

# Religious attire, grooming subject of new EEOC workplace guidance

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The U.S. Equal Employment Opportunity Commission recently issued two guidance documents that highlight employers' obligations under Title VII of the Civil Rights Act of 1964 to make accommodations for dress and grooming practices motivated by employees' religious beliefs.

The EEOC's guidance documents comes as the number of religion-based discrimination charges filed with the agency continues to grow. In fiscal year 2013, the EEOC received 3,721 charges alleging religious discrimination, an increase of 47 percent over fiscal year 2003, and of more than 100 percent over fiscal year 1997.

Although the guidance documents are not binding, most of the principles they detail are well established, and courts often give significant weight to the EEOC's views in deciding Title VII cases.

Further, EEOC investigators will almost certainly consider the guidance in evaluat-

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ing potential claims of religious discrimination and deciding whether to initiate litigation.

Accordingly, employers should carefully review the material and consider whether their policies and practices regarding accommodating religious attire and grooming need to be modified.

## Overview of guidance documents

The EEOC documents consist of a detailed question-and-answer guide and an accompanying fact sheet. While this article does not cover every aspect of the guidance, most of the key issues addressed are outlined below:

### • General accommodation obligations

The guidance documents emphasize that if an employee asks an employer to make an exception to its dress or grooming requirements in order to accommodate the employee's sincerely held religious beliefs, the employer must grant the exception, unless doing so would pose an "undue hardship" to the employer.

The guidance provides specific examples of religiously motivated workplace dress and grooming practices that are generally protected under Title VII. The examples include wearing religious clothing or articles, such as a Christian cross, a Muslim hijab (headscarf), or a Sikh turban; observing a religious prohibition against wearing certain garments (e.g., a Muslim, Pentecostal Christian, or Orthodox Jewish woman's practice of wearing modest clothing and not wearing pants or short skirts); and adhering to religious requirements relating to shaving or

hair length, such as Rastafarian dreadlocks, uncut hair for Sikh men, or Jewish peyes (sidelocks).

The EEOC emphasizes that an employer should determine on a case-by-case basis how best to accommodate an employee's religious attire or grooming. For example, asking an employee to cover religious attire while at work may be a reasonable accommodation if the employee's religious beliefs permit covering the attire, but imposing such a requirement might not be permissible if covering the attire would violate the employee's religious beliefs.

By contrast, the EEOC takes the view that it is *never* permissible for an employer to exclude an employee from a position or assignment out of concern that customers or co-workers may react negatively to the employee's religious attire or grooming.

As one example, the guidance documents cite an applicant for an airline ticket counter position who wears a Muslim hijab. According to the EEOC, it would be a violation of Title VII for the airline to decide to offer the applicant a job in its call center instead of at its ticket counter in order to prevent travelers from coming into contact with her.

### • Nature of undue hardship

The EEOC indicates that a proposed religious accommodation would constitute an undue hardship if it would impose "a more than de minimis" cost or burden on an employer's operations.

Under that standard, a requested accommodation may pose an undue hardship when it would implicate legitimate

safety, security, or health concerns, but the EEOC may apply the concept more narrowly than employers might prefer.

For example, the guidance documents posit a restaurant that requires its servers to keep their hair short, for hygiene reasons. An applicant for a server position who wears his hair long, due to his Native American religious beliefs, offers to wear it in a ponytail or held up with a clip. In the EEOC's view, the applicant's proposed accommodation should allay the employer's hygiene concerns, preventing the employer from establishing undue hardship.

Importantly, the EEOC takes the position that neither customer preference nor co-worker disgruntlement can constitute undue hardship. Thus, the EEOC recommends that employers "communicate clearly to managers that customer preference about religious beliefs and practices is not a lawful basis for employment decisions."

#### • **Recognizing requests for accommodations**

The guidance documents note that an issue involving accommodation of religious garb or grooming generally arises when an applicant or employee is notified of an employer's dress or grooming policies and requests an accommodation based on his or her religious beliefs.

In seeking an accommodation, an individual need not use any "magic words," such as "accommodation" or "Title VII," if the substance of the request makes clear that the individual is seeking a religious-based accommodation.

By contrast, if an individual does not request an exception to a dress or grooming policy, or does not indicate that such a request is for religious reasons, the employer

generally is not obligated to make an exception to its policy.

However, according to the EEOC, "[i]n some instances, even absent a request, it will be obvious that the practice is religious and conflicts with a work policy, and therefore that accommodation is needed." Unfortunately, the guidance documents do not provide an example of such a scenario.

#### • **Nature of religious beliefs**

The EEOC notes that the scope of Title VII's protection of religious beliefs is broad, encompassing not only the tenets of established religions but also beliefs that are new or uncommon, not endorsed by any formal organization, or seemingly "illogical or unreasonable."

Moreover, in the EEOC's view, Title VII extends even to "non-theistic moral or ethical beliefs as to what is right or wrong," if such beliefs "are sincerely held with the strength of traditional religious views."

According to the EEOC, the "sincerity" of an individual's stated religious beliefs is usually not in dispute. In that regard, the EEOC emphasizes that even if an individual's beliefs or practices deviate from the official or commonly followed tenets of his or her religion, that should not automatically be taken as evidence that his or her beliefs are not sincere. An individual's religious beliefs may remain "sincerely held" even while changing over time, such as when an employee converts from one religion to another.

If an employer has a legitimate reason to doubt the sincerity of a belief for which an employee has requested an accommodation, or if it is unclear whether an accommodation has been requested for religious reasons, the employer may ask the employ-

ee for information reasonably needed to determine if an accommodation may be warranted.

#### • **Exceptions for secular reasons**

Title VII's religious accommodation protections extend only to practices that are motivated by sincerely held religious beliefs and, as such, do not cover "me too" requests by co-workers who would like the same accommodations but who do not have a religious basis for them.

For instance, if an employer agrees to permit a Sikh employee to wear his hair and beard uncut for religious reasons, that would not require the employer to extend the accommodation to others who might wish to have long hair or beards based on secular fashion preferences.

#### **Recommendations for employers**

In light of the issues highlighted in the EEOC's guidance documents, we suggest that employers take the following steps:

First, they should review the guidance documents carefully with managers, supervisors, and human resources representatives.

Second, they should review policies and practices relating to employee dress and grooming and, in consultation with employment counsel, revise them if necessary to comply with Title VII.

Third, they should provide training on handling requests for religious accommodations, recognizing situations in which a request has not been made but an accommodation might nonetheless be appropriate, and responding appropriately to the employees involved.

Given the rapid growth of religion-discrimination charges in recent years, attention to these issues is critical. **MLW**