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Mansfield Rule Certified 2022-2023

KD Alert: Religious Garb and Grooming in the Workplace – New EEOC Guidelines

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(March 31, 2014)

The EEOC recently issued two new publications outlining employer prohibitions and responsibilities with respect to religious clothing worn by employees as well as religious "grooming" protections. The new guidelines are derived from current federal law, Title VII of the Civil Rights Act of 1964 ("Title VII").

Title VII prohibits an employer from discriminating, denying reasonable accommodations, or engaging in workplace segregation based on customer preferences or the employer's image or marketing strategy. Title VII does not consider these issues when determining what constitutes an "undue hardship," thereby allowing the employer to engage in otherwise prohibited activity. Examples of prohibited activity relating to customer preference or image include: refusing to hire an applicant knowing he or she will request religious accommodations for religious garb or grooming that conflicts with image or customer preference or segregating an employee to a non-customer contact position based on actual or assumed customer preference. NOTE: An employer may accommodate an employee's religious dress or grooming practice by offering to have the employee cover the religious attire or item while at work if this would not violate the employee's religious beliefs.

However, concerns for workplace safety, security, and health may be appropriate reasons to deny requested accommodations as undue hardships. Often, there is an alternative accommodation allowing the employer to avoid undue hardship while permitting the employee to adhere to religious practices. For example, an employee's religious practices prohibit him from trimming facial hair, but his duties include sterilizing medical instruments. The employee's religious practice may pose a danger to contaminating sterile instruments, but the employer may reasonably accommodate by requiring the employee to wear two face masks instead of trimming his beard. The "interactive process" (borrowed from the Americans with Disabilities Act, as amended) – a discussion or discussions with the employee regarding whether an accommodation can be made – is a critical component of this analysis.

Further, an employer may not retaliate against an individual who merely requests religious accommodation, or who opposes a practice the employee reasonably believes is unlawful, filing a charge of discrimination, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the statute. Retaliation claims continue to rank among the most prevalent charges filed with the EEOC.

Title VII also holds employers liable for religious harassment, which may occur in the same manner as sexual harassment - unwelcome statements or conduct based on religion, or when the behavior creates a hostile work environment or results in an adverse employment action, such as discipline up to and including termination.

Because an employer may be liable for harassment by co-workers, third parties, and supervisors, sensitivity training is key at all levels. The attorneys in KD's Employment Law Group can assist companies with this training and other strategies designed to avoid claims by disgruntled employees.

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