

MEMORANDUM

To: Jennifer L. Monk
From: Benjamin C. Rosenbaum
Date: November 6, 2008
File Number: 08-1066-002
RE: The Rights of Employers with Regard to Religion in the Workplace

Questions Presented

What are the rights of employers with regard to religion in the workplace in California, and what best practices can an employer implement to reduce their exposure to liability while still exercising their religious freedoms and beliefs as they desire?

Discussion

This memorandum is meant to be a general evaluation of how Christian employers may conduct themselves with regard to their religious beliefs and practices, and their interactions in the workplace with their employees. While this memorandum can offer some clear guidelines, the specifics of each situation should be analyzed on a case-by-case basis to ensure that company policies as a whole do not create an environment that may expose the business owner to unnecessary potential liability.

This area of law is generally governed by Title VII of the Civil Rights Act of 1964 (“Title VII”),¹ the California Fair Employment and Housing Act (“FEHA”),² the California Constitution, and the California Unruh Civil Rights Act.³ Both Title VII and FEHA prohibit discrimination against an individual based upon an individual’s race, color, religion, sex, or national origin. Within the State of California, discrimination is also unlawful with regard to sexual orientation. Further, harassment of individuals is likewise prohibited by federal and state law. Liability on the part of an employer may generally arise where there is disparate treatment (differing treatment) of employees, harassment of individuals based upon a protected category, or where there is a hostile work environment.⁴ When evaluating cases, the California State Court will typically refer to federal decisions regarding analogous Title VII provisions unless FEHA clearly indicates that its state statutory provisions should be interpreted differently.⁵

While employers have to be wise in how they choose to conduct themselves with regard to their religious beliefs and practices, they do not have to check their religion at the door when they come to work, and they may share their religious convictions with their

¹ Codified in 42 U.S.C §§ 2000e et seq.

² Codified in California Government Code §§12900 et seq.

³ Codified in California Civil Code §§ 51 et seq.

⁴ See generally, *Harris v. Forklift SYS., Inc.*, 510 U.S. 17 (1993); *Venters v. City of Delphi*, 123 F.3d 956 (7th Cir. 1997).

⁵ See, e.g., *Johnson v. City of Loma Linda*, 24 Cal.4th 61, 74 (2000); *Fisher v. San Pedro Peninsula Hosp.*, 214 Cal.App.3d 590, 606 (1989).

employees and through their business. The following is a general analysis of best practices for various situations.

I. Witnessing to Employees

Employers may generally speak to their employees about their religious beliefs, share the gospel, and/or invite employees to attend church, provided that it is made clear to employees that their continued employment and advancement within the company does not have any correlation with compliance with their employer's religious beliefs or practices.⁶ Employers must not continue to witness to employees, or to invite them to church, once they have expressed a desire to not be subjected to such proselytizing. Continued attempts to witness after the employee raises objections could be seen as religious harassment. While employers may make their religious beliefs known, they are not allowed to impose their beliefs on their employees.⁷

II. Distributing and Displaying Religious Literature

Much like an employer's general right to speak with employees about their religious beliefs, employers may distribute and display religious literature in the workplace.⁸ However, as with spoken religious speech, employers must make it clear to employees that their continued employment and advancement within the company does not have anything to do with compliance with their employer's religious beliefs. Further, employers must respect their employees' objections to such written religious speech, and must not take any retaliatory action in response to disagreement or protest on the part of the employee. Moreover, employers would be wise to accommodate any objections from employees to such materials by providing them with any work related materials in a format that does not contain any religious content. Further, employers should consider placing a statement on any printed material that contains a religious message that the employer does not discriminate on the basis of religion with regard to advancement within the company or employment.

III. Holding Religious Meetings or Bible Studies

An employer may hold regular Bible studies or religious meetings at their business, so long as attendance is not mandatory.⁹ Courts have held that if attendance is mandatory, it can amount to religious discrimination against employees that do not want to attend.¹⁰ Additionally, management need not shy away from taking an active role in such religious meetings or Bible studies.¹¹ The key in this area is that employees understand that such religious activities in the workplace are voluntary and entirely optional. Any notice regarding such meeting should clearly state that they are not mandatory. Further, it

⁶ See *Meltebeke v. Bureau of Labor & Indus.*, 903 P.2d 351 (Or. 1995); see also *Hess v. Multnomah County*, 216 F.Supp.2d 1140 (D.Or. 2001) (citing *Meltebeke* and affirming its harassment standard).

⁷ *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1021 (4th Cir. 1996).

⁸ *Taylor v. National Group of Co's.*, 729 F.Supp. 575 (N.D. Ohio 1989).

⁹ *Young v. Southwester Sav. & Loan Assoc.*, 509 F.2d 140 (5th Cir. 1975).

¹⁰ See, e.g., *id.*

¹¹ *Brown v. Polk County*, 61 F.3d (8th Cir. 1995).

would be wise to only hold such meetings before work hours begin, during breaks, or after work hours end, to avoid any appearance that religious meetings or Bible studies are a part of the required workday.

IV. Training Based on Religious Principles

While, as discussed above, an employer may not require attendance at religious meetings or Bible studies, an employer may require employees to attend a training program that is merely based on religious principles. So long as the training is not “religious” training, is not a religious service, and does not require employees to engage in activities that violate their sincerely held religious beliefs, the philosophical underpinnings of business training may come from the Bible.

V. Basing Business Goals or Objectives on Religious Principles

An employer is completely free to base their business goals or objectives on religious principles. Such action is not discrimination because it would be allowing the business owner to affirm their own faith through their work.¹² Courts have clearly held that “Title VII does not, and could not, require individual employers to abandon their religion.”¹³ Again, the key is not giving current or prospective employees the impression that employment or advancement within the business is in any way related to compliance with their employer’s religious beliefs or practices. As discussed above, specifically as it related to religious literature distributed by an employer, employers should consider placing a statement on any application forms, employee orientation materials, evaluation forms, and in employee handbooks, that the employer does not discriminate on the basis of religion with regard to advancement within the company or employment. Employers should ensure that they abide by that standard, and that all managers within the organization adhere to that guideline as well.

VI. Regulating Employee Speech and Employee Displayed Literature

While employers should be sensitive to the sincerely held religious beliefs of their employees, they also have the inherent right to control the image of their own business, and how their business is portrayed to the public. Unless an employer is a governmental entity, employees generally have no First Amendment right to free speech in the workplace. Because of this, employers can create guidelines about what types of literature may be displayed in areas of the office that can be viewed by the public, and they may curtail displays that are disruptive to the work environment. In making such determinations, employers should attempt to accommodate an employee’s desire to display items in their work area that relate to their sincerely held religious beliefs, so long as they are not disruptive. Further, employers can regulate employees’ speech with customers and in the workplace to ensure that it does not create an image that would hurt business, or be disruptive to the workplace.

¹² See generally, *id.*

¹³ *E.E.O.C. v. Townley Engineering & Mfg. Co.*, 859 F.2d 610, 621 (9th Cir. 1988).

VII. Accommodations for Employees' Religious Beliefs

As discussed above, both Title VII and FEHA prohibit discrimination against an employee based upon an employee's religious beliefs. Generally, to fall under such legal protections, an employee's objection to something in the workplace must meet three criteria to be legally actionable. First, the employee must have a sincerely held religious belief that conflicts with an employment requirement. Second, the employee must inform the employer that such a conflict exists. Third, the employer must either terminate the employee, or discipline the employee by failing to make accommodations for the conflicting employment requirement, as a result of the complaint. To ensure that there is no liability for religious discrimination, employers should make every effort to prevent those three criteria from being met.

Religion, for purposes of Title VII, is a very broad term. It includes all religious practices and observances, as well as beliefs, including moral and ethical beliefs about right and wrong. As soon as an employer or manager is informed that an employee has a sincerely held belief that is in conflict with a workplace requirement, employers should take such a complaint very seriously, and make every effort to alleviate any conflict for the employee. The employer and management must not take any actions towards the employee to punish them for raising the issue, and should carefully avoid any perception of retaliation for the complaint.

Conclusion

Employers have substantial rights in the workplace and should not feel reticent to live and share their faith through their company and with their employees. So long as employers abide by these best practices, and ensure that all of their managers abide by them, they should be insulated from liability for religious discrimination. This area of law, as with most areas of the law, is very fact intensive. If you have any questions regarding the specifics of a given situation, and whether it is a situation that might amount to discrimination, please feel free to contact our office for further guidance.