



MEMORANDUM

RE: Religion in the Workplace –A Guide for Private Christian Business Owners

Questions Presented

What are the rights of employers with regard to religion in the workplace, 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 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 liability.

This area of law is governed by Title VII of the Civil Rights Act of 1964 (“Title VII”) and state statutes.¹ Both Title VII and state statutes prohibit discrimination on the basis of race, color, religion, sex, or national origin. It is generally unlawful for an employer to discharge or fail to hire any person, or otherwise discriminate, with respect to compensation, terms, conditions or privileges of employment, because of his protected class. Many states have included sexual orientation and gender as protected classes along with the other classes identified above. Furthermore, an employer may not limit, segregate or classify an employee in a way which would deprive the employee of employment opportunities or adversely affect his status as an employee based on his status in a protected class.

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

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

I. Witnessing to Employees and Clients

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.² Employers must not continue to witness to employees, or to invite them to church, once the employee has 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.³

In addition, employers must refrain from making comments or statements about an employee's religious beliefs or lack thereof, and must not allow any discussion of the employer's religious beliefs to make the employee feel that he or she is wrong or immoral. In a case called *Venters v. City of Delphi*, a supervisor made it clear to an employee that he was a born-again Christian who believed that he had been sent by God to save as many people from damnation as he could.⁴ In his conversations with the employee, he continuously interjected religious observations and quotations from the Bible, and spoke to an employee about her salvation in a manner that led her to conclude that he considered her immoral. He ultimately told her that she had a choice to follow God's way or Satan's way, and that she would not continue working for him if she chose the latter. In that case, the employee successfully sued the employer for religious harassment.

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.⁵ However, as with spoken religious speech, employers must make it clear to employees that their continued employment and advancement within the company will not be affected by the extent to which they agree or disagree 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 hiring, privileges or advancement within the company.

2 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).

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

4 *Venters v. City of Delphi*, 123 F3d 956, 972 (7th Cir. 1997).

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

III. Holding Religious Meetings, Bible Studies, and Prayer

An employer may hold regular Bible studies or religious meetings at their business, so long as attendance is not mandatory.⁶ Courts have held that if attendance is mandatory, it can amount to religious discrimination against employees that do not want to attend.⁷ Additionally, management need not shy away from taking an active role in such religious meetings or Bible studies.⁸ The key in this area is that employees understand that such religious activities in the workplace are voluntary and entirely optional. Any invitation regarding such meeting should clearly state that they are not mandatory. Further, it 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.

It is permitted for an employer to make time for prayer during the workday. If an employer wants to hold prayer around staff meetings, they should designate a specified time for prayer, and ensure that employees know they are free to opt out. In order to avoid liability, it is suggested that an employer designate specific prayer time before the staff meetings begin or after meetings are dismissed. Each time the prayer meeting is announced, the employer should include a note that says it is not mandatory for employees to attend. Further, an employer should hold prayer meetings in a different room than the staff meetings. The employer must always reiterate to employees that prayer is optional. It is important that the employer is never hostile towards an employee because he does not want to attend prayer meetings.

In the event that an employer hosts a Christmas party or other large corporate event, the employer is not prohibited from praying over the meal or having a prayer to commence or conclude the event. If the event includes hundreds of people, it may be easier for an objecting employee to slip out of the meeting without being noticed and without feeling ostracized. Ultimately, each situation is different and the employer should try to make it easy for the employee to avoid the time of prayer by identifying the prayer time in the event's program, by announcing that a prayer will soon be occurring, or by some other reasonable manner.

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.

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

7 *See, e.g., id.*

8 *Brown v. Polk County*, 61 F.3d 650 (8th Cir. 1995).

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.⁹ Courts have clearly held that “Title VII does not, and could not, require individual employers to abandon their religion.”¹⁰ 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 relates 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.

Recently, in the now famous “Hobby Lobby” case, the Supreme Court held that closely-held corporations have a right to refuse to pay for medical insurance which provides coverage for abortifacient contraceptive drugs based on the religious objections of the employer.¹¹ In so holding, the Supreme Court observed that closely-held corporations have a right under the Religious Freedom Restoration Act (“RFRA”) to freely exercise the religious beliefs of the shareholders who own it. While *Hobby Lobby* was not decided under the First Amendment, the Supreme Court’s decision does offer persuasive argument that free exercise rights under the First Amendment are not limited to individual supervisors or employers but should also extend to the corporate business itself.

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.

⁹ See generally, *id.*

¹⁰ *E.E.O.C. v. Townley Engineering & Mfg. Co.*, 859 F.2d 610, 621 (9th Cir. 1988).

¹¹ *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014)

VII. Accommodations for Employees' Religious Beliefs

Cases concerning religion in the workplace often arise from “discharge of employment” or “failure to accommodate” because of an employee’s religion. Title VII prohibits employment discrimination based on religion, unless the organization is a religious organization whose category falls under the religious exemption.¹² However, in order to avoid employment discrimination claims, it is best to not make employment decisions based on religion and ensure that prospective and current employees are aware that all religions are accommodated in the work place. Generally, to fall under Title VII 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.¹³ 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. However, 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 at (951) 600-2733.

¹² *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010).

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