Workplace Prayer Rooms

By S. Kristine Farmer, MS, RP, PHR
& Kim Nimon, PhD

In support of my research on workplace chaplains, I asked Kristine Farmer to co-author this issue's column with me and review a federal court case involving workplace prayer rooms. Kristine is a litigation paralegal working in the areas of labor and employment law who is also pursuing her doctorate in human resource development. As such, Kristine is uniquely qualified to provide a legal perspective on workplace prayer rooms and the practice of designating company areas in which employees are permitted to pray during the workday.

Just as the concern about religious overtones with the clerical activities of corporate chaplains could be perceived as a hostile work environment (Nimon, 2009), so could the existence of prayer rooms within a place of employment. But what if an employee sought to organize monthly prayer meetings with colleagues using the company's conference room? Would the employer violate the employee's right *not* to be discriminated against if they did *not* allow the use of its conference room for the monthly prayer meetings?

In 2006, the Ninth Circuit Court of Appeals considered precisely this issue. Daniel Berry filed a lawsuit against his public employer, the Tehama County Department of Social Services (Department), alleging that his rights under the First Amendment of the United States Constitution and Title VII of the Civil Rights Act of 1964 were violated when his employer prohibited him from discussing religion with the Department's clients, displaying religious items in his cubicle, and using a conference room for prayer meetings (*Berry v. Department of Social Services*, 2006).

Berry had been employed by the Department since 1991, and in 1997, he was transferred to the employment services division. In this position, Berry's official duties involved assisting unemployed and underemployed clients in their transition out of welfare programs, including conducting client interviews. Over ninety percent of these interviews were conducted in Berry's cubicle. At the time of his transfer, the Department informed Berry that employees in his position were not allowed to discuss religion with Department clients, and Berry acquiesced.

As the Department did not prohibit Berry from discussing religion with his colleagues, Berry organized a monthly, voluntary employee prayer meeting that was to take place during lunch time in one of the conference rooms in the Department's facility. Although the Director of the Department informed Berry that he could not use the conference room for the prayer meetings, Berry continued to hold prayer meetings in the conference room without officially scheduling it.

In April 2001, the Director sent Berry a letter reiterating that prayer meetings could not be held in the Department's conference room, but instead he and his group could pray in the break room during the regular lunch hour or go outside and pray on Department grounds. The letter specifically stated that the Director was "in no way infringing on (Berry's) constitutional right to free speech" and further informed Berry that "freedom of speech and expression are constitutionally protected by the First Amendment of the United State Constitution" but that those privileges were not "unlimited" and that the "constitutionality of limitations on speech vary depending upon the forum used to express speech" (*Barry v. Department of Social Services,* 2006). The letter further informed Berry that "using a County conference room for public purposes (in other words, non-county related) transformed it into a public forum that can be used by any group of any persuasion, whether or not they are employed by the County" (*Barry v. Department of Social Services,* 2006).

During the fall of 2001, Berry contacted a civil rights organization to inquire whether he could legally keep a Bible on his desk and decorate his cubicle with faith-related items. Berry was encouraged by the response, and in early December 2001, he placed a Spanish language Bible on his desk and hung a sign that read, "Happy Birthday Jesus" on the wall of his cubicle.

On December 6, 2001, Berry received a letter of reprimand instructing him that he could not display religious items that were visible to clients, and instructed him to remove the Bible from view of the clients and remove the name of "Jesus" from the sign. Following receipt of that letter of reprimand, Berry filed a charge of discrimination with the EEOC and received a "right to sue letter" from the EEOC. On May 1, 2002, Berry sued the Department in the United States District Court for the Eastern District of California, asking the court to declare that the Department was required by the First Amendment of the Constitution and Title VII to accommodate Berry's religious beliefs by allowing him to (1) share his religious view with clients when they "initiate the discussion or are open and receptive to such discussions," (2) use the conference room for voluntary prayer group meetings, and (3) display religious objects in his cubicle (*Barry v. Department of Social Services*, 2006).

Both Berry and the Department filed cross-motions for summary judgment. The court denied Berry's motion and granted the Department's motion, and Berry appealed.

As I mentioned in *EEOC v. Preferred Management Corporation* (Nimon, 2009), U.S. courts normally try to balance the rights of

the employee with the rights of the employer. In reaching its decision, the Ninth Circuit considered the facts submitted by Berry and the Department in their respective motions for summary judgment. Specifically, the Department's conference room, according to Berry, was open to other nonbusiness-related meetings, and as such would not be seen as "endorsing religion" by allowing individual employees to use the room for prayer. However, no evidence was presented to the Court that the conference rooms were used for "anything other than official business meetings and business-related social functions, such as employee birthday parties, of the sort ordinarily allowed by employers in meeting areas" *(Barry v. Department of Social Services*, 2006). Moreover, there was no evidence submitted to the Court that showed that the Department had ever allowed any political or religious groups to use its conference rooms, or that the rooms had ever been made publically accessible.

In its opinion, the Ninth Circuit held that the public employer's interests in avoiding violations of the Establishment Clause 1 and in maintaining the conference room as a nonpublic forum outweighed the resulting limitations on Berry's free exercise of religion at work. Specifically, the Court concluded that the Department's decision to allow its conference room to be used for birthday parties and baby showers but not by employee social organizations is a "reasonable" limitation. Moreover, the Court held that the Department declined to allow Berry to use the conference room for a "legitimate, nondiscriminatory reason, to maintain the room as a nonpublic forum" and affirmed the decision of the United States District Court for the Eastern District of California (Barry v. Department of Social Services, 2006).

What can public sector employers take away from the *Berry* case? It seems the best practice is for employers to carefully consider when employees should be granted access to company facilities for non-work related activities (e.g., prayer meetings), especially if those facilities might involve individuals outside of the company. While employers should not discourage employees from praying during their breaks or lunch hours, this case seems to suggest that employers are able to reasonably restrict access to its nonpublic facilities for non-work related events.

For private sector employers, as well as most unions and employment agencies, who employ fifteen or more employees, Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination based on religion, ethnicity, country of origin, race, and color. When a company's workplace policies interfere with an employee's religious practices, an employee may ask for a "reasonable accommodation," which is "a change in a workplace rule or policy" to allow the employee to engage in a religious practice. Whether the accommodation can be made is based upon the nature of the employee's work and the workplace. In some cases, employers can allow employees to use their lunch or break times for religious prayer. According to the EEOC's website, an employee's religious practices may not impose a monetary or administrative burden on the employer. For example, if "allowing an employee to utilize appropriate space for prayer" would impose a burden on the employer that cannot be resolved, the employer is not required to allow the accommodation (EEOC, 2011).

With regard to use of employer facilities, the EEOC presents the case of an employee whose assigned work area is a factory floor rather than an enclosed office. In this example, the employee asked his supervisor if he could use one of the company's unoccupied conference rooms to pray during a scheduled break time. The EEOC stated that the employer must grant this request if it would not pose an undue hardship. Such a hardship might exist, for example, if the only conference room available during lunch is needed for work meetings. However, according to the EEOC Compliance Manual (2008), the employer is not required to provide the employee with his choice of available locations, but rather can meet the accommodation by making any appropriate location available that would accommodate the employee's religious needs (e.g., an unoccupied area of work space rather than a conference room).

As always, I am interested in your thoughts and opinions regarding religion in the workplace. I would appreciate hearing about your encounters of religion in the workplace and experiences with corporate prayer rooms. Feel free to contact me via email at kim.nimon@gmail.com. I look forward to your input.

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1Definition of "Establishment Clause"—The First Amendment of the Constitution states: "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof (U.S. Constitution, Bill of Rights, First Amendment. 1791).

ABOUT THE AUTHOR

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KIM NIMON, PhD, is an assistant professor at the University of North Texas, where the main tenet of her research agenda focuses on improving human performance through the practice of workplace spirituality. She became aware of corporate chaplaincy programs during her doctoral studies and began researching how they fit within the larger context of workplace spirituality. Her research on workplace chaplains has been published by the *Journal of Management, Spirituality, & Religion* and the *International Society for Performance Improvement.*