

Religious Accommodation Reminder

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Two recent cases illustrate the importance of training managers to recognize the need to consider accommodation for religious beliefs of employees, and the care with which such requests should be analyzed. Title VII prohibits discrimination against employees because of their religious beliefs, and also requires employers to provide accommodations unless the accommodation imposes an undue hardship. Significantly, the term “religion” encompasses many ideologies, not just mainstream organized religions.

In *EEOC v. Abercrombie & Fitch Stores, Inc.*, the court held that the employer violated Title VII by terminating an employee who wore a hijab, or Muslim headscarf. The company claimed that the headscarf was inconsistent with its “Look Policy,” which required employees to present themselves at work in clothing mirroring the Abercrombie & Fitch product line. The company argued that its employees’ work attire was an essential part of its marketing strategy, but had no evidence that the plaintiff employee’s hijab negatively impacted sales. The message of this case is that denial of religious accommodation must be based on some demonstrable negative impact on the company’s operations, not speculation.

In *Adey v. Heartland Sweeteners, Inc.*, the employee asked for one week of vacation and three weeks of unpaid leave to attend his father’s funeral in Nigeria. He did not request a religious accommodation; rather he said he needed to “participate in the funeral rite according to our custom and tradition” and that the funeral rites were “compulsory for the children so that death will not come or take away any of the children’s life.” He was not granted the leave, went anyway, and was terminated. He sued, claiming failure to provide religious accommodation. The company argued that his request for leave was not sufficient to put it on notice that the employee was requesting a religious accommodation, but the court disagreed. Relying on the broad definition of “religion,” the court held that the employee’s references to “spiritual activities and the potential consequences in the afterlife” could be sufficient to trigger reasonable accommodation obligations and that a jury trial was warranted on this issue.

The court also rejected the company’s claim that the requested four week absence was an undue hardship. The employee worked as a material handler and packer. There was high turnover in these jobs, and many positions were filled with temporary workers. Because their temporary workers were available to cover the employee’s position, the court found that the employee’s absence could be considered a minor inconvenience, and not sufficient to meet the undue burden standard. On this point, the court held again that a jury trial was warranted.

These two cases illustrate the complexity of analyzing employee requests which might be based on a belief that falls under the broad definition of religion, and the fact intensive evaluation necessary to determine whether the request creates an undue hardship that justifies its denial. Prudent employers should educate managers about the potentially broad reach of Title VII's mandate for religious accommodation and seek legal advice when confronted with these issues.

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