

## CASE REPORT

**REASONABLE ACCOMMODATION OF RELIGIOUS PRACTICES — ADVERSE EMPLOYMENT ACTION.** The Washington Law Against Discrimination (WLAD) creates an implied cause of action for failure to reasonably accommodate an employee's religious practices. *Kumar v. Gate Gourmet, Inc.*, No. 88062-0, Wash. Supreme Ct. (May 22, 2014).

**I. Facts.** Employees of Gate Gourmet, which prepares meals for service on trains and airplanes, brought a class action lawsuit against Gate Gourmet under the WLAD for failure to reasonably accommodate their religious beliefs. Gate Gourmet's meal policy bars employees from bringing their own food for lunch for security reasons, and an employer-provided lunch is served.<sup>1</sup> The employees alleged that Gate Gourmet used animal by-products in its vegetarian lunch option and served pork, despite having been informed that such meals violated their religious beliefs. The trial court dismissed the lawsuit, finding that the WLAD contained no requirement that employers make reasonable accommodation for their employees' religious practices.

**II. Applicable Law and Analysis.** The Supreme Court accepted direct review of the trial court's decision and reversed, holding that the WLAD creates an implied cause of action for an employer's failure to reasonably accommodate an employee's religious practices. In reaching this decision, the Court relied upon the federal antidiscrimination statute, Title VII, which has already been interpreted as establishing an implied cause of action for failure to reasonably accommodate religious beliefs. Specifically, Title VII initially did not include an express requirement that employers reasonably accommodate religious practices but was amended in 1972 to add such an express requirement.<sup>2</sup> Nevertheless, federal caselaw interpreting the 1972 amendment held that the amendment only clarified that Title VII requires accommodation of religious practices and did not modify its original meaning. The reasoning of these cases (holding that Title VII always provided an implied cause of action for religious accommodation) was persuasive to the Court. In its view, it makes little sense to find that Title VII impliedly prohibits employment practices that are neutral on their face where they disproportionately burden a protected class (disparate impact) but to not find a corresponding requirement to accommodate religious practices to eliminate the disparate impact. Thus, where federal courts have found that Title VII included an implied cause of action for failure to accommodate

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<sup>1</sup> Gate Gourmet employees work at the airport behind the security check.

<sup>2</sup> 42 U.S.C. § 2000e(j) ("religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee or prospective employee's religious observance or practice without undue hardship).

religious beliefs, the Supreme Court applied the same reasoning to the WLAD, despite the absence of express language regarding religious accommodation.

Moreover, the Court concluded that the Washington Human Rights Commission's failure to promulgate regulations interpreting the WLAD as requiring reasonable accommodation of religious practices was insignificant. The Court concluded that the HRC's silence on the matter could easily have meant that the HRC assumed that the WLAD imposed the same duty to accommodate religious practices as Title VII, without a need to issue a regulatory clarification. In fact, the HRC submitted evidence to the Court that it had recognized and enforced the requirement to accommodate employees' religious practices through interpretive guides and complaint investigations. In the end, the Court noted that it had previously construed the WLAD's protections broadly where other forms of discrimination are concerned, and it declined to make an exception for religious discrimination.

In addition, the Court went on to decide that the Gate Gourmet employees had satisfied their initial burden of proving a failure to accommodate religious practices (a prima facie claim). A plaintiff establishes a prima facie claim of failure to accommodate religious practices where (1) he or she had a bona fide religious belief, the practice of which conflicted with employment duties; (2) he or she informed the employer of the beliefs and the conflict; and (3) the employer responded by subjecting the employee to threatened or actual discriminatory treatment. The employer may then defend by showing that it did offer a reasonable accommodation or that an accommodation would be an undue hardship on the employer, *i.e.*, that the accommodation requires the employer to bear more than a *de minimis* cost. The reasonable accommodation also need not be the precise accommodation requested by the employee. In this case, the Court found that the employees had established a prima facie claim because the employer knew of the employees' religious beliefs and continued to subject the employees to discriminatory treatment by refusing to entertain any proposed accommodation, thereby forcing them to eat prohibited food or work hungry.

**III. Conclusion.** For many cities, Title VII already imposes a requirement to reasonably accommodate an employee's religious practices or beliefs. Title VII's requirement applies to all employers with more than 15 employees.<sup>3</sup> The same requirement will now extend to all Washington employers with 8 or more employees.<sup>4</sup> It should be noted that the WLAD's protections extend not only to employees but to independent contractors as well.<sup>5</sup>

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<sup>3</sup> 42 U.S.C. § 2000e(b) (the term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year).

<sup>4</sup> RCW 49.60.040("Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit).

<sup>5</sup> *Marquis v. City of Spokane*, 130 Wn.2d 97, 110-11, 922 P.2d 43 (1996) (independent contractor has the right to be free of discrimination based on sex, race, national origin, religion, or disability in the making or performing of a contract for services).