

# Understanding Religious Discrimination, Accommodations, and Harassment in the Workplace



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# What is religious discrimination?

- ▶ Religious discrimination involves treating a person (an applicant or employee) unfavorably because of their religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, Sikh, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.
- ▶ Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion.



# What is the applicable federal law?

- ▶ **Title VII of the Civil Rights Act of 1964:**
- ▶ Prohibits employers from discriminating against individuals because of their religion (or lack of religious belief).
- ▶ Forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment. Title VII also prohibits job segregation based on religion, such as assigning an employee to a non-customer contact position because of actual or feared customer preference.



# What is the applicable federal law? (continued)

- ▶ **Title VII of the Civil Rights Act of 1964:**
- ▶ Prohibits retaliation against an individual for opposing employment practices that discriminate based on religion or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation.



# What are examples of religious accommodation?

- ▶ **Some common religious accommodations include:**
  - Flexible scheduling,
  - Voluntary shift substitutions or swaps,
  - Job reassignments,
  - The wear of articles of faith, and
  - Modifications to workplace policies or practices including grooming standards.



# What are employers obligated to do?

- ▶ The law requires an employer or other covered entity to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause a burden that is substantial in the overall context of the employer's business. What qualifies as "substantial" varies based on the business itself. This case-by-case analysis accounts for all relevant factors, including the specific accommodation at issue and its practical impact on the conduct of the business based on the nature, size, and operating cost of the employer.
- ▶ The analysis may result in an employer being required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.



# Prior to the Groff v. DeJoy decision, how were religious accommodations reviewed?

- ▶ Prior to the Groff decision, employers were not obligated to provide a religious accommodation if the accommodation posed more than a “de minimis cost” on the employer. In practice, the “de minimis cost” standard was interpreted as posing any cost and was a relatively low bar for employers to show. This resulted in the denial of many reasonable accommodation requests.



# How did the Groff v. DeJoy decision change the way religious accommodations are reviewed?

- ▶ Since the Supreme Court's 2023 decision in Groff, under Title VII employers must reasonably accommodate an employee's "religious observance and practice" unless the employer shows that such accommodation would cause "undue hardship on the conduct of the employer's business." The decision also spelled out some specific requirements as part of making this determination:





# How did the Groff v. DeJoy decision change the way religious accommodations are reviewed? (continued)

- ▶ Upon receiving a religious accommodation request, Employers must review the request;
- ▶ Employers must engage in a meaningful “interactive process” with the Employee to determine what actions may or may not meet the Employee’s accommodation needs;
- ▶ The interactive process should involve good faith discussion with the Employee and take into account whether accommodating the Employee’s request would create a substantial burden on the Employer’s business, including its practical impact on the conduct of the business based on the nature, size, and operating costs of the Employer;
- ▶ If the accommodation would not pose an undue hardship, the Employer must provide the accommodation.



# What is Harassment based on Religion?

- ▶ It is illegal to harass a person because of his or her religion.
- ▶ Harassment can include, amongst other things, offensive remarks about a person's religious beliefs or practices.
- ▶ Title VII does not prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious.
- ▶ Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment, or when it results in an adverse employment decision (such as the victim being fired or demoted).
- ▶ The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.



# What are employers' best practices in accommodating employees?

- ▶ Employers should inform employees that they will make reasonable efforts to accommodate the employees' religious practices.
- ▶ Employers should train managers and supervisors on how to recognize religious accommodation requests from employees.
- ▶ Employers should consider developing internal procedures for processing religious accommodation requests.
- ▶ Employers should individually assess each request and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate.



# What are employers' best practices in accommodating employees? (continued)

- ▶ Employers and employees should confer fully and promptly to the extent needed to share any necessary information about the employee's religious needs and the available accommodation options.
- ▶ An employer is not required to provide an employee's preferred accommodation if there is more than one effective alternative to choose from. An employer should, however, consider the employee's proposed method of accommodation, and if it is denied, explain to the employee why his proposed accommodation is not being granted.



# What are employers' best practices in accommodating employees? (continued)

- ▶ Managers and supervisors should be trained to consider alternative available accommodations if the particular accommodation requested would pose an undue hardship.
- ▶ When faced with a request for a religious accommodation which cannot be promptly implemented, an employer should consider offering alternative methods of accommodation on a temporary basis, while a permanent accommodation is being explored. In this situation, an employer should also keep the employee apprised of the status of the employer's efforts to implement a permanent accommodation.



# What are employees' best practices in accommodating employees? (continued)

- ▶ Employees should advise their supervisors or managers of the nature of the conflict between their religious needs and the work rules.
- ▶ Employees should provide enough information to enable the employer to understand what accommodation is needed, and why it is necessitated by a religious practice or belief.
- ▶ Employees who seek to proselytize in the workplace should cease doing so with respect to any individual who indicates that the communications are unwelcome.



# What are employers' best practices addressing religious harassment?

- ▶ Employers should have a well-publicized and consistently applied anti-harassment policy that: (1) covers religious harassment; (2) clearly explains what is prohibited; (3) describes procedures for bringing harassment to management's attention; and, (4) contains an assurance that complainants will be protected against retaliation. The procedures should include a complaint mechanism that includes multiple avenues for complaint; prompt, thorough, and impartial investigations; and prompt and appropriate corrective action.
- ▶ Employers should allow religious expression among employees to the same extent that they allow other types of personal expression that are not harassing or disruptive.



# What are employers' best practices addressing religious harassment? (continued)

- ▶ Once an employer is on notice that an employee objects to religious conduct that is directed at him or her, the employer should take steps to end the conduct because even conduct that the employer does not regard as abusive can become sufficiently severe or pervasive to affect the conditions of employment if allowed to persist in the face of the employee's objection.
- ▶ If harassment is perpetrated by a non-employee assigned by a contractor, the supervisor or other appropriate individual in the chain of command should initiate a meeting with the contractor regarding the harassment and demand that it cease, that appropriate disciplinary action be taken if it continues, and/or that a different individual be assigned by the contractor.





# What are employers' best practices addressing religious harassment?(continued)

- ▶ To prevent conflicts from escalating to the level of a Title VII violation, employers should immediately intervene when they become aware of objectively abusive or insulting conduct, even absent a complaint.
- ▶ Employers should encourage managers to intervene proactively and discuss with subordinates whether particular religious expression is welcome if the manager believes the expression might be construed as harassing to a reasonable person.
- ▶ While supervisors are permitted to engage in certain religious expression, they should avoid expression that might – due to their supervisory authority – reasonably be perceived by subordinates as coercive, even when not so intended.



# What are employees' best practices addressing religious harassment?

- Employees who are the recipients of unwelcome religious conduct should inform the individual engaging in the conduct that they wish it to stop. If the conduct does not stop, employees should report it to their supervisor or other appropriate company official in accordance with the procedures established in the company's anti-harassment policy.



# What are employees' best practices addressing religious harassment?(continued)

- Employees who do not wish to personally confront an individual who is directing unwelcome religious or anti-religious conduct towards them should report the conduct to their supervisor or other appropriate company official in accordance with the company's anti-harassment policy.



# Thank You!



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