

SECTION 12: RELIGIOUS DISCRIMINATION

OVERVIEW^[1]

This Section of the Compliance Manual focuses on religious discrimination under Title VII of the Civil Rights Act of 1964 (Title VII).

Title VII protects workers from employment discrimination based on their race, color, religion, sex (including pregnancy, sexual orientation, and transgender status),^[2] national origin, or protected activity.

Under Title VII, an employer is prohibited from discriminating because of religion in hiring, promotion, discharge, compensation, or other “terms, conditions or privileges” of employment, and also cannot “limit, segregate, or classify” applicants or employees based on religion “in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee.”^[3]

The statute defines “religion” as including “all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that [it] is unable to reasonably accommodate . . . without undue hardship on the conduct of the employer’s business.”^[4] “Undue hardship” under Title VII is not defined in the statute but has been defined by the Supreme Court as “more than a de minimis cost”^[5] – a lower standard for employers to satisfy than the “undue hardship” defense under the Americans with Disabilities Act (ADA), which is defined by statute as “significant difficulty or expense.”^[6]

These protections apply whether the religious beliefs or practices in question are common or non-traditional, and regardless of whether they are recognized by any organized religion.^[7] The test under Title VII’s definition of religion is whether the beliefs are, in the individual’s “own scheme of things, religious.”^[8] Belief in God or gods is not necessary; nontheistic beliefs can also be religious for purposes of the Title VII exemption as long as they “occupy in the life of that individual “a place parallel to that filled by . . . God” in traditionally religious persons.”^[9] The non-discrimination provisions of the statute also protect employees who do not possess religious beliefs or engage in religious practices.^[10] EEOC, as a federal government enforcement agency, and its staff,

like all governmental entities, carries out its mission neutrally and without any hostility to any religion or related observances, practices, and beliefs, or lack thereof.^[11]

12-I COVERAGE

Types of Cases

Title VII prohibits covered employers, employment agencies, and unions^[14] from engaging in disparate treatment and from maintaining policies or practices that result in unjustified disparate impact based on religion.

Different types of fact patterns may arise in relation to Title VII religious discrimination, including:

- **treating applicants or employees differently** (disparate treatment) by taking an adverse action based on their religious beliefs, observances, or practices (or lack of religious beliefs, observances or practices) in any aspect of employment, including recruitment, hiring, assignments, discipline, promotion, discharge, and benefits;
- **taking adverse action motivated by a desire to avoid accommodating a religious belief**, observance, or practice that the employer knew or suspected may be needed and would not pose an undue hardship;
- **denying a needed reasonable accommodation** sought for an applicant's or employee's sincerely held religious beliefs, observances, or practices if an accommodation will not impose an undue hardship on the conduct of the business;
- **intentionally limiting, segregating or classifying employees based on the presence or absence of religious beliefs**, observances, or practices (also a form of disparate treatment), or enforcing a neutral rule that has the effect of limiting, segregating, or classifying an applicant or employee based on religious beliefs, observances, or practices and that cannot be justified by business necessity (disparate impact);
- **subjecting employees to harassment because of their religious beliefs**, observances, or practices (or lack of religious beliefs, observances or practices) or because of a belief that someone of the employee's religion should not associate with someone else (e.g., discrimination because of an employee's religious inter-marriage, etc.);

- **retaliating against an applicant or employee who has opposed discrimination on the basis of religion**, or participated in any manner in an investigation, proceeding, or hearing regarding discrimination on the basis of religion, including by filing an equal employment opportunity (EEO) charge or testifying as a witness in someone else’s EEO matter, or complaining to a human resources department about alleged religious discrimination.

A. Definitions

Overview: Religion is very broadly defined for purposes of Title VII. The presence of a deity or deities is not necessary for a religion to receive protection under Title VII. Religious beliefs can include unique beliefs held by a few or even one individual; however, mere personal preferences are not religious beliefs. Individuals who do not practice any religion are also protected from discrimination on the basis of religion or lack thereof.

Title VII requires employers to accommodate religious beliefs, practices and observances if the beliefs are “sincerely held” and the reasonable accommodation poses no undue hardship on the employer.

1. Religion

Title VII defines “religion” to include “all aspects of religious observance and practice as well as belief,” not just practices that are mandated or prohibited by a tenet of the individual’s faith.^[18] Religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Sikhism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others.^[19] Further, a person’s religious beliefs “need not be confined in either source or content to traditional or parochial concepts of religion.”^[20] A belief is “religious” for Title VII purposes if it is “religious” in the person’s “own scheme of things,” i.e., it is a “sincere and meaningful” belief that “occupies a place in the life of its possessor parallel to that filled by . . . God.”^[21] The Supreme Court has made it clear that it is not a court’s role to determine the reasonableness of an individual’s religious beliefs, and that “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”^[22] An employee’s belief, observance, or practice can be “religious” under Title VII even if the employee is affiliated with a

religious group that does not espouse or recognize that individual's belief, observance, or practice, or if few – or no – other people adhere to it.^[23] _

Religious beliefs include theistic beliefs as well as non-theistic “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”^[24] Although courts generally resolve doubts about particular beliefs in favor of finding that they are religious,^[25] beliefs are not protected merely because they are strongly held. Rather, religion typically concerns “ultimate ideas” about “life, purpose, and death.”^[26]

Courts have looked for certain features to determine if an individual's beliefs can be considered religious. As one court explained: “First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.”^[27]

2. Sincerely Held

Title VII requires employers to accommodate those religious beliefs that are “sincerely held.”^[38] Whether or not a religious belief is sincerely held by an applicant or employee is rarely at issue in many types of Title VII religious claims.^[39] For example, with respect to an allegation of discriminatory discharge or harassment, it is the motivation of the discriminating official, not the actual beliefs of the individual alleging discrimination, that is relevant in determining if the discrimination that occurred was because of religion. A detailed discussion of reasonable accommodation of sincerely held religious beliefs appears in § 12-IV, but the meaning of “sincerely held” is addressed here.

Like the religious nature of a belief, observance, or practice, the sincerity of an employee's stated religious belief is usually not in dispute and is “generally presumed or easily established.”^[40] Further, the Commission and courts “are not and should not be in the business of deciding whether a person holds religious beliefs for the ‘proper’ reasons. We thus restrict our inquiry to whether or not the religious belief system is sincerely held; we do not review the motives or reasons for holding the belief in the first place.”^[41] The individual's sincerity in espousing a religious observance or practice is “largely a matter of individual credibility.”^[42] Moreover, “a sincere religious believer doesn't forfeit his religious rights merely because he is not scrupulous in his observance,”

An individual's beliefs – or degree of adherence – may change over time, and therefore an employee's newly adopted or inconsistently observed religious practice may nevertheless be sincerely held.^[48] Similarly, an individual's belief may be to adhere to a religious custom only at certain times, even though others may always adhere,^[49] or, fearful of discrimination, he or she may have forgone his or her sincerely held religious practice during the application process and not revealed it to the employer until after he or she was hired or later in employment.^[50] An employer also should not assume that an employee is insincere simply because some of his or her practices deviate from the commonly followed tenets of his or her religion, or because the employee adheres to some common practices but not others.^[51] As noted, courts have held that "Title VII protects more than . . . practices specifically mandated by an employee's religion."^[52]

3. Employer Inquiries into Religious Nature or Sincerity of Belief

Because the definition of religion is broad and protects beliefs, observances, and practices with which the employer may be unfamiliar, **the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief.** If, however, an employee requests religious accommodation, and an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, observance, or practice, the employer would be justified in seeking additional supporting information.

Since religious beliefs can be unique to an individual, evidence from others is not always necessary.

<https://clintonwhitehouse2.archives.gov/WH/New/html/19970819-3275.html>

Title VII of the Civil Rights Act of 1964 makes it unlawful for employers, both private and public, to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion." 42 U.S.C. 2000e-2(a)(1).

Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1

D. Hostile Work Environment and Harassment. Employers violate Title VII's ban on discrimination by creating or tolerating a "hostile environment" in which an employee is subject to discriminatory intimidation, ridicule, or insult sufficiently severe or pervasive to alter the conditions of the victim's employment. This statutory standard

can be triggered (at the very least) when an employee, because of her or his religion or lack thereof, is exposed to intimidation, ridicule, and insult. The hostile conduct -- which may take the form of speech -- need not come from supervisors or from the employer. Fellow employees can create a hostile environment through their own words and actions.