"Old Time Religion" Takes Center Stage In The Workplace - Religious Discrimination Claims On The Rise

By Stephanie K. Rawitt / Nov 08, 2013

When can an employer prohibit an employee from wearing a Hijab or Burka? Can an employee of a trucking company dictate which products he will or won't deliver on religious grounds? Can an employee refuse biometric hand-scanning because of his interpretation of the Bible? Can employees refuse to wear company-issued uniforms? Must employees be given prayer breaks?

These questions and more like them are arising with increasing frequency in US businesses. In fact, religion is one of the fastest growing and also one of the most contentious areas in employment law. Employers may not discriminate based upon religion, must reasonably accommodate religious beliefs and practices and also must protect other employees against the unwelcome religious behaviors of their co-workers and/or managers. Employers can find themselves in a no-win situation when the religious-based demands of one person might be in conflict with company policy and/or the religious beliefs or the basic rights of others. However, employers today must find the proper balance between business necessity and the religious rights and requirements of their employees in order to avoid discrimination claims.

Why the increase? We live in an age where US workers have grown more expressive about their beliefs and where the workforce has become increasingly diverse. Many attribute the rising conflict to immigration, a less inhibited discourse concerning religious beliefs and differences, and a more assertive and knowledgeable workforce. Religion has always been a hot button issue, but today's worker is willing to stand up for her rights when she believes that she has been wronged.

Religious discrimination complaints do not, when compared to claims of age, sex, gender, disability and race, account for a very large percentage of the charges filed with the EEOC each year, but they have increased in number by over 40% in the past decade. In September of this year, a Federal Judge found Abercrombie & Fitch liable for religious discrimination when it fired a Muslim employee for wearing her hijab (religious scarf). According to the lawsuit filed by the EEOC in 2011, the employee started working for the store in San Mateo, CA in 2009. She worked primarily in the stockroom. At first she was asked to wear headscarves in Hollister colors which she agreed to do. However, in mid-February, 2010 she was informed that her hijab violated Abercrombie's "Look Policy", a company-wide dress code. She was advised that she would be taken off the schedule unless she removed her headscarf while at work. The employee was fired at the end of February, 2010 for refusing to take off the hijab. The Court found that it was illegal for the store to fire the employee solely for wearing the hijab. The Court was not swayed by the store's arguments of undue hardship. U.S. Equal Employment Opportunity Commission v. Abercrombie & Fitch, 2013 WL 4726137, N.D. Cal. 2013).

The EEOC is actively pursuing what it perceives to be religious discrimination violations across the country. In one suit the EEOC has charged that a trucking company failed to accommodate two employees because of their religion, Islam. The employees advised their employer that they could not deliver alcohol because of their religion and were thereafter terminated. In that suit the EEOC maintained that the employer easily could have reassigned the employees to other delivery jobs as a reasonable accommodation without undue hardship. The suit is presently pending. EEOC v. Star Transport, Inc., Civil Action No. 13 C 01240-JES-BGC, US District Court for the Central District of Illinois in Peoria.

In another suit filed by the EEOC, a Texas-based franchise refused to permit a female employee to wear a skirt and instead insisted that she wear black pants like the rest of the employees, despite the fact that the employee advised that she was a member of the Christian Pentecostal Church and adhered to an interpretation of the Scripture that women should wear skirts or dresses. That case was settled. EEOC v. Fries Restaurant Management, L.L.C., Civil Action No. 3:12-cv-3169-M, US District Court for the Northern District of Texas.

The EEOC also brought suit against a Miami, FL based medical and chiropractic service provider because the employer allegedly required employees to attend courses that involved Scientology religious practices. When several of the employees refused to participate in the Scientology religious practices, they were terminated. The EEOC maintained that requiring employees to conform to religious practices and beliefs espoused by the employer created a hostile work environment, in violation of Title VII. EEOC v. Dynamic Medical Services, Inc., Civil Action No.: 1:13-cv21866, US District Court for the Southern District of Florida.

In addition to the above, over the past few years, the EEOC has filed religious discrimination suits against a variety of companies including fast-food restaurants, hair salons, aviation, hotels, retail, medical and health services. The cases involve numerous issues from employees seeking to avoid working on their Sabbath to food preparation and workers; appearance. Employers defend by citing undue hardship. However, the defense is fact specific and often difficult to establish.

It should be noted that the EEOC is more interested in settling the suits than litigating where possible. Despite a rise in complaints, the EEOC has filed fewer religious-based lawsuits in the past few years, and instead is working to resolve and educate employers. As with other EEOC resolutions, the settlements often include mandated training.

When faced with a request for an accommodation of an employee's religious beliefs, the employer should enter into an interactive process with the employee to determine an accommodation for the employee's religious belief. If the employer determines it cannot accommodate the employee's request, the employer should ensure that it can demonstrate that the accommodation would cause an undue hardship. Because this is increasingly litigated area, Employers should engage their employment counsel in the accommodation process.

If you have any questions about religious accommodations or discrimination, you may contact Stephanie K. Rawitt, (215) 640-8515. Srawitt@clarkhill.com, or another member of Clark Hill's Labor and Employment Practice Group.