RELIGION IN THE WORKPLACE

By

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RELIGION IN THE WORKPLACE

• The United States remains a very religious nation.
  – A recent Gallup Poll indicated that 90 – 95% of U.S. citizens believe in some form of higher being.
  – This, of course, indicates that 5 – 10% do not, which makes the absence of religion a significant religious viewpoint.

• Title VII protects an employee from discrimination or harassment based on religious beliefs or the absence thereof.
  – Title VII also requires an employer to grant religious accommodations in some circumstances.

• Religious discrimination cases have been the most rapidly increasing area of discrimination cases since the turn of the century.

• The challenge is to make sense of confusing and confused case law -- or at least to recognize the issues that await us.
Discrimination
and
Harassment Based on
Religion
Discrimination and Harassment

- An employer may not discriminate:
  - On the basis of religious beliefs, or
  - The absence of religious beliefs.
- Exceptions:
  - Religious institutions.
  - Those in the business of supplying religious services.
  - What if you simply wish to dedicate your business to honoring God?
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Discrimination and Harassment

- The simple issues:
  - I will not hire you because I do not like your religion, or the absence thereof:
    - Are you a religious institution or delivering religious services?
    - If not, this is illegal.
  - I don’t like your religion or lack of religion, thus, I intend to make disparaging remarks about it or simply will mistreat you:
    - No surprise. This also is illegal. *Vaughn v. Ag Processing, Inc.*, 459 N.W.2d 627, 632 (Iowa 1990).
    - What about general swearing around someone whose religious beliefs make him or her find it offensive?
      - Maybe not, but what about an accommodation?
      - *Do I make these up? See Sedalia No. 200 Sch. Dist. v. Missouri Comm’n on Human Rights*, 843 S.W.2d 928 (Mo. Ct. App. 1992)
Accommodation of Religious Beliefs

- The Supreme Court has taken a limited view of the right to religious accommodations:
  - No undue burden:
    - The financial impact must be *de minimus*.
    - An accommodation need not burden other employees.

- Typically, accommodation requests fall into four categories:
  - Employees who do not want to pay union dues.
  - Attire issues.
  - Attendance and leave issues.
  - Communication issues (the proselytizing employee).
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Union Dues

- Some religions, forbid allegiance to any higher authority other than their religion:
  - Employees with religious objections cannot be compelled to pay union dues.
    • They can, however, be compelled to contribute a like amount to a charity.
  - This is not really an issue in Iowa because we are a right to work state.
Attire Issues

- Attire issues are among the easiest issues to address:
  - Yarmulke?
  - Ash smudge on Ash Wednesday?
  - Hair length?
  - Bindi?
  - Hijab?

- And some of the more difficult:
  - Facial Hair (Sikh)?
  - Anti-abortion button?
Attendance Issues

- **Attendance**
  - The EEOC takes the position that employers should facilitate swapping of shifts to accommodate religious absences or changing break times to pray.

- **Issues arise regarding working hours during:**
  - Religious holidays
  - The Sabbath
  - Break time to pray

- **The general rule is that you are not required to burden other employees.**
Communication Issues
Religious Communication in the Workplace

- The proselytizing employee:
  - Proselytizing comes in various forms and varying degrees.
    - What about the employees who feel they must greet people with “God Bless You” or “Praise the Lord?”
    - What about signing documents “Servants of the Lord Jesus Christ.”
      - Tucker v. California Department of Educ., 97 F.3d 1204 (9th Cir. 1996).
    - What about beginning sentences with “In the name of Jesus Christ of Nazareth?”
  - Note that in at least some of these cases the court found the absence of complaints to be significant.
  - Thus, the cases might come out the other way if you receive complaints.
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- Abortion:
  - What about graphic anti-abortion buttons?
    - In *Wilson v. US West Communications, Inc.*, 860 F.Supp. 665 (D. Neb. 1994), the Court found that the employer could forbid wearing a graphic anti-abortion button. In this case, the employer documented an astounding decline in productivity.

  - What about expressing that one is considering an abortion?
    - In *Turic v. Holland Hospitality, Inc.*, 85 F.3d 1211 (6th Cir. 1996), the Court found that an employee should not have been fired for expressing that she was considering an abortion.
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- Prayer and religious articles:
  - What about the occasional prayer?
  - What about wearing a cross?
  - What about a graphic depiction of a crucifix?
    - If it is small?
    - If it is large?
  - What about religious messages on a screen saver?
  - Brown v. Polk County, 61 F.3d 650 (8th Cir. 1995).
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    - If it is large?
  - What about religious messages on a screen saver?
  - Thus far we have more questions than answers.
The Proselytizing Employer
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The Proselytizing Employer

- An increasingly common phenomenon is the employer that promotes religion:
  - Accounting firms allowing organized prayer meetings at work.
  - A local pizza place provides a list of “Christian companies” to its patrons.
  - A bank in California portrays itself as the Christian bank.
  - Employers wishing to incorporate phrases in their handbooks such as, “We will operate our company to honor God.”
  - Lawyers who advertise by placing WWJD in their ads?

- What is allowed and what is illegal?
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The Proselytizing Employer

- Several cases have arisen.
  - A company included religious messages in its newsletter.
  - A company broadcast prayers over its intercom system.
    - This also was found to violate employees’ rights. *Hillsman v. Runyon*, 1995 WL 217486 (E.E.O.C. Michigan, 1995)
  - A company opened meetings with a prayer.
    - Employees cannot be required to attend. *Young v. Southwestern Sav. and Loan Ass’n.*, 509 F.2d 140 (11th Cir. 1975); *E.E.O.C. v. Townley Engineering & Mfg. Co.*, 859 F.2d 610 (9th Cir. 1988).
The Proselytizing Employer

• The current state of the law
  – Conduct that, if engaged in by an employee may be protected, may subject the employer to liability if done by a supervisor. *Chalmers v. Tulonlo*, 101 F.3d 1012, 1021 (4th Cir. 1996)
  – Oddly enough, some cases indicate that what must be tolerated by subordinates cannot be tolerated in supervisors.
  – Thus, what many of your employees may have suspected, is legally true. As you climb in management you must give up religion.
  • Of course, that’s not true, but the ability to express such views in the workplace becomes much more limited.
MY BEST COMMON SENSE ADVICE:

• Accommodate religious observances where you can do so without disrupting the workplace and without burdening employees.

• Tolerate a reasonable amount of religious expression, but respond to complaints from those who are offended.

• Practice your religion or lack thereof as you see fit in your private life, run your business consistent with the ethical views you hold based on your values, do not try to impose your views on your employees and show tolerance for differing views.

• If issues start to arise, call your lawyer as quickly as you can.