

Clarity Regarding Workplace Bias Based on Religion

The U.S. Equal Employment Opportunity Commission (EEOC) has issued a new compliance manual intended to help employers answer questions of whether beliefs and practices labeled as religious will be protected under the law. The EEOC issued Compliance Manual Section 12, addressing workplace discrimination, harassment and retaliation based on religion. The new Section 12 was drafted primarily to benefit employers, but it also will be a tool for investigations by EEOC staff into employee claims based on religion.

Section 12 consolidates recent Title 7 case law and the EEOC's position regarding issues surrounding religion, into one document. The U.S. Supreme Court has defined religion broadly under Title 7 to include not only traditional organized religions such as the monotheistic faiths (Christianity, Islam and Judaism), but also religious beliefs that are held by few people or even one person, but this is not without limit.

An employer must look at each employee's acts on a case-by-case basis to determine whether the activity is religious and thus entitled to Title 7 protection. In order for a practice that an employee engages in to be religious, the act must be motivated by religious faith. Section 12 stresses that employers must assume that an employee's request for religious accommodation is based on a sincerely held religious belief. This is because of the broad definition of religion, which is so expansive that it assumes that employers are incapable of knowing about all valid beliefs and practices that exist and warrant accommodation.

When there is doubt by the employer, the courts have recognized certain factors to help determine whether an employee's religious beliefs are sincerely held:

1. has the employee behaved in a manner that is consistent with the edicts of the employee's espoused religious faith;
2. has the employee previously requested the same accommodation for secular purposes and is now making the same request but for purported religious reasons;
3. does the requested accommodation have benefit for secular purposes; and is there evidence suggesting that the employee is not seeking an accommodation for religious purposes.

Religious practices, observances and beliefs that are sincerely held must be accommodated if the accommodation does not pose an undue hardship on the employer. The burden is placed squarely on the employee to provide sufficient information that there is a conflict between a religious belief or practice and a job duty so that an accommodation is necessary. There is no obligation for the employer to offer an accommodation without a request.

The compliance manual also addresses harassment on the basis of an employee's religious beliefs. The analysis is the same as the test for harassment on the basis of other Title 7 grounds (race, sex, age, etc.).

What This Means For Counties

Counties should evaluate all requests for religious accommodations made by employees before they deny them to avoid potential liability. Although Section 12 does not change the existing law in this area, it provides much-needed guidance regarding a pervasive form of harassment, discrimination and retaliation.

For more information, contact CTSI at 303-861-0507.