

RELIGION AT WORK

By Karen Sutherland and Ross Farr

Conflicts regarding the expression of religious belief have become more prevalent in recent years. Employers cannot leave it to employees to work out these issues among themselves because most workplaces are covered by Title VII of the Civil Rights Act of 1964, which protects employees from being discriminated against based on sincerely-held religious beliefs. An employer can be held liable under Title VII if the employee proves that (1) the employee's sincerely held religious belief conflicts with an employment requirement, (2) the employee has told the employer about the conflict, and (3) the employer discharges or disciplines the employee, or otherwise subjects the employee to discriminatory treatment for failing to comply with the requirement.

An employer is obligated to accommodate an employee's religious beliefs unless the accommodation would result in undue hardships to the employer. An employee, however, must make some effort to cooperate with an employer's attempt at accommodation. Each situation is considered on a case-by-case basis, as what may be a reasonable accommodation for one employee may not be reasonable for another. However, if the employer's attempts at accommodation are unsuccessful, the employer still carries the burden to show that it cannot accommodate the employee's beliefs without undue hardship.

In one case, the employee's religious beliefs prohibited him from working on Sunday, or asking anyone else to. The employer's policy required the employee to first try to swap shifts, but the employee did not attempt to do so because he believed it would be a sin. The court held that the employer's accommodation did not resolve the conflict, and the employer could have reasonably accommodated the employee by taking responsibility for finding someone to take the Sunday shifts itself instead of requiring the employee to do so.

In another case, an employee objected to his employer putting posters in the workplace that promoted diversity because the employee believed that homosexuality was a sin. He responded to the diversity posters by posting Biblical scriptures above his cubicle, in a large enough font that passersby could clearly read them. The employee stated that the postings were "intended to be hurtful" to gay and lesbian employees in order to cause them to "repent, and be saved." The employee refused to take down his Bible verses unless the employer removed the diversity posters. The employee was fired for insubordination.

The employee sued, claiming that his employer had failed to accommodate him and had treated him disparately as a member of a protected class. Under the disparate treatment claim, the employee argued that the employer's diversity campaign was a "crusade to convert fundamentalist Christians to its values." The court concluded, however, that the employer's goal of increasing tolerance of diversity, including gay and lesbian people, was not unlawful. The court disagreed that the employer was trying to change the employee's religious beliefs. Instead, it only required that he treat his fellow employees with respect, which included removing intentionally hurtful postings above his cubicle.

As for the employee's claim that the employer failed to accommodate his religious beliefs, the court held that the only accommodation the employee was willing to accept – removal of the diversity posters or allowing him to post Biblical passages – would have been an undue hardship on the employer. The court held that “an employer need not accommodate an employee's religious beliefs if doing so would result in discrimination against his co-workers or deprive them of contractual or statutory rights,” and said that the law does not require an employer to accommodate an employee's desire to impose his religious beliefs on his co-workers.

In another case, a trial court ruled that the employer did not do enough to accommodate an employee's religious beliefs where the employee was asked to sign a “Diversity Policy” as part of AT&T's employee handbook. The employee objected to a sentence in the policy, which read: “Each person at AT&T Broadband is charged with the responsibility to fully recognize, respect and value the differences among all of us.” The employee refused to sign the policy and explained to his employer that he considered homosexual behavior and beliefs to be sinful. He did not intend to discriminate against or harass anyone based on beliefs or behaviors he found sinful, but he could not agree to “value” sinful beliefs or behaviors. He was subsequently terminated for not signing the policy.

The court ruled that the employer could have reasonably accommodated the employee's beliefs without undue hardship by rewording the policy. The court stated that if the employer sought more details about the employee's concerns, it would have learned that the employee basically agreed with the policy but had difficulty with the literal meaning of the term “value.”

For further discussion of these two cases, see *HR Magazine*, August 2004.

This brief article is a broad summary only. It lacks specificity about the law and about the effects of different fact patterns, and thus shall not be applied without consulting an attorney. It also focuses on Washington State law and federal law, and the laws of other jurisdictions may vary materially. The information set forth in this article is a broad and general overview of complex topics, and is not legal advice. It also does not take into account any changes to the law or in interpretations of the law that may have occurred since it was written. For more information, contact Karen Sutherland at ksutherland@omwlaw.com or Ross Farr at rfarr@omwlaw.com