

Religious Accommodation in the Workplace: Examining Recent Federal Case Law

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Religious discrimination cases have doubled over the last thirteen years (Nimon, 2011). Since the passage of the Title VII of the Civil Rights Act of 1964 (Title VII), human resource development (HRD) professionals often encounter issues related to potential discrimination in the workplace, including religious discrimination. Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin. The statute defines “religion” to include “all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business” (42 USCS § 2000e).

Statement of the Problem

Within the past few months, cases involving religious beliefs have dominated the courts and the media. Most recently, the United States Supreme Court (USSC) issued a landmark opinion in the case of *Burwell v. Hobby Lobby* (2014), which presented the question of whether the Religious Freedom Restoration Act of 1993 (RFRA) allows a for-profit corporation to deny its employees the health coverage of contraceptives to which the employees are otherwise entitled by federal law, based on the religious objections of the corporation's owners. The USSC ruled that closely held for-profit corporations cannot be required to provide no-cost coverage for four objectionable contraceptives to its female employees. In *Town of Greece v. Galloway*, the USSC found that the Town's prayer practices were not unconstitutional because the First Amendment does not require legislative prayer to be nonsectarian. Although the Town invited a

predominantly Christian set of ministers to lead monthly prayers, the USSC found that the Establishment Clause had not been violated because the Town was not required to search beyond its borders for non-Christian prayer givers in order to “achieve religious balancing” (*Town of Greece v. Galloway*, 2014, pp. 848-849, 1824).

Purpose of the Study and Research Question

The purpose of this study was to examine recent court opinions to provide a synthesis of how United States federal appellate courts are construing religious accommodation cases. The following research question guided the review:

In the past five years, how have federal appellate courts construed and applied the provisions of the Title VII requiring an employer to “reasonably accommodate” the religious observances and practices of employees or prospective employees?

Significance of the Study

While there are empirical studies and theoretical frameworks related to accommodating religion and spirituality in the workplace, this study will fill a gap in scholarly research for HRD scholars and scholar-practitioners. By building upon their knowledge base and deepening their understanding of religious discrimination and reasonable and spiritual accommodations, HRD professionals will have resources on which to rely when considering employee requests for accommodations.

Conceptual Structure

Cash and Gray (2000) developed a framework for accommodating religion and spirituality in the workplace. This framework created two categories of accommodations. The first is observation requests (outside the workplace), which include accommodations such as time off for holidays, rituals or events, or leaves of absences. The second is manifestation requests (inside the workplace), which include an employee’s religious affiliation, dress or

displaying of symbols, proselytizing, and information meetings such as prayer meetings (Cash and Gray, 2000). We followed this framework in analyzing federal appellate court opinions and organizing them into these two types of accommodation categories.

Method

This integrative literature review used the logic of replication in which researchers replicate the procedures for each case (cf. Yin, 2009). Each court opinion was read in its entirety and coded for legal factors that formed the bases for the courts' holdings. Coding of case studies included the identity of the federal appellate court issuing the opinion, case decision year, the district court from which the case was appealed, the style of the case, the category of case (observation or manifestation), the type of accommodation requested, a brief summary of the case, appellate court ruling, and outcome of the effect (employee, employer, or union).

Court opinions were located using Lexis-Nexis Academic database. Opinions were selected from decisions by the USSC and the United States Courts of Appeal involving causes of action for religious discrimination in violation of Title VII decided after January 1, 2009 until the present day. Cases were only selected if they related to "reasonable accommodation" as that term is used and defined by Section 701(j) or 2000e(j) of Title VII. The number of court opinions appearing from the combination keyword searching using the "Natural language" search entered in the advanced search feature of Lexis-Nexis Academic of "Civil Rights Act of 1964" and "701(j)" or "2000e(j)" and limited to cases decided after January 1, 2009 was sixteen (see [Appendix A](#)).

Results

Across the cases reviewed, there was an equal number categorized as observance and manifestation. Across the eight observation cases, six found favor of the employer. In most of these instances, the employer was able to show that it had (a) attempted to reasonably

accommodate the employee's request but was unable to do so without (b) undue hardship.

Across the eight manifestation cases, half were concerned with the wearing or display of certain manner of dress or symbols, and all but one found in favor of the employer.

Observance Requests

In 2009, the Seventh Circuit found that accommodating the employee's religious practices of church attendance would "impose a significant scheduling strain on the company" (*Adams v. Retail Ventures, Inc.*, 2009, p. 443). In 2011 and 2012, employees' requests for accommodation were found to be unreasonable (*Jordan v. Gwinnett County Sheriff's Department*, 2011; *Porter v. City of Chicago*, 2012; *EEOC v. Thompson Contracting, Grading, Paving & Utilities, Inc.*, 2012; *Sanchez-Rodriguez v. AT&T Mobility Puerto Rico, Inc.*, 2012). Similarly, the Eight Circuit found that the seniority provisions of the union's collective bargaining agreement was not required to be modified in order to accommodate the employee's religious beliefs (*Harrell v. Patrick R. Donahue, Postmaster General*, 2011).

Most recently, appellate courts have decided cases requesting religious accommodation for Sabbath (*Crider v. University of Tennessee*, 2012) and religious funeral attendance (*Adeyeye v. Heartland Sweeteners, Inc.*, 2013). In each of those specific cases, the respective federal appellate courts found in favor of the employee.

Manifestation Requests for Religious Accommodation

Wearing or displaying of certain manner of dress or symbols. In 2009, the appellate court affirmed the decision of the Third Circuit, stating that a private corporate operator of U.S. prisons satisfied the necessary showing of undue hardship defense in its inability to provide a reasonable accommodation to a class of women employee requesting to wear khimars at work (*EEOC v. GEO Group, Inc.*, 2010). The Third Circuit also affirmed the decision of the Pennsylvania District Court when it supported a police department's decision to maintain its

uniform policy and not accommodate an employee's religious practices of wearing a headscarf while in uniform and on duty (*Webb v. City of Philadelphia*, 2009). The Eight Circuit court's opinion favored a temporary employment agency employer in a case where an employee applicant alleged religious discrimination when the company failed to refer her to a commercial printing company for employment because she refused to remove her khimar at work (*EEOC v. Kelly Services, Inc.*, 2010). Lastly, the appellate court found favor with an employer when a prospective employee claimed she needed a reasonable accommodation to wear a hijab or headscarf for religion reasons because the prospective employee could not establish a prime facie case of discrimination (*EEOC v. Abercrombie & Fitch Stores, Inc.*, 2013). The EEOC appealed the decision and the USSC has agreed to hear the case during its 2014-15 term.

Prohibitions. In the first of two cases related to prohibitions, both decided by the Eleventh Circuit, two employees were terminated for being "too religious." The appellate court found for the employer because there was differing testimony as to whether the employees held a "sincere religious belief that conflicted with the employer's directive to remove their religious artwork" and the statute does not provide the employees a "right to hang religious artwork" (*Dixon v. The Hallmark Companies, Inc.*, 2010). In the second case, an employee whose religious beliefs conflicted with providing same-sex relationship counseling informed her employer that she could not provide the counseling because of the employee's personal values. Because she did not mention religion or religious beliefs and because her employer provided a reasonable accommodation under Title VII, the appellate court found for the employer (*Walden v. Centers for Disease Control and Prevention*, 2012).

Payment of Union Dues. In the case of *Reed v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America*, an employee sued the union for failing to provide a reasonable accommodation for his religious objection to the payment of dues

in support of the union. The collective bargaining agreement provided for two types of accommodation (i.e., receive a rebate on union dues for the portion that was used for political causes or payment equal to full membership dues to a charity). On appeal, the employee asserted that he believed a requirement to pay to charity in excess of an amount other objectors to paying union dues had paid was effectively a reduction in his pay and therefore an adverse employment action. The appellate court sided with the union in affirming the decision of the trial court, stating that the employee had not provided sufficient evidence that he had been discharged or disciplined.

Religious Affiliation. In 2011, two employees were terminated after the employer learned that they both denied the “deity of Christ” and “disavowed the doctrine of the Trinity.” In its ruling, the Ninth Circuit found that faith-based organizations were exempt from Title VII and found in favor of the employer (*Spencer v. World Vision, Inc.*, 2011).

Conclusions

There is an over-arching theme to these court opinions. Courts weigh the importance of the employee’s religious beliefs and desire to be accommodated with the reality of the employer’s business and employment practices. While courts want to see that the employee’s religious observances and beliefs are accommodated, it is important that the employer not face more than a *de minimis* hardship in implementing such a reasonable accommodation for the employee. These two common factors should be considered by HRD practitioners who desire to accommodate the religious beliefs of their employees. The key to success with these types of spiritual or religious offerings in the employment environment is their voluntary nature. If an employer provides voluntary opportunities for spiritual or religious benefits and accommodations for its employees, it should not find itself in violation of Title VII.

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