious beliefs and avoid religious discrimination charges.

See *EEOC Compliance Manual on Religious Discrimination*, available at

<http://www.eeoc.gov/policy/docs/religion.html> (updated July 22, 2008). The manual reminds employers that the concept of "religion" has a broad definition and that "[r]eligious beliefs, practices, and observances include those that are theistic in nature, as well as non-theistic 'moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.'" It instructs employers that "[r]eligious beliefs can include unique views held by a few or even one individual; however, mere personal preferences are not religious beliefs." The EEOC recommends that an employer provide substantial deference to an employee's claim that his or her religious belief is sincerely held. Nonetheless, the agency acknowledges that employers can question an employee's purported religious observance or practice in situations

where the employee has acted previously in a way that is patently inconsistent with his or her purported belief. For example, if an employee routinely has worked on Sundays in the past, but unexpectedly objects to working on the Sunday of a big football game because working on Sunday interferes with his or her sincerely held religious belief, an employer may question the sincerity of that belief.

Many of the religious discrimination claims filed over the past decade challenge the employer's duty to reasonably accommodate an employee's religious belief, practice, or observance. The EEOC defines an accommodation as "any adjustment to the work environment that will allow the employee to comply with his or her religious beliefs." The most common accommodation requests involve dress and/or grooming standards, work schedules, and religious practice or expression at work.

For example, Muslim women are required to wear a head scarf, or "hijab," a religious practice that is inconsistent with the dress codes of some employers. The EEOC's guidelines suggest that requested dress code accommodations should be made on a case-by-case basis. For instance, where an airline's dress code prohibits its passenger service agents from wearing hijabs on the grounds that customers may fear that the agent is sympathetic to terrorists, the perceived customer "fears" will not amount to an undue hardship under Title VII, and the airline will be required to accommodate the agent by allowing her to wear a hijab. *See generally EEOC v. American Airlines*, Civil Action No. 02-C-6172 (N.D. Ill.) (Order of Resolution filed September 3, 2002) (resolving claim on behalf of employee who was not hired as passenger service agent because she wore a hijab for religious reasons in violation of the airline's since-changed uniform policy; the airline's current uniform policy specifically provides exceptions for religious accommodation of employees). However, the EEOC's guidance manual also contemplates that there may be instances where the need for uniformity is so important that it would be an undue hardship for the employer to accommodate the wearing of a traditional religious headpiece. *See Webb v. City of Philadelphia*, 2007 WL 1866763 (E.D. Pa. June 27, 2007) (finding that the City of Philadelphia established that it would pose an undue hardship to accommodate the wearing of a traditional religious headpiece by a Muslim police officer while in uniform, in contravention of the department's dress code policy).

The issue of reasonably accommodating an employee's religious belief by altering a dress requirement is not unique to the Muslim religion. In a recent case filed in the Eastern District of North Carolina, the EEOC claims that Belk Department store refused to accommodate, and discriminated against, a Jehovah's Witness employee who refused to dress in a Santa hat and apron during the holiday season because her religion prohibited her from celebrating Christmas or engaging in other traditions or actions that recognize the Christmas holiday. *See EEOC v. Belk, Inc.*, Civil Action No. 10-cv-300 (E.D.N.C. filed July 29, 2010); *see also EEOC v. UPS Ground Freight*, No. 1:08-cv-01806 (M.D. Pa. Order of Resolution filed Feb. 11, 2010) (resolving a lawsuit involving a claim that a national trucking company terminated a Rastafarian new hire after he declined to cut his hair and shave his beard in accordance with the employer's grooming policy); *EEOC v. Pollard Agency*, No. 5:10-cv-00094 (M.D. Ga. Order of Resolution filed May 20, 2010) (resolving a lawsuit involving a claim that a contract security company failed to reasonably accommodate a female security guard's sincerely held religious belief when it prevented her from wearing a scarf to cover

her hair, which was required by the Mennonite Baptist faith).

The EEOC has also recently challenged an employer's alleged refusal to accommodate a religious belief or practice that would require an altered work schedule in two cases against a meat processing company (JBS) brought on behalf of Somali Muslim employees claiming that they were denied religious accommodations during the Islamic holy month of Ramadan. See *EEOC v. JBS USA*, Civil Action No. 10-cv-2103 (D. Colo. Filed Aug. 30, 2010); *EEOC v. JBS USA*, Civil Action No. 10-cv-318 (D. Neb. Filed Aug. 30, 2010). The Muslim faith requires five prayers a day at times defined by the position of the sun. In addition, during the month of Ramadan, Muslims fast during the day and break their fasts at sunset. The Denver complaint alleges that JBS refused to accommodate the religious belief of Muslim employees at its Greeley, Colorado meatpacking plant when it denied them the ability to pray during their bathroom breaks. The EEOC also contends that JBS denied the employees' request for their meal break to be moved from 9:15 p.m. to 7:30 p.m. during Ramadan (so they could break their fast within 15 minutes of sunset). In addition, the EEOC alleges that other JBS employees shut off water fountains to prevent Muslim employees from washing before they prayed (which is required by their religion).

In an effort to avoid religious discrimination claims like those raised in the JBS and Belk cases, employers should review their practices and policies to ensure that an employee's need for a religious accommodation is not inappropriately influencing employment decisions. For example, businesses should not exclude candidates simply because they might need a reasonable religious accommodation that would not cause an undue hardship. Employers should adopt and use objective, written criteria to evaluate individuals for potential hire or promotion. Employers should also train supervisors on procedures for handling an accommodation request, which should include evaluating each request on a case-by-case basis and conferring with the individual and management "fully and promptly to the extent needed to share any necessary information about the employee's religious needs and the available accommodation requests." See *EEOC's Best Practices for Eradicating Religious Discrimination in the Workplace*, available at [http://www.eeoc.gov/policy/docs/best\\_practices\\_religion.html](http://www.eeoc.gov/policy/docs/best_practices_religion.html). If an employee makes a request for a religious accommodation that cannot be executed promptly, an employer should consider offering a different method of accommodation on a temporary basis, while a permanent accommodation is being investigated, and keeping the employee updated on the employer's efforts to implement a permanent accommodation.

If you have any questions, please contact a member of our Labor & Employment Team.

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