Legal Perspectives on the Rewards and Challenges of Religion in the Workplace

Thursday, January 18, 2018
6:00 p.m. - 8:00 p.m.

McNally Amphitheater
140 W 62th Street

Free and open to the public.

Speakers:

Stephen Sloan, Senior Principal, Accenture Analytics

Katrina L. Baker, Associate, Kramer Levin Naftalis & Frankel LLP

Rabbi Tsivi Blanchard, Meyer Struckmann Professor of Jewish Law, Humboldt Faculty of Law in Berlin, Scholar-in-Residence, Institute on Religion, Law & Lawyer’s Work at Fordham Law School.

Endy Morales, Fellow, Institute on Religion, Law & Lawyer’s Work, Fordham Law School

As the economy becomes increasingly global, our workforce becomes increasingly diverse. Diversity not only involves how people perceive themselves, but how they perceive others. Those perceptions affect their interactions and effectiveness. Today more than ever, organizational success and competitiveness depends on the ability to engage a multiplicity of viewpoints and perspectives.

The Accenture Interfaith group and Fordham Law School will be co-hosting an exciting event where we will be exploring the rewards and challenges of religious diversity in the workplace, and the benefits of encouraging people to bring their whole self to work. We will also review the legal underpinnings protecting this diversity and the issues that might arise.

RSVP by January 17 or at the door.

Questions will be encouraged and refreshments will be provided.
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THE LEGALITY OF USING EMPLOYEE APPEARANCE POLICIES TO PROMOTE ORGANIZATIONAL CULTURE

Dennis R. Kuhn* & John A. Pearce II**

INTRODUCTION

An organizational culture is a learned body of tradition consisting of the beliefs, norms, values, and premises that are held by the members of an organization, and provides the basis for behavior that satisfies the standards of group membership. Since organizational culture influences employee attitudes on commitment, motivation, morale, and satisfaction, effective management requires attempts to shape the culture in the company's best interest. Critically important in the development of culture is an inclusionary dimension. Morality and legality require that organizations exercise special care to accommodate gender and diversity needs to help assure equality in the workplace. Therefore, the shaping of organizational culture through company policies provides an important

* Dennis Kuhn, J.D., LL.M. is associate professor of business law in School of Business at Villanova University. He earned his J.D. from American University and his LL.M. from Georgetown University. Dr. Kuhn's primary teaching responsibility is in the field of the impact of government regulation on business activities. His research focus has been in the field of labor law with articles published in such journals as Labor Law Journal, and Law and Policy. He may be contacted at 610-519-4459 or dennis.kuhn@villanova.edu.

** John A. Pearce II, Ph.D., is the Villanova School of Business Endowed Chair in Strategic Management and Entrepreneurship at Villanova University. He is coauthor of 34 books, and author or co-author of 97 refereed articles in prominent academic business journals and law reviews. Dr. Pearce has provided expert testimony in legal proceedings dealing with strategic planning, business management, statistical analysis, labor economics, and employee behavior. He may be contacted at 610-519-4332 or john.pearce@villanova.edu.
opportunity to recognize the legitimate needs of all employees.

Since it is also essential to balance the interests of the organization with those of the employees, laws have been established to curtail the judgment and discretion of employers in their development and protection of an organizational culture. This article discusses legal challenges that have been mounted against some of these policies. The success or failure of these challenges – which deal specifically with the appearance of employees – provides employees with safeguards for their individual and collective rights. Court rulings on these challenges also provide managers with safeguards for the discretion that is warranted in the development of policies designed to create and sustain a legal, and inclusive, organizational culture.

I. ORGANIZATIONAL CULTURE

Employee interactions over time, coupled with management policies and practices, create a value system that influences how members of a company behave. The common perception that develops regarding "the way things get done around here," is known as a company's organizational culture.¹ It helps to determine how employees interact with each other, managers, customers and other company stakeholders, and how they identify problems, analyze information, and make decisions.

An organizational culture is, thus, a learned body of tradition consisting of the beliefs, norms, values, and premises that are held by the members of an organization, providing the basis for behavior that satisfies the standards of group membership.² Since the organizational culture influences employee attitudes on commitment, motivation,

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morale, and satisfaction, effective management requires attempts to shape the organizational culture in the company’s best interests.

II. THE NEED FOR LIMITS ON POLICIES THAT PRESCRIBE ORGANIZATIONAL CULTURE

To help refine and defend their organizational culture, managers establish formal and informal expectations for their employees, including policies that seek to delimit employee conduct. Policies are directives designed to standardize many routine decisions and to clarify the discretion that employees can exercise on-the-job. Creating policies that guide and “preauthorize” the thinking, decisions, and actions of employees is an essential task for executives in establishing and controlling the ongoing processes of a firm in a manner consistent with a company’s organizational culture.

Policies that promote the improvement and perpetuation of an organizational culture also provide important safeguards for employees. They guarantee a “comfort zone” for employees, within which they can freely express their preferences, without endangering their standing in their company. Further, policies promote consistency and predictability in managerial action, which enable employees to anticipate correct behavior that will be supported and rewarded.

As will be discussed in Part III of this article, company policies that are designed to control employee appearance are particularly important to a business, especially when employees have contact with the public. Employee appearances that are outside the norms of public expectation may lead customers to turn elsewhere. In addition, a non-conforming

3. See Randall Y. Odom, W. Randy Boxx & Mark G. Dunn, Organizational Cultures, Commitment, Satisfaction, and Cohesion, 14 PUB. PRODUCTIVITY & MGMT. REV. 157, 166 (1990) (arguing that innovative and supportive cultures positively correlate with employee commitment, satisfaction, and cohesion); Stanley G. Harris & Kevin W. Mosholder, The Affective Implications of Perceived Congruence with Culture Dimensions During Organizational Transformation, 22 J. MGMT. 527, 527 (1996) (“[T]he discrepancy between individuals’ assessments of the current culture and their ideal culture explained significant variance in . . . organizational commitment and optimism about the organization’s future.”).


5. JOHN A. PEARCE II & RICHARD B. ROBINSON JR., STRATEGIC MANAGEMENT: FORMULATION, IMPLEMENTATION, AND CONTROL 303-04 (10th ed. 2007).

6. See id. at 303-06.
employee may create tensions and distractions for other employees, which can disrupt their interactions with one another and adversely affect the productivity of a business.

The desire of managers to minimize threats to an organizational culture, posed by the discordant appearance of employees, is understandable. It raises the issue as to whether the standards set by an employer in making hiring, retention and promotional decisions have more to do with the ability of the individual or with stereotypical thinking. To balance the interests of an organization with those of an employee or job applicant, federal, state, and local governments have established laws aimed at curtailing the judgment and discretion of employers in their development and protection of an organizational culture.\(^7\)

Several federal laws have been enacted that affect the creation of appearance policies. In particular, Title VII of the Civil Rights Act of 1964 limits an employer’s appearance standards if the standards discriminate against individuals because of race, sex, religion, natural origin, or color.\(^8\) The Americans with Disabilities Act prohibits policies that cause discrimination against employees, who possess a physical or mental disability, where the individual is qualified for a position with or without a reasonable accommodation from the employer.\(^9\) Finally, the Age Discrimination in Employment Act bars employers from creating standards that affect employment opportunities for individuals based upon such individual’s age.\(^10\)

Claims under these statutes proceed under the theories of disparate treatment and/or disparate impact.\(^11\) Under disparate treatment, a plaintiff contends that an employer’s standards are treating him or her less favorably than others because of his or her membership in a class protected by statute.\(^12\) This “intentional discrimination” by the employer can be established through circumstantial evidence.\(^13\) The employer can defend its position by demonstrating that there was a legitimate,


\(^{8}\) Id.


\(^{12}\) See McDonnell Douglas, 411 U.S. at 802.

\(^{13}\) See id. at 804-05.
nondiscriminatory reason for the decision. The plaintiff is entitled to rebut the stated reason by showing it is a pretext and that the real reason is tied to an intention to discriminate.

With disparate impact, a plaintiff contends that while the standard an employer is using appears neutral on its face, it has a discriminatory impact on individuals in a protected group. For example, a minimum height standard, while appearing neutral, could have an adverse effect on an individual because of gender or national origin. In these cases, an employer can defend the policy by showing that the standard is needed because of the necessities of their business. The plaintiff can rebut this justification by showing that there is a different standard that the employer could use which would have a less adverse impact on the protected group, while still meeting the employer’s objectives.

The sections that follow discuss legal challenges that have been mounted against company policies that were established to build and protect organizational culture. The success or failure of these challenges – which deal specifically with the appearance of employees – provides employees with safeguards for their individual and collective rights, and managers with safeguards for the discretion that is warranted in the development of policies designed to create, and sustain, an organizational culture.

III. POLICIES ON APPEARANCE

When employees have contact with the public, the employer may believe it is particularly important that the employees project an image that is consistent with the company’s organizational culture. Consequently, managers frequently consider an array of policies aimed at controlling employee appearance including: restrictions on hair length or hairstyle, the presence of facial hair, the style or type of clothing worn on-the-job, jewelry or cosmetics that can be worn, and the body weight of employees. While the courts have given employers considerable latitude in creating these policies, federal, state and local law do place some important limitations on their content.

14. Id. at 802.
15. Id. at 804.
17. See id. at 267 (citing Smith v. Xerox Corp, 196 F.3d 358, 365 (2d Cir. 1999)).
A. Regulation of hair length

Employees contesting employer policies that seek to control hair length have mounted a number of challenges.\(^{19}\) Typically, these claims have revolved around assertions of gender, race, or religious discrimination.\(^{20}\) For instance, men who claim sex discrimination, because the employer limits the length of hair for male employees but does not apply the same standards to women, have brought a number of such suits.\(^{21}\)

Such was the case in *Willingham v. Macon Telegraph Publishing Co.*, where a man was denied employment because of his shoulder length hair.\(^{22}\) The company’s grooming code required employees to be neatly dressed and groomed in accordance with the standards of the business community.\(^{23}\) The company interpreted this as excluding men, but not women, from having long hair.\(^{24}\)

The lower court found that the Macon Telegraph Publishing Co. standard did not violate Title VII.\(^{25}\) However, a divided panel of the Fifth Circuit reversed and remanded the lower court’s ruling.\(^{26}\) Essentially, the panel found that the Supreme Court’s decision in *Phillips v. Martin Marietta Corp.*\(^{27}\) should control.\(^{28}\) In *Phillips*, the Supreme Court found that Title VII not only covered cases where the employer discriminated by denying employment opportunities based on gender, but also where the employer added a requirement that applied to one gender but not the other.\(^{29}\)

On rehearing, the full Fifth Circuit vacated the panel’s decision and

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23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. 400 U.S. 542 (1971).


29. *Phillips*, 400 U.S. at 543-44. In *Phillips*, the employer disqualified women who had preschool children from employment. *Id.* at 543. However, men with preschool children were not disqualified. *Id.*
affirmed the lower court’s decision.\textsuperscript{30} It found that Title VII was aimed at prohibiting discrimination because of certain immutable characteristics, or because it interfered with a fundamental right of the individual.\textsuperscript{31} Immutable characteristics relate to issues that include gender, race, color, or national origin.\textsuperscript{32} A person’s hair length is not immutable because it is something a person can choose to alter or not. A fundamental right involves the right to marry, have children, or practice religion, but does not include the right to have long hair, even where the individual claims it is a form of self-expression.\textsuperscript{33}

The court believed that the \textit{Willingham} case related more to how a company decided to run its business than to sexual discrimination.\textsuperscript{34} If Willingham had been hired, he would have been in a position which would require contact with potential customers of the business.\textsuperscript{35} The court accepted the employer’s contention that, in the community where the employer operated, people did not have a positive opinion of men with long hair.\textsuperscript{36} Thus, Willingham’s appearance could have a detrimental impact on their business.\textsuperscript{37}

The lower court in \textit{Willingham} pointed out that if the plaintiff’s argument was accepted, it would mean that if an employer allowed female employees to wear dresses, lipstick, eye shadow, and earrings to work, then the employer would have to allow men the same privilege.\textsuperscript{38} The court stated that to argue Congress intended such a result when it passed Title VII would be “ridiculous.”\textsuperscript{39} The court further stated that employers should not be forced to accept behavior that is out of the norm for customary grooming, and not related to a fundamental right, where it could have adverse implications for a business.\textsuperscript{40}

Some lower federal courts have been willing to consider the possibility that hair length policies that discriminate between men and women could be a basis for a discrimination claim.\textsuperscript{41} However, the

\begin{flushleft}
\footnotesize
30. \textit{Willingham}, 507 F.2d at 1087.
31. \textit{id.} at 1092.
32. \textit{id.} at 1091.
33. \textit{id.}
34. \textit{id.}
35. \textit{id.} at 1087.
36. \textit{id.}
37. \textit{id.}
39. \textit{id.}
40. See \textit{id.} at 1021-22.
\end{flushleft}
circuit courts that have reviewed this issue have supported the Fifth Circuit's position in Willingham. 42

Claims of religious discrimination under Title VII have also arisen regarding employer regulations on hair. 43 Unlike contentions of race, gender, color, or national origin discrimination, Title VII requires that an employer must offer a reasonable accommodation to an employee when an employment policy conflicts with an employee's religious beliefs or practices, unless it would create an undue hardship for the employer. 44

The Supreme Court has set a low threshold for an employer to meet in order to satisfy the reasonable accommodation requirement. 45 In TWA v. Hardison, the Court determined that if the available accommodations create more than a de minimis burden, the employer is not required to offer it. 46 The Court refined this requirement in Ansonia Board of Education v. Philbrook, 47 where it concluded that once an employer offered a reasonable accommodation it met its obligation even if the employee offered, and preferred, a reasonable alternative. 48

In Vargas v. Sears, Roebuck & Co., a district court dealt with a policy that required employees to maintain hair in a neat and trimmed manner. 49 When Vargas was hired, he was in compliance with the policy. 50 Shortly thereafter, his hair reached ponytail length. 51 He was then advised that his hair was not acceptable, but the company took no other formal action. 52 Subsequently, after a change in supervisors, he was told to bring his hair into compliance. 53 At that point, he informed


45. See generally TWA, Inc. v. Hardison, 432 U.S. 63 (1977) (holding that if an accommodation would create more than a de minimis burden, the employer is not required to offer the accommodation).

46. Id. at 84-85.

47. 479 U.S. 60 (1986).

48. Id. at 68.


50. Id.

51. Id.

52. Id.

53. Id. at *4-5.
the company that the length of his hair was due to his religious beliefs as a follower of traditional Native American religion. 54

With this new information, the company attempted to provide an accommodation by telling him to tuck his hair underneath his shirt or jacket. 55 Vargas rejected the direction. 56 During his deposition, Vargas testified that tucking his hair underneath a garment would violate his religious conviction. 57 He never offered an alternative and demanded he be allowed to wear his hair as he wanted. 58

In granting the employer’s motion for summary judgment, the court concluded that Vargas had a duty to cooperate with the employer’s efforts to offer a reasonable accommodation. 59 Vargas’ conduct did not meet that obligation. 60 As a result, the court found that he could not raise the question of whether the company’s accommodation was reasonable. 61

B. Policies affecting hairstyles

Related to the issue of hair length are employer efforts to regulate the hairstyles of employees. Employee challenges to this type of policy have been raised in cases where the employees contended that the employer discriminated against them on the basis of race or religion. 62

In Eatman v. UPS, an African-American male driver who had been employed for six years began to wear his hair in tight, hand-rolled spirals commonly referred to as “dreadlocks.” 63 His supervisors informed him that the style was in conflict with the employer’s appearance policy that required hair be worn in a “business-like manner.” 64 Eatman claimed that the locks were a reflection of his commitment to his Protestant faith. 65 Initially, he complied with the

54. Id. at *5.
55. Id. at *5-6.
56. Id. at *6.
57. Id. at *8.
58. Id. at *9.
59. Id. at *14, *19.
60. Id. at *16-18.
61. Id. at *19.
62. E.g., Eatman v. UPS, 194 F. Supp. 2d 256 (S.D.N.Y. 2002) (involving an African-American former employee with dreadlocks who brought suit against his former employer, claiming that the employer discriminated against him based upon his race and religion).
63. Id. at 258, 260.
64. Id. at 259-60.
65. Id. at 259.
company's willingness to allow any employee that was not in compliance with the policy to wear a hat.\textsuperscript{66} Due to the nature of his hairstyle, the only type of hat that Eastman decided he was eligible to wear was made of wool.\textsuperscript{67} After wearing the hat for a period of time, he objected claiming that it made him feel faint, gave him headaches, and destroyed some of his locks.\textsuperscript{68} Ultimately, Eatman refused to wear the hat and was subsequently terminated.\textsuperscript{69}

In considering Eatman's claim that the employer had engaged in religious discrimination, because of its failure to offer him a reasonable accommodation, the court recited the requirements that a plaintiff first needed to prove.\textsuperscript{70} Requirements included that:

1. He have a bona fide religious belief that conflicted with the employer's policy;

2. He informed the employer of the belief; and

3. He was disciplined because he did not comply.\textsuperscript{71}

The court concluded that Eatman failed to meet these requirements for two reasons.\textsuperscript{72} First, he failed to show that his conduct was prompted by a religious belief.\textsuperscript{73} There was no evidence that the locks were a mandate of his religion.\textsuperscript{74} Rather, it appeared to the court that the style was a matter of his "personal choice."\textsuperscript{75} Secondly, Eatman failed to prove that he informed the employer that the hat requirement conflicted with his religious beliefs.\textsuperscript{76}

Eatman also raised the claim that the application of the company's appearance policy was a form of racial discrimination.\textsuperscript{77} His contention was that locked hair was a unique hairstyle worn by African-Americans
and, thus, only this racial group was affected by the policy.\textsuperscript{78} Additionally, he claimed that the application of the policy was having a greater impact on African-Americans than on any other group.\textsuperscript{79}

The court rejected both Eatman’s disparate treatment and disparate impact claims.\textsuperscript{80} As to disparate treatment, the court found that Eatman had failed to show that the policy was facially discriminatory.\textsuperscript{81} Eatman’s own expert had testified that locked hair was not unique to African-Americans, as other racial groups in other parts of the world also wore dreadlocks.\textsuperscript{82} In addition, the court found that Eatman failed to prove an intent to discriminate because there was no evidence that the standards were applied differently to employees of other races.\textsuperscript{83} The court concluded that creating reasonable appearance standards for employees who have contact with customers was a legitimate responsibility of management.\textsuperscript{84}

In reaching its conclusion, the court cited Rogers v. American Airlines, Inc.\textsuperscript{85} In Rogers, the employer established a policy that barred braided hairstyles.\textsuperscript{86} Rogers was an African-American woman who held a position that required contact with the public.\textsuperscript{87} She objected to the policy because it barred her from wearing her hair in “corn row” style.\textsuperscript{88} She claimed that the policy constituted racial discrimination in violation of the Thirteenth Amendment’s prohibition against involuntary servitude, Title VII, and 42 U.S.C. section 1981.\textsuperscript{89} In addition, Rogers also alleged that the policy discriminated against her as a woman.\textsuperscript{90}

The court rejected the argument that the policy violated the Thirteenth Amendment, since the plaintiff had the freedom to leave her job.\textsuperscript{91} The court likewise rejected the argument that the policy was a
form of racial discrimination under Title VII or section 1981. Rogers had contended that the “corn row” style had special significance to African-American women and reflected their “cultural, historical essence.” However, the court pointed out that she had not alleged that only African-Americans wore the hairstyle. In fact, the employer had stated that Rogers only started wearing the hairstyle after the movie “10,” where a white actress wore a braided hairstyle, had been released.

The court also commented on Eatman’s contention that if an employer banned the “Afro/bush” style, it would violate Title VII and section 1981. The court recognized this argument as a different issue because the style is a natural one, and particular to African-Americans. Banning it could be viewed as a regulation of an “immutable characteristic.” However, braided hair is not natural. The style can be changed easily, and there was nothing to prevent Rogers from wearing it when she was off duty.

The court similarly rejected the claim that the policy was a form of sexual discrimination. The policy applied equally to men and women. The court reasoned that it is possible for male employees to have longer hair than women and that these men may prefer to put their hair in braids. The court referred to Willingham and similar cases dealing with policies on hair length. It stated that even a difference in how the standards applied to men and women would not necessarily mean that the law had been violated, since this type of policy has a small impact on the basic concept of equal opportunity.

In Hollins v. Atlantic Co., the Sixth Circuit dealt with an employee’s claim that the application of a grooming policy to her hairstyle constituted racial discrimination. The policy stated that

92. Id.
93. Id. at 231-32.
94. Id. at 232.
95. Id.
96. Id.
97. Id.
98. Id.
99. Id. at 232-33.
100. Id. at 231.
101. Id.
102. Id.
103. Id.
104. Id.
105. 188 F.3d 652 (6th Cir. 1999).
106. Id. at 655.
women’s hair needed to be neat and well groomed. The trouble started when Hollins, who was African-American, began to wear her hair in “finger waves.” She was told by her foreman that it was too different and not in compliance with the company’s policy. Others in management echoed those comments stating that the style was “eye catching” and called attention to her. Hollins was told that if she wanted to change her hairstyle she should first submit a picture of it and get approval from her manager.

More than a year later, Hollins started wearing a ponytail that management contended was in conflict with the company’s standards. Even a hairstyle that had been previously approved by a manager became a point of contention between the company and Hollins. These disputes led her to file a claim of racial discrimination.

The lower court granted the employer’s motion for summary judgment, finding that Hollins had failed to establish a prima facie case of disparate treatment. The Court of Appeals reversed, finding that affidavits submitted by Hollins and another female African-American employee gave rise to a factual dispute as to whether the company’s standards were being applied differently to African-American women as compared to white female employees. In particular, Hollins contended that her ponytail was the same as that worn by a number of white women, who had not been reprimanded, and that only she had been required to submit pictures of the style in advance of wearing it. This factual dispute raised the question of whether Hollins had been subjected to disparate treatment because of race.

Hollins stands in contrast to Ali v. Mount Sinai Hospital. In Ali, the court also dealt with a racial discrimination claim by an African-American woman who challenged her employer’s appearance policy as
disparate treatment discrimination. While the employer’s policy emphasized the need to present a conservative appearance, the plaintiff’s (Ali’s) loud attire and unconventional hair called attention to her. In Ali’s words, her hair was in a “punk” style that she described as an “Afro hairstyle.” Her supervisor objected to her appearance, contending it was not in conformance with the company’s appearance policy. While Ali claimed the policy was being enforced against her but not against white female employees, the court here, in contrast to the court in *Hollins*, found no evidence to support the claim of unequal treatment and, thus, granted the employer’s motion for summary judgment.

C. Restrictions on facial hair

Employers frequently include restrictions on facial hair in their grooming and appearance policies. The policies may be motivated by what the company managers see as “the needs of the business.” A restaurant chain may perceive a need to make certain that the hair of a food preparer does not find its way into the “house special.” In other cases, it may need to assure that employees working around dangerous substances have masks that properly fit and protect them. Some policies may be created to reinforce an image the company wants its workers to project to the public.

A number of challenges have been mounted against facial hair restrictions based on claims of religious discrimination. In these cases, the plaintiffs have alleged that having a beard is part of their religious beliefs, and that the employer is refusing to provide a reasonable accommodation. In *EEOC v. Sambo’s of Georgia, Inc.*, a man applied for a position as a restaurant manager. His application was rejected solely because he indicated that, because of the teachings of his religion (Sikhism), he could not comply with a grooming standard that barred managers, and other restaurant employees, from having facial hair other

120. *Id.*
121. *See id.* at *3-5.
122. *Id.* at *4.
123. *Id.* at *6.
124. *Id.* at *18-19, *23.
126. *E.g.,* *id.* at 88.
127. *E.g.,* *id.*
128. *Id.*
than a neatly trimmed mustache.\textsuperscript{129} The EEOC contended that the employer had failed to provide him with a reasonable accommodation.\textsuperscript{130}

The court rejected the Commission’s argument.\textsuperscript{131} It found that “no beard” policies were common in the restaurant industry and that the employer had not granted exceptions in the past.\textsuperscript{132} The employer’s experience indicated that customers prefer restaurants where managers are clean-shaven.\textsuperscript{133} The presence of beards raises customer concerns regarding sanitary conditions within the restaurant.\textsuperscript{134} The court also noted that the guidelines established by the state indicated that excessive facial hair could be considered a violation of state regulations.\textsuperscript{135} Given the low threshold established in \textit{Hardison}, granting an accommodation to the claimant would involve significant cost to the employer and, thus, would constitute an undue hardship.\textsuperscript{136}

In \textit{Bhatia v. Chevron U.S.A., Inc.},\textsuperscript{137} the Ninth Circuit heard from another follower of the Sikh religion.\textsuperscript{138} There, the employer established a policy requiring that all employees who could potentially be exposed to toxic gases be clean-shaven, so that the masks used to protect them from possible gas leaks would be tight fitting.\textsuperscript{139} The policy had been created to comply with a state safety regulation.\textsuperscript{140} Employees who refused to comply with the company’s policy were fired.\textsuperscript{141}

When the plaintiff (Bhatia) told the company he could not comply with the policy because of his religious beliefs, he was suspended without pay.\textsuperscript{142} The company then processed an application for transfer to a similar position where Bhatia would not be required to wear a mask.\textsuperscript{143} After a fruitless search, the company offered Bhatia other positions, at a lower pay rate, and promised he would be allowed to return to his old position if new safety equipment was developed that

\textsuperscript{129} Id. at 88-89.
\textsuperscript{130} Id. at 90.
\textsuperscript{131} Id.
\textsuperscript{132} Id. at 89.
\textsuperscript{133} Id.
\textsuperscript{134} Id.
\textsuperscript{135} Id. at 90.
\textsuperscript{136} Id. at 90-91 (citing TWA v. Hardison, 432 U.S. 63 (1977)).
\textsuperscript{137} 734 F.2d 1382 (9th Cir. 1984).
\textsuperscript{138} Id. at 1383.
\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} Id.
would both cover his beard and protect him from gas leaks.\textsuperscript{144} Initially Bhatia refused the offers, but ultimately took a janitorial job with a pay rate below what he had been paid in his original position.\textsuperscript{145}

The court recognized that Bhatia’s religious beliefs had caused his removal and that, as a result, he had established a \textit{prima facie} case of religious discrimination.\textsuperscript{146} However, the employer was able to mount a successful defense by showing that allowing Bhatia to stay in his original machinist job would create an undue hardship given that the company would be in violation of state safety regulations.\textsuperscript{147} The company’s willingness to look for other jobs for Bhatia, and its promise to return him to his job if appropriate protective gear was later created, demonstrated the employer’s accommodation efforts.\textsuperscript{148} This was something the company had not done for other employees whose refusal to shave was not motivated by a religious belief.\textsuperscript{149}

In other cases, plaintiffs have enjoyed some measure of success in challenging company policies on beards that create conflict with religious beliefs.\textsuperscript{150} In \textit{Carter v. Bruce Oakley, Inc.}, the plaintiff (Carter) was constructively discharged because of his refusal to comply with the requirement that his beard be kept trim.\textsuperscript{151} Carter claimed that his religious beliefs (Judaism) prohibited him from complying.\textsuperscript{152} The employer contended that wearing a beard was not required by Carter’s religion.\textsuperscript{153} While the court conceded that Carter’s beliefs did not fit neatly into Judaism, they were based on scripture and were beliefs that he sincerely held.\textsuperscript{154} Thus, Carter met the first requirement for establishing a \textit{prima facie} case of religious discrimination.\textsuperscript{155} The second and third requirements were met as well, when Carter showed that he had informed the employer of the conflict between his beliefs and the

\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{151} Id. at 676. Due to a shortage of workers with the plaintiff’s skills, the employer indicated that it would waive its no-beard policy for him if he returned to work. Shortly after his return, the company demanded that he trim the beard in a manner that the plaintiff claimed was contrary to his religious beliefs. Id. at 674.
\textsuperscript{152} Id. at 673.
\textsuperscript{153} Id. at 674.
\textsuperscript{154} Id. at 674-75.
\textsuperscript{155} Id. at 675.
policy, and that the conflict ultimately resulted in his dismissal.\footnote{156}

The court examined whether an undue hardship would be created for the employer if a reasonable accommodation were offered to the plaintiff.\footnote{157} Compelling to the court was the fact that the employer had difficulty articulating reasons why Carter should be denied the right to wear a beard.\footnote{158} The company’s contention that it was unsafe, because workers sometimes had to wear protective masks, was rebutted by Carter’s testimony that his beard actually helped the mask fit better.\footnote{159} Nor did the court find that Carter’s appearance was “unprofessional.”\footnote{160} Rather, the beard was short to moderate in length.\footnote{161} Thus, the court concluded that allowing Carter to wear a beard would not create an undue hardship for the employer and that Carter should have been offered a reasonable accommodation.\footnote{162}

In \textit{EEOC v. UPS},\footnote{163} the employer’s policy barred employees in public contact positions from having a beard.\footnote{164} Aiyub Patel was a part-time employee with a beard that was permitted because his position did not require public contact.\footnote{165} However, when he had enough seniority, under the company’s bargaining agreement with the union, he applied for a public contact position as a delivery-driver.\footnote{166} However, as a follower of Islam, Patel refused to comply with the no beard policy and, consequently, the company denied him the new position.\footnote{167} The employer was willing to allow him to be considered for full-time positions that did not require public contact, but contended that Patel was not interested in these accommodations.\footnote{168}

The EEOC challenged the company’s decision, arguing that the employer had not offered Patel a reasonable accommodation.\footnote{169} While the trial court granted the employer summary judgment, concluding that the offer of a non-contact position provided a reasonable

\footnote{156} Id.
\footnote{157} Id. at 675-76.
\footnote{158} Id.
\footnote{159} Id. at 676.
\footnote{160} Id.
\footnote{161} Id.
\footnote{162} Id.
\footnote{163} 94 F.3d 314 (7th Cir. 1996).
\footnote{164} Id. at 315.
\footnote{165} Id.
\footnote{166} Id.
\footnote{167} Id.
\footnote{168} Id.
\footnote{169} Id.
accommodation, the Seventh Circuit reversed. It found that summary judgment was not appropriate because a conflict existed between the parties as to the material facts of the case. Further, it rejected the employer’s contention that the offer, of a substitute full-time position where there was no public contact, was a reasonable accommodation. The court rejected the employer’s contention that an acceptable accommodation had been offered because management admitted that, at the time, there was no such position available to Patel because of his lack of seniority, and that it was possible that he would not become eligible for such a position for two years or longer. In light of the fact that the non-public contact position was currently unavailable, the proposed accommodation hardly seemed reasonable.

“No beard” policies have also been challenged as being a form of racial discrimination. Many African-American men suffer from pseudofolliculitis barbae (PFB), which is a painful skin condition that almost exclusively affects this group. For those afflicted, it is difficult, or even impossible, to shave. If an employer strictly enforces a “no beard” policy, it may effectively deny these men the chance for employment.

In *Woods v. Safeway Stores, Inc.*, an African-American employee was terminated by a retail grocery store when he grew a beard in violation of a policy that barred facial hair, except for short mustaches. The plaintiff (Woods) had grown the beard on the advice of his dermatologist who felt it might help treat his PFB. Woods claimed that since the condition almost exclusively affected African-American men, the policy was based on racially tainted criteria.

The *Woods* court recognized that a neutral policy, that significantly and adversely affects one racial group, could be the basis of a racial discrimination claim. However, it also indicated that the employer

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170. *Id.* at 320-21.
171. *Id.*
172. *Id.* at 320.
173. *Id.* at 319-20.
174. *Id.*
175. *E.g.*, EEOC v. UPS, 860 F.2d 372, 373 (10th Cir. 1988).
177. *UPS*, 860 F.2d at 373.
179. *Id.* at 37.
180. *Id.* at 41.
181. *Id.* at 42.
could defend itself by showing the policy is based on a legitimate business purpose.\footnote{182} The court ultimately accepted the employer's contention that in the very competitive retail grocery business, it is important that the store, and its employees, convey an image of cleanliness in order to attract customers, and that some people hold the view that beards are unclean.\footnote{183} In upholding the right of the employer to establish this policy, the court found that the impact in this case had been slight, since it appeared that only the plaintiff had been adversely affected.\footnote{184} Additionally, there was no evidence that the standard was created with the intent to discriminate, and the employer had no history of practicing discrimination.\footnote{185}

While the court in \textit{Woods} showed a willingness to defer to the judgment of the employer, as it related to an understanding of customer preferences, the Eighth Circuit was not willing to defer in \textit{Bradley v. Pizzaco of Nebraska, Inc.}\footnote{186} In this case, the plaintiff, who suffered from PFB, was fired as a delivery man for a franchisor of Domino’s Pizza because he violated the ban on beards that had been established nationwide by Domino’s.\footnote{187} A vice president of Domino’s testified that it was common sense that the better Domino’s employees looked, the better sales would be.\footnote{188} In addition, the vice president cited a public opinion survey that showed that twenty percent of those surveyed would react negatively to a bearded deliveryman.\footnote{189}

The court looked with skepticism on using customer preference as a basis for arguing business necessity absent evidence that customers would actually order less pizza because of bearded deliverymen.\footnote{190} It pointed out that its decision did not bar Domino’s from enforcing its no beard policy for those who did not suffer from the skin condition.\footnote{191} It also affirmed the company's right to require those who had to grow beards because of the condition to keep them neatly trimmed, not exceeding a specified length.\footnote{192}
In *EEOC v. Trailways, Inc.*, a district court also rejected an employer’s “no beard” policy that applied to drivers and other workers in public contact positions. The policy caused a number of African-American men who suffered from PFB to lose their jobs. The difference between this case and *Bradley* was that the employer offered no argument of business necessity to rebut the disparate impact claim. Instead, the employer relied on *EEOC v. Greyhound Lines, Inc.*, which held that a “no beard” policy did not violate Title VII.

However, the judge in *Trailways* concluded that the defendant had misread the scope of the Third Circuit’s decision in *Greyhound*. There, the court was dealing with circumstances where the EEOC had failed to introduce evidence to show the disparate impact of the policy on African-Americans. In *Trailways*, the court pointed out that there was no such failure. Evidence from the Commission demonstrated that PFB almost exclusively affected African-American men and that the employer’s policy would exclude roughly a quarter of them from being employed in public contact positions.

In *Trailways*, the court found no justification for the disparate impact claim since the employer had failed to show any business need for the rule. However, as in *Bradley*, the court indicated that its finding did not prevent the employer from establishing a general no beard policy, so long as an exception was permitted for those suffering from PFB. Those with the condition could be required to have neat and trim beards.

**D. Policies Regulating Dress**

Employers regulate the clothing of employees for a number of reasons. If an employee has contact with the public, an employer may

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194. *Id.* at 55, 59 (citing Griggs v. Duke Power Co., 401 U.S. 424 (1971)).
195. *Id.* at 56.
196. *Id.* at 57.
197. 635 F.2d 188 (3d Cir. 1980).
199. *Id.* (quoting *Greyhound Lines*, 635 F.2d at 190 n.3).
200. *Id.*
201. *Id.*
202. *Id.*
203. *Id.* at 55, 59 (citing Griggs v. Duke Power Co., 401 U.S. 424 (1971)).
204. *Id.* at 59.
205. *Id.*
want to make certain that the employee’s attire projects a certain image for the business. A financial institution or an office of professionals may want to create a conservative image. On the other hand, a clothing store that targets teenaged customers may want employees to dress in a manner that reflects current trends. In other instances, uniforms bring a standardization that allows customers and supervisors to identify employees.

Even if an employee is not in contact with the public, an employer may want to regulate dress to discourage attire that it considers overly provocative, or otherwise disruptive of the performance of other workers. Dress deemed inappropriate may, in the judgment of managers, be too sexually revealing or too reflective of the wearer’s political or religious beliefs. If an employee challenges clothing regulations, the employer typically confronts issues relating to discrimination due to gender, race, or religion. \(^{206}\)

In *Carroll v. Talman Federal Savings & Loan Ass’n*, a female employee brought an action challenging a dress code that she claimed discriminated against women. \(^{207}\) In particular, she objected to a policy requiring female employees to wear uniforms, while male employees performing the same jobs were allowed to wear customary business clothing. \(^{208}\) The lower court granted the employer’s motion for summary judgment, finding that the employer’s policy did not prevent equal employment opportunity for women. \(^{209}\)

The Seventh Circuit reversed, finding that under section 703(a)(1) the employer had discriminated as to compensation, terms, conditions or privileges of employment because of such individual’s sex. \(^{210}\) The court stated that there had been discrimination in compensation because the uniforms given to the female employees were considered income, which required the employer to withhold income tax from their pay which, of course, was not done for the men. \(^{211}\) In addition, if the uniform was


\(^{207}\) *Carroll*, 604 F.2d at 1029.

\(^{208}\) Id.

\(^{209}\) Id.

\(^{210}\) Id. at 1033. Section 703(a)(1) provides that it is an unlawful employment practice for an employer "to fail or refuse to hire or to discharge . . . or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (2000).

\(^{211}\) *Carroll*, 604 F.2d at 1030.
damaged, the female employee had to pay for a replacement uniform.\textsuperscript{212}

A second finding in the court’s decision was that requiring only women to wear uniforms was demeaning to the women.\textsuperscript{213} The court stated that it is assumed that those wearing uniforms are of a lower professional status than those who are not, and found that the employer’s policy was based on offensive stereotyping.\textsuperscript{214}

In \textit{Fountain v. Safeway Stores, Inc.},\textsuperscript{215} a male employee claimed sexual discrimination after he was terminated for not complying with a rule requiring that he wear a tie on the job, something not required of female employees.\textsuperscript{216} He claimed discrimination because when female employees had earlier violated a policy requiring them to wear skirts, not only were they not disciplined, but the company also changed its policy to allow women to wear slacks.\textsuperscript{217} To the plaintiff, these events represented unequal treatment based on sex.\textsuperscript{218}

The court rejected both arguments.\textsuperscript{219} First, the court found that there was substantial precedent for allowing an employer to establish different dress standards for men and women.\textsuperscript{220} Second, it found that an employer had the right to amend the dress code over time to reflect changes in the image that the company wanted to project.\textsuperscript{221} The fact that the company had failed to discipline the female employees for their violations and had also amended the policy to meet the women’s objections, was interpreted by the court as a reflection that the company’s judgment about acceptable attire for female employees had changed.\textsuperscript{222} The right to amend the regulations for one gender, and not the other, flows from the right an employer has to create separate

\textsuperscript{212} Id. The dissent found the majority’s position to be nit-picking, given that male employees had to pay the full price when they bought clothing for work and did not receive a tax deduction. \textit{Id.} at 1038. In addition, if a male employee’s clothing was damaged, he had to pay for that loss just as a female employee would. \textit{Id.}

\textsuperscript{213} \textit{Id.} at 1032-33.

\textsuperscript{214} \textit{Id.} at 1033; \textit{see also O’Donnell v. Burlington Coat Factory Warehouse, Inc.}, 656 F. Supp. 263, 266 (S.D. Ohio 1987) (relying on \textit{Carroll} to find discrimination because of a requirement that female employees wear a smock over their clothing, while male employees performing the same job were allowed to wear a shirt and tie).

\textsuperscript{215} 555 F.2d 753 (9th Cir. 1977).

\textsuperscript{216} \textit{Id.} at 754-55.

\textsuperscript{217} \textit{Id.} at 755.

\textsuperscript{218} \textit{Id.} at 756.

\textsuperscript{219} \textit{Id.}

\textsuperscript{220} \textit{Id.} at 755-56.

\textsuperscript{221} \textit{Id.} at 756.

\textsuperscript{222} \textit{Id.}
appearance regulations for men and women.\textsuperscript{223}

What happens when an employer has no written policy governing particular clothing that an employee must wear that differentiates between male and female employees? In \textit{Craft v. Metromedia, Inc.},\textsuperscript{224} a television station demoted a female news anchor after receiving results from focus groups and a telephone survey of the station’s target audience.\textsuperscript{225} The survey attempted to measure the audience’s view of the plaintiff (Craft) versus other female news anchors working for competing stations.\textsuperscript{226} It showed that Craft was trailing the other female anchors in almost every category.\textsuperscript{227} Four of the categories related to “good looks,” clothing, and image of a female anchor.\textsuperscript{228} According to Craft, part of the evidence of discrimination included surveys regarding male on-air personalities that were different from the female surveys in that the male surveys did not attempt to measure “appearance” in the same way as for the female employees.\textsuperscript{229}

Part of Craft’s sexual discrimination claim related to what she argued was the more stringent appearance standards that the company applied to female on-air personnel.\textsuperscript{230} The evidence showed that soon after Craft was hired the station began to have concerns about her clothing and makeup.\textsuperscript{231} The news director began to make suggestions and criticisms regarding her clothing.\textsuperscript{232} Eventually, the station arranged with Macy’s to provide a fashion consultant and clothing for Craft.\textsuperscript{233}

In addition, the plaintiff introduced the testimony of other female employees who opined that the employer placed more emphasis on the appearance of female employees.\textsuperscript{234} The record reflected that the station had hired Craft to try to soften the image of its news presentation that, in part, was to be accomplished through a wardrobe that emphasized a feminine touch replete with “bows and ruffles.”\textsuperscript{235} She was also

\begin{itemize}
\item \textsuperscript{223} Id.
\item \textsuperscript{224} 766 F.2d 1205 (8th Cir. 1985).
\item \textsuperscript{225} Id. at 1209.
\item \textsuperscript{226} Id.
\item \textsuperscript{227} Id.
\item \textsuperscript{228} Id.
\item \textsuperscript{229} See id. at 1214.
\item \textsuperscript{230} Id. at 1210.
\item \textsuperscript{231} Id. at 1208.
\item \textsuperscript{232} Id.
\item \textsuperscript{233} Id. at 1208-09.
\item \textsuperscript{234} Id. at 1213.
\item \textsuperscript{235} Id. at 1214.
\end{itemize}
cautioned against wearing clothes that were too tight fitting or “sexy.” Craft was told to wait at least three weeks before wearing the same outfit on camera again, while the men were allowed to wear the same suit twice in one week so long as it was with a different tie.

The trial court rejected Craft’s claim of sex discrimination. It found that the television station required both men and women in on-air roles to maintain a professional appearance, and that the enforcement of this objective was done in a nondiscriminatory manner. In contradiction to the evidence introduced by Craft, the Eighth Circuit pointed out that the lower court had evidence before it that indicated the men were also subjected to scrutiny of their appearance. One man was told to get better fitting clothing, to refrain from wearing sweaters under jackets, and to tie neckties in a certain manner. Other men had been told to lose weight, to get a hairpiece, and to start wearing contact lenses.

The Court of Appeals found that there was no evidence in the record that the trial court had acted in a clearly erroneous fashion. While the appellate court felt that the station had overemphasized the issue of appearance, it held that the station had not done so in a discriminatory manner. It accepted the lower court’s conclusion that “appearance” is critical to a business whose economic success is so tied to a visual medium.

In Schmitz v. ING Securities, Futures & Options, Inc., the plaintiff (Schmitz) brought a sexual harassment suit after she had been terminated for poor work performance. She claimed the real reason behind her termination was that she had complained about sexually harassing behavior. The behavior under critique related to repeated criticisms made by a manager about the inappropriateness of the clothing.

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236. See id. at 1215.
237. Id. at 1214.
238. Id. at 1207-08.
239. Id. at 1209-10.
240. See id. at 1213.
241. Id.
242. Id.
243. Id. at 1216.
244. Id. at 1215-16.
245. Id. at 1215.
247. Id. at *4.
248. Id.
she wore.\(^{249}\) He criticized Schmitz for having skirts or blouses that were too tight or too revealing.\(^{250}\) Schmitz acknowledged that she wore skirts that were five or six inches above her knees.\(^{251}\) The manager complained to her that her clothing left little to the imagination and was so provocative that any “hot-blooded male” would be aroused by her appearance.\(^{252}\) He claimed that this type of attire was disrupting office productivity.\(^{253}\) Female supervisors who worked for the company agreed with the thrust of his criticisms.\(^{254}\)

While the court did not specifically deal with the issue of the employer’s right to have managers regulate the dress of subordinates, it found that Schmitz had failed to make a case for sexual harassment that was attributable to a hostile work environment.\(^{255}\) In particular, she had the duty to show that she was subject to unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature.\(^{256}\) According to the court, Schmitz was unconvincing on this point.\(^{257}\) There was no evidence of improper sexual advances.\(^{258}\) The court stated that harassment is not proven just because words have a sexual connotation.\(^{259}\)

On the other hand, employers can be liable for requiring female employees to wear clothing that subjects them to sexual harassment.\(^{260}\) In *EEOC v. Sage Realty Corp.*, a woman had been required to wear a uniform that she claimed was too revealing and led to her being subjected to lewd remarks and sexual propositions.\(^{261}\) The court’s review of photographs of the employee in her uniform led to a finding that the uniform was “short, revealing and sexually provocative.”\(^{262}\) The court concluded that a *prima facie* case had been established that she was subjected to sexual harassment because of her employer’s

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\(^{249}\) *Id.* at *2.

\(^{250}\) *Id.*

\(^{251}\) *Id.*

\(^{252}\) *Id.* at *3.

\(^{253}\) *Id.*

\(^{254}\) *Id.* at *9.

\(^{255}\) See *id.* at *12-13.

\(^{256}\) *Id.* at *6* (citing *Parkins v. Civil Constructors of Ill.*, Inc., 163 F.3d 1027, 1032 (7th Cir. 1998)).

\(^{257}\) *Id.* at *7.

\(^{258}\) *Id.*

\(^{259}\) *Id.* (quoting *Oncale v. Sundowner Offshore Servs.*, Inc., 523 U.S. 75, 80 (1998); *Shepherd v. Slater Steels Corp.*, 168 F.3d 998, 1009 (7th Cir. 1999)).


\(^{261}\) *Id.* at 605.

\(^{262}\) *Id.* at 607.
requirement.\textsuperscript{263} Since her employer failed to introduce any legitimate, nondiscriminatory reason for the requirement, it violated Title VII.\textsuperscript{264}

In \textit{Davis v. Mothers Work, Inc.}, an African-American plaintiff (Davis) contended that her employer's enforcement of its dress code constituted both racial and religious discrimination.\textsuperscript{265} The store's policy required employees to wear "clothing that reflects the current in-store seasonal fashions."\textsuperscript{266} While exactly what transpired between Davis and the company's district manager was in dispute, what was clear was that the district manager did not approve of the full-length robe and headscarf that Davis wore as part of her Muslim religion.\textsuperscript{267} According to Davis, this led the manager to tell her to leave work and go home.\textsuperscript{268}

Although the manager relented and allowed Davis to return to work with her over-garment, Davis contended that the manager demonstrated an unwillingness to accept her appearance.\textsuperscript{269} Davis charged that the manager monitored her work more closely than before, and that she was subject to rude comments and "nasty looks" from the manager.\textsuperscript{270} In addition, her work schedule was changed, creating a conflict with the second job she held.\textsuperscript{271} Finally, the reason the company used to terminate Davis was that she did not show up for a scheduled day of work.\textsuperscript{272} In her defense, Davis claimed that it was a day when she was not originally scheduled to work and that the scheduling change was never communicated to her.\textsuperscript{273}

The court allowed Davis' claims to survive the defendant's motion for summary judgment.\textsuperscript{274} As to the charge of racial discrimination, the court concluded that Davis had established a \textit{prima facie} case because she contended that a white employee, who did not conform to the company's dress code, had not been subject to the same treatment.\textsuperscript{275} Davis argued that the reason given for her termination was a pretext, and
that the dismissal was really attributable to her race.\textsuperscript{276}

Similarly, Davis introduced sufficient evidence on her religious discrimination case to survive the motion for summary judgment.\textsuperscript{277} She argued that she was treated differently than other employees because she wore religious attire.\textsuperscript{278}

In other claims of religious discrimination, it has not been the clothing worn, but symbols or words adorning the dress of an employee that have raised controversy.\textsuperscript{279} In Wilson v. U.S. West Communications, an employee (Wilson) wore an anti-abortion button on her clothing that depicted a fetus.\textsuperscript{280} The graphic nature of the pin led to controversy with other workers who objected to it and complained to management.\textsuperscript{281} While the company did not have a dress policy, it informed Wilson that because the pin was upsetting other workers and affecting their productivity, she would not be allowed to wear it outside of her work cubicle.\textsuperscript{282} The company tried to offer her a number of accommodations, each of which she refused because she claimed that they would require her to ignore her religious beliefs.\textsuperscript{283} The Eighth Circuit upheld Wilson’s termination, finding that her religious beliefs did not require that she wear that particular pin, and that the employer had extended her a number of reasonable accommodations.\textsuperscript{284}

A similar issue arose in Rivera v. Choice Courier Systems, Inc.\textsuperscript{285} In that case, an employee (Rivera) delivered mail and answered phones at clients’ businesses.\textsuperscript{286} The employer had a dress code that it considered important in projecting the professional image of its employees.\textsuperscript{287} Rivera attached badges to his work clothes that reflected his religious beliefs.\textsuperscript{288} One of the clients contacted the employer to express “concern” about the badges.\textsuperscript{289} Subsequently, Rivera was told not to wear them.\textsuperscript{290} Rivera indicated he could not comply with this direction.

\textsuperscript{276} ld. at *21-23.
\textsuperscript{277} ld. at *25, *41.
\textsuperscript{278} ld. at *25.
\textsuperscript{279} See, e.g., Wilson v. U.S. W. Comme'ns., 58 F.3d 1337, 1338 (8th Cir. 1995).
\textsuperscript{280} ld. at 1339.
\textsuperscript{281} ld.
\textsuperscript{282} ld.
\textsuperscript{283} ld.
\textsuperscript{284} ld. at 1341-42.
\textsuperscript{285} No. 01 Civ. 2096 (CBM), 2004 U.S. Dist. LEXIS 11758, at *1 (S.D.N.Y. June 24, 2004).
\textsuperscript{286} ld. at *1-2.
\textsuperscript{287} ld. at *2.
\textsuperscript{288} ld. at *4.
\textsuperscript{289} ld.
\textsuperscript{290} ld. at *5.
because of his religious beliefs and he was subsequently terminated. Due to a conflict in the contentions of the parties, as to whether he had been offered a reasonable accommodation and whether such was even possible given his intransigence, the court did not grant summary judgment.

E. Jewelry and Cosmetic Appearance

Companies have also sought to regulate the wearing of jewelry and cosmetics by their employees while on the job. Such policies are usually motivated by managers' desire to make certain that the appearance of an employee is acceptable to the public. As suggested in Schmitz, the appearance of an employee may be seen as affecting the performance of other workers.

In Cloutier v. Costco Wholesale Corp., an employer instituted a dress code barring employees from wearing facial jewelry, with the exception of earrings. Cloutier wore a ring in her pierced eyebrow. When she was approached about violating the policy, she refused to comply indicating that the ring was worn as a reflection of her religious beliefs. The employer offered her the accommodations of either wearing a plastic retainer or a band-aid over the jewelry. Cloutier rejected both offers, claiming that her religious beliefs required that her facial piercing be on display at all times.

When the employer terminated Cloutier's employment, she filed suit, claiming that the company failed to meet its obligation to reasonably accommodate her religious beliefs. After bringing suit in federal court, under both Title VII and state law, the employer filed a motion for summary judgment, which the lower court granted, finding that the employer had offered Cloutier a reasonable accommodation.

In affirming the lower court's decision, the First Circuit based its decision...

291. Id. at *6.
292. Id. at *31.
294. 390 F.3d 126 (1st Cir. 2004).
295. Id. at 129.
296. Id.
297. Id.
298. Id. at 130.
299. Id.
300. Id. at 128, 130.
301. Id. at 130-32.
decision on the finding that the employer could not accommodate Cloutier, in a way she found reasonable, without undue hardship.\textsuperscript{302} In particular, the court pointed out that the appearance of employees reflects on their employers.\textsuperscript{303} This is especially true of employees who, like Cloutier, were in public contact positions.\textsuperscript{304} The employer successfully argued that Cloutier’s facial jewelry detracted from the image it wanted to project to its customers, and that requiring it to grant an exemption from the policy, which was essentially all that Cloutier would accept, would adversely affect that image.\textsuperscript{305}

Beyond employee claims that policies governing appearance may violate Title VII, employers must also be concerned with state or local laws that provide employees with broader protections.\textsuperscript{306} Such was the case in Sam’s Club, Inc. v. Madison Equal Opportunities Commission.\textsuperscript{307} There, the state court had to interpret a city ordinance that, in part, prohibited discrimination in employment based on “physical appearance.”\textsuperscript{308} The ordinance included policies that pertained to hairstyles, beards, dress, weight, facial features, and other aspects of appearance.\textsuperscript{309} The ordinance contained an exception when the employer’s regulations were based on cleanliness, uniforms, or prescribed attire, so long as the standards were uniformly applied and were for a reasonable business purpose.\textsuperscript{310}

In this case, as in Costco, the employee had a loop through her eyebrow that violated the company’s policy barring facial jewelry.\textsuperscript{311} The employer argued that the policy was motivated by its desire to promote a “traditional” or “conservative” style of appearance, and that it did not want employees to have a “flashy” appearance that would be distracting to customers.\textsuperscript{312} The company’s expert testified that the wearing of facial jewelry was not consistent with the conservative image that the employer wanted to convey to its customers.\textsuperscript{313}

\textsuperscript{302} Id. at 132.
\textsuperscript{303} Id. at 135.
\textsuperscript{304} Id.
\textsuperscript{305} Id.
\textsuperscript{307} Id.
\textsuperscript{308} Id.
\textsuperscript{309} Id. (quoting MADISON, WISC., MADISON GENERAL ORDINANCE, § 3.23(2)(bb) (1998)).
\textsuperscript{310} Id. (quoting MADISON, WISC., MADISON GENERAL ORDINANCE, § 3.23(2)(bb) (1998)).
\textsuperscript{311} Id.
\textsuperscript{312} Id.
\textsuperscript{313} Id. at *2.
The city’s commission adopted the hearing examiner’s findings that the policy, designed to promote a conservative image, was not based on a reasonable business purpose and that the employee’s discharge violated the city’s ordinance.\textsuperscript{314} The lower court reversed the commission’s finding.\textsuperscript{315}

The appellate court affirmed the lower court.\textsuperscript{316} It found that one business might have a very different idea than another, in terms of the image that it wants its employees to convey to the public.\textsuperscript{317} One business may want to appear as “trendy,” allowing employees freedom in terms of appearance.\textsuperscript{318} However, Sam’s Club wanted to project a “no frills, no flash” look for its employees.\textsuperscript{319} Prohibiting facial jewelry was consistent with that objective and, thus, the regulation was for a “reasonable business purpose.”\textsuperscript{320}

In \textit{DeSantis v. Pacific Telephone & Telegraph Co.},\textsuperscript{321} the Ninth Circuit consolidated three district court decisions, all of which related to the question of whether homosexuals were protected under Title VII.\textsuperscript{322} In one of the cases, a male employee had been terminated from his position in a nursery school because he wore a small ear-loop.\textsuperscript{323} He contended that he was terminated because the school relied on a stereotype that dictated that men must have a virile appearance, and that the school viewed the earring as effeminate.\textsuperscript{324} The lower court’s dismissal of his Title VII claim, holding that protection from sexual discrimination applied only to an individual’s gender and should not be extended to include sexual preference, was affirmed by the appellate court.\textsuperscript{325}

This case did not raise the traditional claim of unequal treatment because of gender. In addition, social norms have changed regarding men wearing earrings since the time when the case was decided.\textsuperscript{326}

\textsuperscript{314} \textit{Id.}
\textsuperscript{315} \textit{Id. at *3.}
\textsuperscript{316} \textit{Id. at *16.}
\textsuperscript{317} \textit{Id. at *14.}
\textsuperscript{318} \textit{Id.}
\textsuperscript{319} \textit{Id. at *15.}
\textsuperscript{320} \textit{Id. at *15-16.}
\textsuperscript{321} 608 F.2d 327 (9th Cir. 1979).
\textsuperscript{322} \textit{Id. at 328.}
\textsuperscript{323} \textit{Id.}
\textsuperscript{324} \textit{Id. at 331.}
\textsuperscript{325} \textit{Id. at 331-32.}
\textsuperscript{326} See generally Michael Winerip, \textit{Our Towns: New Male Rite of Passage: Getting an Ear Pierced}, N.Y. TIMES, Mar. 16, 1986, §1, at 148 (discussing society’s growing acceptance of men wearing earrings).
However, given the latitude that the courts have given to employers in creating distinctions in appearance policies for men and women, it seems likely that in a case where conservative appearance is considered an important aspect of a position, an employer can make a valid argument that it should have a right to allow women but not men to wear earrings.

A controversy arose in Jespersen v. Harrah’s Operating Co.,\(^{327}\) regarding the right of a business to establish different cosmetic standards for men and women.\(^{328}\) A casino had established appearance standards for its bartenders that distinguished on the basis of gender in several ways.\(^{329}\) For example, the length of male employees’ hair was regulated and, while the women’s was not, women were required to have hair that was teased, curled or styled, and worn down.\(^{330}\) Men had to have clean and neatly trimmed nails, with no colored polish, while women were told that their nails could only be covered by certain colors, and could not contain either exotic art or be of exotic length.\(^{331}\)

Jespersen had been employed with the company for twenty years and objected to the appearance standard that required female employees to wear make-up, claiming that it conflicted with her self-image, and was demeaning and degrading to women.\(^{332}\) She further argued that it imposed a greater burden on women.\(^{333}\) Jespersen contended that the policy violated Title VII because men were not subject to the same terms and conditions of employment that were imposed on women.\(^{334}\) Her second argument was that, under the rationale used by the Supreme Court in Price Waterhouse v. Hopkins,\(^{335}\) the employer was engaged in impermissible sexual stereotyping.\(^{336}\)

The Ninth Circuit affirmed the lower court’s grant of summary judgment to the employer.\(^{337}\) As to Jespersen’s claim that the requirement placed a time and expense burden on women that was not

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327. 444 F.3d 1104 (9th Cir. 2006).
328. Id. at 1105-06.
329. Id. at 1107.
330. Id.
331. Id.
332. Id. at 1106-08.
333. See id. at 1110.
334. Id. at 1108.
335. 490 U.S. 228 (1989). In Hopkins, the employer did not promote a female employee, Hopkins, to partner, at least in part, because her aggressive behavior marked her as not being feminine enough. See id. at 233-35. Yet, the firm recognized that her aggressive behavior (stereotypical of men) was important to her success. See id. at 234. The Court found that this could create a Catch-22 for Hopkins. Id. at 251.
336. See Jespersen, 444 F.3d at 1108, 1111.
337. Id. at 1106.
placed on men, the court held that not every difference in grooming policies constitutes illegal sex discrimination. In addition, the court determined that Jespersen had failed to introduce evidence that the standards were more burdensome on women.

The court also rejected Jespersen's contention that the employer's conduct constituted illegal stereotyping under Price Waterhouse. In Price Waterhouse, the plaintiff (Hopkins) had essentially been told that to achieve a promotion she needed to tone down characteristics that seemed more masculine and to act more femininely. In Jespersen, the court did not believe that Harrah's standards interfered with the plaintiff's ability to do her job in the way that Price Waterhouse's standards interfered with Hopkin's ability to do her job. The court went on to say that while it was possible that a grooming standard could constitute sexual stereotyping, most of the standards were applied equally to men and women, did not appear to be motivated by stereotypical thinking, and were reasonable.

In another case, a public employer was sued when an employee was terminated, in part, because of her failure to conform to her supervisor's expectations as to what constituted an appropriate appearance. In particular, she had been reprimanded, and later terminated, for wearing excessive makeup and wearing her hair down. In that case, Wislocki-Goin v. Mears, there was no written dress or appearance policy. However, the employer-judge, who was responsible for overseeing the performance of employees, expected her subordinates to maintain an appearance that would conform to a "Brooks Brothers look." The Seventh Circuit affirmed the lower court's rejection of the plaintiff's disparate treatment claim because she failed to show that the supervisor treated male employees more leniently. She also failed to show that the stated reason for her discharge was a pretext for discrimination.
The plaintiff's disparate impact claim was also rejected. She failed to show that the supervisor's desire to have the staff maintain a professional appearance in their dealings with the public was not a legitimate interest. In addition, there was no evidence that the application of the appearance policies created a greater hardship for female employees.

F. Policies Controlling Weight

Some businesses have created policies to regulate the weight of their employees; their reasons vary. One reason may be that if an employee exceeds certain weight limits, he or she will not be able to perform one of the functions of the position. For example, the airlines have established weight limitations for flight attendants, at least in part, because occasionally the attendant must be able to access, in very limited space, a passenger suffering from some type of physical distress. In other instances, employers may want weight limitations because of the high correlation between weight, medical costs, and absenteeism.

Employers may also be interested in regulating the appearance of employees who are dealing with the public. When weight restrictions lead to employer actions that adversely affect employees, challenges have been mounted under a variety of statutes, including Title VII, the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act (ADEA), as

350. Id. at 1382.
351. Id. at 1380 (citing Dothard v. Rawlinson, 433 U.S. 321, 329 (1977)).
352. Id.
358. 29 U.S.C. §§ 701-796l (2000). Like the ADA, the Rehabilitation Act was designed to protect those that meet the definition of being disabled; however, the reach of the law is not as broad, as it applies only to those who receive federal funds or are government contractors, federal
well as various state or local laws.  

Those disciplined or denied employment because of weight have frequently invoked the ADA and the Rehabilitation Act of 1973. To proceed to the question of whether a person has been a victim of discrimination, under either statute, the employee must first establish that he qualifies as "disabled." The ADA provides the claimant with three possible ways of satisfying this requirement. The individual can either show that he has a physical or mental impairment that substantially affects one or more major life activities, that he has had a history of an impairment that affects major life activities, or that the employer regarded him as disabled.

In Coleman v. Georgia Power Co., the plaintiff (Coleman) was discharged because of his failure to meet weight limitations that applied to his position. The requirement was established because the position could require the operation of a lift device that had an operator weight limit attached to it by its manufacturer.

The court concluded that Coleman was not disabled under any of the definitions included under the ADA. The court relied on EEOC regulations stating that only in rare cases would obesity be considered a disability. While there was evidence that he qualified as being morbidly obese, there was no evidence that tied his condition to a physiological disorder or condition, as required under EEOC regulations.

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executive agencies or the U.S. Postal Service. See id. § 701(b), (c); see also U.S. Dep’t of Labor, Section 503 of the Rehabilitation Act of 1973, http://www.dol.gov/esa/regs/compliance/ofccp/fs503.htm (last visited May 16, 2007) (explaining the basic provisions and scope of the Act).


361. E.g., Frank v. United Airlines, Inc., 216 F.3d 845, 847 (9th Cir. 2000) (claiming a violation of the ADA when an employer rejected an applicant because of his weight); Tudyman v. United Airlines, 608 F. Supp. 739, 740 (C.D. Cal. 1984) (claiming that the employer airline violated the Rehabilitation Act of 1973 when the employer rejected an applicant because of his weight).

362. See Francis v. City of Meriden, 129 F.3d 281, 283 (2d Cir. 1997).


364. Id.


366. Id. at 1367.

367. Id. at 1366.

368. Id. at 1370.

369. Id. at 1368 (citing 29 C.F.R. pt. 1630, app. § 1630.2(j) (1997)).

370. Id. (citing 29 C.F.R. pt. 1630, app. § 1630.2(h) (1991)). Under EEOC regulations, a physical impairment includes "[a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular,
The court also found that Coleman did not qualify under the second prong of the definition because he failed to show that he had a history demonstrating that his obese condition substantially limited major life activities.\(^{371}\) Nor did he qualify under the third criterion since the record did not include evidence that his employer regarded him as having a substantial impairment of a major life activity.\(^{372}\)

However, the First Circuit, in *Cook v. Rhode Island Department of Mental Health, Retardation, & Hospitals,*\(^ {373}\) found that the plaintiff’s (Cook’s) morbid obesity qualified her as being disabled under the Rehabilitation Act.\(^ {374}\) Unlike in *Coleman,* the court concluded that the jury, which had found for Cook, could conclude, based on the evidence, that her condition met the EEOC’s definition of disability.\(^ {375}\) In particular, the jury could conclude that Cook’s condition was attributable to a “metabolic dysfunction” that was tied to a “physiological disorder.”\(^ {376}\)

In *Cook,* the nurse who conducted the pre-hire physical had found that Cook was morbidly obese but had not concluded that her weight would affect her ability to do the job.\(^ {377}\) However, the employer rejected Cook because it believed her condition would prevent her from doing some of the tasks included in the job.\(^ {378}\) The employer’s supervisor also believed that the condition would lead to a higher rate of absenteeism and a greater risk that she would file workers compensation claims.\(^ {379}\)

Cook prevailed, not based on the theory that she suffered from a disability that substantially affected major life activities, but on her contention that the employer perceived her as disabled.\(^ {380}\) The evidence before the jury allowed it to conclude that the employer believed she was disabled.\(^ {381}\) The court stated that the fact that the employer’s belief may have been formed in “good faith” was no defense.\(^ {382}\) In addition, even if

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372. *Id.* (citing Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1327 n.2 (11th Cir. 1998)).
373. 10 F.3d 17 (1st Cir. 1993).
374. *Id.* at 28.
375. *Id.* at 23.
376. *Id.* at 24.
377. *Id.* at 19.
378. *Id.* at 20-21.
379. *Id.*
380. *Id.* at 23.
381. *Id.*
382. *Id.* at 26-27 (citing Pushkin v. Regents of Univ. of Colo., 658 F.2d 1372 (10th Cir. 1981); Carter v. Casa Cent., 849 F.2d 1048, 1056 (7th Cir. 1988)).
the employer was correct in thinking that Cook would miss more work than the average employee due to her condition, or that she was more likely to file workers compensation claims, those reasons provided no defense.\textsuperscript{383} The "reasonable accommodation" duty of the statute required the employer to accept such a burden when dealing with a disabled employee.\textsuperscript{384}

Another challenge to weight standards was mounted by female flight attendants in \textit{Frank v. United Airlines, Inc.}\textsuperscript{385} This suit involved claims under Title VII, the ADEA and the ADA.\textsuperscript{386} The evidence showed that women had to weigh 14 to 25 pounds less than male attendants of the same height and age.\textsuperscript{387} The reason for the difference was that the airline used weight tables that distinguished between the weights expected for those with large frames as opposed to medium frames.\textsuperscript{388} For women, the medium frame standards from the weight tables were used, while for men the large frame criteria were applied.\textsuperscript{389} Failure of the women to meet the standards led to either discipline or termination.\textsuperscript{390}

The Ninth Circuit based its conclusion, that the different standards violated Title VII, on the Supreme Court's decision in \textit{UAW v. Johnson Controls, Inc.}\textsuperscript{391} In that case, the employer had refused to allow potentially fertile women to work in positions where there was the possibility of lead exposure which, in the employer's mind, could be harmful to a fetus.\textsuperscript{392} However, men capable of fathering children were not excluded.\textsuperscript{393} The court found that there was no \textit{bona fide} occupational qualification that justified the apparently discriminatory policy.\textsuperscript{394} In \textit{Frank}, the Ninth Circuit found that the employer had failed to introduce evidence demonstrating that the essentials of the job required that women be thinner than male flight attendants.\textsuperscript{395} Thus,

\begin{thebibliography}{9}
\bibitem{} \textit{Id.} at 27.
\bibitem{} \textit{Id.}
\bibitem{} 216 F.3d 845, 847 (9th Cir. 2000).
\bibitem{} \textit{Id.}
\bibitem{} \textit{Id.} at 848.
\bibitem{} \textit{Id.}
\bibitem{} \textit{Id.}
\bibitem{} \textit{Id.} at 847.
\bibitem{} \textit{Id.} at 854 (citing \textit{UAW v. Johnson Controls, Inc.}, 499 U.S. 187 (1990)).
\bibitem{} \textit{UAW}, 499 U.S. at 192.
\bibitem{} \textit{Id.} at 199.
\bibitem{} \textit{Id.} at 206.
\bibitem{} \textit{Frank}, 216 F.3d at 855.
\end{thebibliography}
there was no defense for the disparate treatment of the women. 396

On the ADEA claim, the court rejected the plaintiffs' argument that the weight standards constituted disparate treatment. 397 The weight standards applied to employees equally, regardless of age. 398 However, the court reversed the lower court's grant of summary judgment to the defendant on the disparate impact claim. 399 It found that the lower court erred in determining that the Supreme Court's decision in Hazen Paper Co. v. Biggins 400 barred disparate impact claims under the ADEA. 401

As to the disability claim in Frank, the court upheld the grant of summary judgment for the airline. 402 The court found that while eating disorders, which the plaintiffs claimed they suffered from because of the employer's weight policies, can qualify as a disability under the ADA, none of the plaintiffs had introduced evidence showing that eating disorders substantially limited major life activities. 403

While employers have to be aware that there are limitations posed by federal civil rights laws on their ability to establish weight standards, it is also clear that employers have some discretion regarding this subject. It could be because the job requires such limitations. However, it could also be because the employer has a legitimate concern regarding the impression that an employee may create in the mind of the public. 404

In Marks v. National Communications Ass'n, a woman challenged her employer's decision to deny her a promotion because she was overweight. 405 The promotion would have created face-to-face contact with customers, and the employer had informed her that an employee's "presentation" (appearance) was important to succeed in the position. 406 She was told if she lost weight, she would get the promotion. 407

The plaintiff claimed that the conduct violated both Title VII and state law barring discrimination based on gender. 408 In particular, she
claimed that, for the position, the employer was applying different weight standards for men and women. Her problem was that the employer presented a legitimate, nondiscriminatory reason for its decision. The employer contended that appearance was important to the position, and also introduced testimony that it did not have overweight men in the position. The court found in favor of the employer because the plaintiff was unable to provide any specific evidence of the identity of the men in the position who were overweight.

409. Id. at 327.
410. Id. at 331 (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)).
411. Id.
412. Id. at 334.
V. CONCLUSIONS

Table 1 briefly summarizes the major conclusions of this article on the current rights of employers in designing appearance policies for their employees. While no set of implied recommendations is a guarantee against legal action, the table contains guidelines that follow legal precedent.

<table>
<thead>
<tr>
<th>Employer Right</th>
<th>Limitation</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>To design appearance policies in general.</td>
<td>The policy must not discriminate based on employees' immutable characteristics or differentially impact members of a protected class. (“Basic Requirement”)</td>
<td>Immutable characteristics include gender, race, color, or national origin.</td>
</tr>
<tr>
<td>To design appearance policies that promote an employer’s relationships with customers and the public.</td>
<td>Basic Requirement.</td>
<td>At-work restrictions on hair length or hairstyle, facial hair, clothing worn, jewelry or cosmetics, and body weight.</td>
</tr>
<tr>
<td>To design policies to ensure that an employee’s appearance does not compromise the well-being or performance of that employee or others.</td>
<td>Basic Requirement.</td>
<td>Sexually suggestive clothing.</td>
</tr>
<tr>
<td>To design appearance policies that restrict employees from engaging in religious practices on-the-job.</td>
<td>Basic Requirement + the employer must offer a reasonable accommodation, but is not required to provide one that would cause the employer to suffer an undue hardship.</td>
<td>Men wearing beards or ponytail length hair.</td>
</tr>
<tr>
<td>To design appearance policies that restrict opportunities for “disabled” applicants.</td>
<td>Basic Requirement + the restrictions must be legitimately tied to essential requirements of the job.</td>
<td>Weight limitations for employees assigned to work in a confined area.</td>
</tr>
<tr>
<td>To change an appearance policy.</td>
<td>Sufficient grounds include changes in the employer’s perceptions of social conditions.</td>
<td>Men wearing earrings.</td>
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</table>
Appearance policies that help to define an organizational culture provide important safeguards for the company and its employees. Employees like the predictability, consistency, and dependability that are provided by policies on personal appearance. Managers like the policies because they provide the authority to enforce rules on appropriateness. However, because policies delimit employee behavior, it is imperative that they are legal and nondiscriminatory impositions on individual freedom.

The legislation and case law reviewed in this article suggests that the courts have granted managers considerable latitude in developing company policies that require employees to maintain an image that is consistent with the business’ organizational culture. Managers may therefore set policies designed to control employee appearance including restrictions on hair length or hairstyle, presence of a beard, clothing style or type, jewelry worn on-the-job, and weight.

However, the courts have been clear in their intent to allow restrictive policies only when they promote the general wellbeing of the company, which associatively promotes the wellbeing of the employees affected by the policies. Additionally, the courts have shown considerable sensitivity to community standards in determining when a policy excessively impinges on individual employee behavior.

413. See, e.g., Wislocki-Goin v. Mears, 831 F.2d 1374, 1379 (7th Cir. 1987).
414. See, e.g., Cloutier v. Costco Wholesale Corp., 390 F.3d 126, 134-37 (1st Cir. 2004) (noting that Costco’s facial piercing policy did not amount to discrimination); Wislocki-Goin, 831 F.2d at 1379 (holding that the plaintiff was discharged for failing to follow her employer’s legitimate business concerns regarding hair and makeup grooming policies); Fountain v. Safeway Stores, Inc., 555 F.2d 753, 756 (9th Cir. 1977) (holding that Safeway’s dress and grooming regulations were not discriminatory in light of their good faith belief that their business required them); Marks, 72 F. Supp. 2d at 336 (holding that the employer’s policy on weight was nondiscriminatory); EEOC v. Sambo’s of Ga., 530 F. Supp. 86, 91 (N.D. Ga. 1981) (holding that being clean shaven is a bona fide occupational requirement for the manager of a restaurant).
415. See, e.g., Craft v. Metromedia, Inc., 766 F.2d 1205, 1215 (8th Cir. 1985) ("[T]he appearance of a company’s employees may contribute greatly to the company’s image and success with the public and thus that a reasonable dress or grooming code is a proper management prerogative." (citing Fagan v. Nat’l Cash Register Co., 481 F.2d 1115, 1124-25 (D.C. Cir. 1973); La Von Lanigan v. Bartlett & Co. Grain, 466 F. Supp. 1388, 1392 (W.D. Mo. 1979))); Willingham v. Macon Tel. Publ’g Co., 507 F.2d 1084, 1091 (5th Cir. 1975) ("Similarly, an employer cannot have one hiring policy for men and another for women if the distinction is based on some fundamental right. But a hiring policy that distinguishes on some other ground... is related more closely to the employer’s choice of how to run his business ....").
416. See, e.g., O’Donnell v. Burlington Coat Factory Warehouse, Inc., 656 F. Supp. 263, 266 (S.D. Ohio 1987) ("Even though defendants have expressed no discriminatory motive for the ‘smock’ rule, we find that the blatant effect of such a rule is to perpetuate sexual stereotypes... In contrast to the ‘hair length’ standards for male employees, the smock requirement finds no justification in accepted social norms."); Willingham, 507 F.2d at 1087 (accepting the employer’s
Thus, business policies designed to promote a community-relevant organizational culture that are respectful of legal rights can serve as constructive safeguards for individual, company, and collective welfare.
J.B. Hunt Transport Settles EEOC Religious Discrimination Charge for $260,000

Sikh Applicants Denied Religious Accommodation During the Hiring Process, Federal Agency Charges

LOS ANGELES - J.B. Hunt Transport, Inc., one of the largest transportation logistics companies in North America, will pay $260,000 and provide other relief to settle charges of race, national origin and religious discrimination filed with the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

The charges filed with EEOC alleged that four East Indian Sikh applicants were denied a religious accommodation during the hiring process when they requested an alternative to the company’s hair sample drug testing policy. Three of the four applicants were denied hire at the South Gate, Calif., location. The fourth applicant was screened out at the pre-screening phone call prior to even having a face-to-face meeting at the South Gate hub. The company is headquartered out of Lowell, Ark.

The charges further asserted that the refusal of the religious accommodation led to the denial of hire for the four applicants. EEOC investigated the allegations and found reasonable cause to believe that J.B. Hunt failed to provide a religious accommodation and failed to hire a class of individuals due to their race, national origin and religion, in violation of Title VII of the Civil Rights Act of 1964.

The charges were filed by the Sikh Coalition on behalf of the four Sikh applicants. One of the five articles of faith for Sikhs is maintaining uncut hair.

Without admitting liability, J.B. Hunt agreed to enter into a two-year conciliation agreement with EEOC and the alleged victims, thereby avoiding litigation. During the course of the investigation, J.B. Hunt revised its written policies and procedures regarding discrimination and religious accommodations, and established an alternative to the drug testing by hair sample for those who need an accommodation. Aside from the monetary relief, the company will extend a conditional offer of employment to all complainants in this case. J.B. Hunt further agreed to designate an equal employment opportunity consultant, develop written complaint procedures, and conduct training for all employees who participate in the hiring, compliance, or internal grievance process. EEOC will monitor compliance with this agreement.

"J.B. Hunt has been cooperative in working with EEOC to resolve this charge without resorting to litigation," said Rosa Viramontes, district director of EEOC’s Los Angeles District. "We commend J.B. Hunt’s willingness to revise its drug testing policy and take steps to make its hiring process more inclusive for qualified candidates regardless of race, national origin or religion."

"Our clients repeatedly asked for alternatives within the drug testing regimes that would allow them to follow their religious tenets, and those requests were denied. Thankfully J.B. Hunt has finally switched gears and moved into the right lane to comply with federal anti-discrimination law," said the Sikh Coalition’s legal director, Harsimran Kaur.

Eliminating barriers in recruitment and hiring, especially class-based recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women, and people with disabilities, is one of six national priorities identified by the Commission’s Strategic Enforcement Plan (SEP).

EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov. Stay connected with the latest EEOC news by subscribing to our email updates.
Questions and Answers: Religious Discrimination in the Workplace

Title VII of the Civil Rights Act of 1964 prohibits employers with at least 15 employees, as well as employment agencies and unions, from discriminating in employment based on race, color, religion, sex, and national origin. It also prohibits retaliation against persons who complain of discrimination or participate in an EEO investigation. With respect to religion, Title VII prohibits:

- treating applicants or employees differently based on their religious beliefs or practices – or lack thereof – in any aspect of employment, including recruitment, hiring, assignments, discipline, promotion, and benefits (disparate treatment);
- subjecting employees to harassment because of their religious beliefs or practices – or lack thereof – or because of the religious practices or beliefs of people with whom they associate (e.g., relatives, friends, etc.);
- denying a requested reasonable accommodation of an applicant's or employee's sincerely held religious beliefs or practices – or lack thereof – if an accommodation will not impose more than a de minimis cost or burden on business operations; and,
- retaliating against an applicant or employee who has engaged in protected activity, including participation (e.g., filing an EEO charge or testifying as a witness in someone else's EEO matter), or opposition to religious discrimination (e.g., complaining to human resources department about alleged religious discrimination).

The following questions and answers were adapted from EEOC’s Compliance Manual Section on Religious Discrimination, available at [https://www.eeoc.gov/policy/docs/religion.html](https://www.eeoc.gov/policy/docs/religion.html), which contains more detailed guidance, legal citations, case examples, and best practices. It is designed to be a practical resource for employers, employees, practitioners, and EEOC enforcement staff on Title VII’s prohibition against religious discrimination, and provides guidance on how to balance the needs of individuals in a diverse religious climate.

1. What is “religion” under Title VII?

Title VII protects all aspects of religious observance and practice as well as belief and defines religion very broadly for purposes of determining what the law covers. For purposes of Title VII, religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, 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. An employee's belief 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 or practice, or if few — or no — other people adhere to it. Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs.

Religious beliefs include theistic beliefs (i.e. those that include a belief in God) 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.” Although courts generally resolve doubts about particular beliefs in favor of finding that they are religious, beliefs are not protected merely because they are strongly held. Rather, religion typically concerns “ultimate ideas” about “life, purpose, and death.” Social, political, or economic philosophies, as well as mere personal preferences, are not “religious” beliefs protected by Title VII.

Religious observances or practices include, for example, attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expression, or refraining from certain activities. Whether a practice is religious depends on the employee's motivation. The same practice might be engaged in by one person for religious reasons and by another person for purely secular reasons (e.g., dietary restrictions, tattoos, etc.).

Discrimination based on religion within the meaning of Title VII could include, for example: not hiring an otherwise qualified applicant because he is a self-described evangelical Christian; a Jewish supervisor denying a promotion to a qualified non-Jewish employee because the supervisor wishes to give a preference based on...
religion to a fellow Jewish employee; or, terminating an employee because he told the employer that he recently converted to the Baha'i Faith.

Similarly, requests for accommodation of a "religious" belief or practice could include, for example: a Catholic employee requesting a schedule change so that he can attend church services on Good Friday; a Muslim employee requesting an exception to the company's dress and grooming code allowing her to wear her headscarf; or a Hindu employee requesting an exception allowing her to wear her bindi (religious forehead marking); an atheist asking to be excused from the religious invocation offered at the beginning of staff meetings; an adherent to Native American spiritual beliefs seeking unpaid leave to attend a ritual ceremony; or an employee who identifies as Christian but is not affiliated with a particular sect or denomination requests accommodation of his religious belief that working on his Sabbath is prohibited.

2. Are there any exceptions to who is covered by Title VII's religion provisions?

Yes. While Title VII's jurisdictional rules apply to all religious discrimination claims under the statute, see EEOC Compliance Manual, "Threshold Issues," https://www.eeoc.gov/policy/docs/threshold.html, specially-defined "religious organizations" and "religious educational institutions" are exempt from certain religious discrimination provisions, and a "ministerial exception" bars Title VII claims by employees who serve in clergy roles.

Religious Organization Exception: Under Title VII, religious organizations are permitted to give employment preference to members of their own religion. The exception applies only to those institutions whose "purpose and character are primarily religious." Factors to consider that would indicate whether an entity is religious include: whether its articles of incorporation state a religious purpose; whether its day-to-day operations are religious (e.g., are the services the entity performs, the product it produces, or the educational curriculum it provides directed toward propagation of the religion?); whether it is not-for-profit; and whether it affiliated with, or supported by, a church or other religious organization.

This exception is not limited to religious activities of the organization. However, it only allows religious organizations to prefer to employ individuals who share their religion. The exception does not allow religious organizations otherwise to discriminate in employment on the basis of race, color, national origin, sex, age, or disability. Thus, a religious organization is not permitted to engage in racially discriminatory hiring by asserting that a tenet of its religious beliefs is not associating with people of other races.

Ministerial Exception: Courts have held that clergy members generally cannot bring claims under the federal employment discrimination laws, including Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, and the Americans with Disabilities Act. This "ministerial exception" comes not from the text of the statutes, but from the First Amendment principle that governmental regulation of church administration, including the appointment of clergy, impedes the free exercise of religion and constitutes impermissible government entanglement with church authority. The exception applies only to employees who perform essentially religious functions, namely those whose primary duties consist of engaging in church governance, supervising a religious order, or conducting religious ritual, worship, or instruction. Some courts have made an exception for harassment claims where they concluded that analysis of the case would not implicate these constitutional constraints.

3. What is the scope of the Title VII prohibition on disparate treatment based on religion?

Title VII's prohibition against disparate (different) treatment based on religion generally functions like its prohibition against disparate treatment based on race, color, sex, or national origin. Disparate treatment violates the statute whether the difference is motivated by bias against or preference toward an applicant or employee due to his religious beliefs, practices, or observances — or lack thereof. For example, except to the extent permitted by the religious organization or ministerial exceptions:

- employers may not refuse to recruit, hire, or promote individuals of a certain religion, impose stricter promotion requirements for persons of a certain religion, or impose more or different work requirements on an employee because of that employee's religious beliefs or practices
- employers may not refuse to hire an applicant simply because he does not share the employer's religious beliefs, and conversely may not select one applicant over another based on a preference for employees of a particular religion
- employment agencies may not comply with requests from employers to engage in discriminatory recruitment or referral practices, for example by screening out applicants who have names often associated with a particular religion (e.g., Mohammed)

https://www.eeoc.gov/policy/docs/qanda_religion.html
• employers may not exclude an applicant from hire merely because he or she may need a reasonable accommodation that could be provided absent undue hardship.

The prohibition against disparate treatment based on religion also applies to disparate treatment of religious expression in the workplace. For example, if an employer allowed one secretary to display a Bible on her desk at work while telling another secretary in the same workplace to put the Quran on his desk out of view because co-workers "will think you are making a political statement, and with everything going on in the world right now we don't need that around here," this would be differential treatment in violation of Title VII. (As discussed below, Title VII also requires employers to accommodate expression that is based on a sincerely held religious practice or belief, unless it threatens to constitute harassment or otherwise poses an undue hardship on the conduct of the business.)

4. What constitutes religious harassment under Title VII?

Religious harassment in violation of Title VII occurs when employees are: (1) required or coerced to abandon, alter, or adopt a religious practice as a condition of employment (this type of "quid pro quo" harassment may also give rise to a disparate treatment or denial of accommodation claim in some circumstances); or (2) subjected to unwelcome statements or conduct that is based on religion and is so severe or pervasive that the individual being harassed reasonably finds the work environment to be hostile or abusive, and there is a basis for holding the employer liable.

It is necessary to evaluate all of the surrounding circumstances to determine whether or not particular conduct or remarks are unwelcome. For example, where an employee is upset by repeated mocking use of derogatory terms or comments about his religious beliefs or observance by a colleague, it may be evident that the conduct is unwelcome. In contrast, a consensual conversation about religious views, even if quite spirited, does not constitute harassment if it is not unwelcome.

Even unwelcome religiously motivated conduct is not unlawful unless the victim subjectively perceives the environment to be abusive and the conduct is severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive. Religious expression that is repeatedly directed at an employee can become severe or pervasive, whether or not the content is intended to be insulting or abusive. Thus, for example, persistently reiterating atheist views to a religious employee who has asked that this conduct stop can create a hostile environment.

The extent to which the expression is directed at a particular employee is relevant to determining whether or when it could reasonably be perceived to be severe or pervasive by that employee. For example, although it is conceivable that an employee may allege that he is offended by a colleague's wearing of religious garb, expressing one's religion by wearing religious garb is not religious harassment. It merely expresses an individual's religious affiliation and does not demean other religious views. As such, it is not objectively hostile. Nor is it directed at any particular individual. Similarly, workplace displays of religious artifacts or posters that do not demean other religious views generally would not constitute religious harassment.

5. When is an employer liable for religious harassment?

An employer is always liable for a supervisor's harassment if it results in a tangible employment action. However, if it does not, the employer may be able to avoid liability or limit damages by showing that: (a) the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and (b) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. An employer is liable for harassment by co-workers where it knew or should have known about the harassment, and failed to take prompt and appropriate corrective action. An employer is liable for harassment by non-employees where it knew or should have known about the harassment, could control the harasser's conduct or otherwise protect the employee, and failed to take prompt and appropriate corrective action.

6. When does Title VII require an employer to accommodate an applicant or employee's religious belief, practice, or observance?

Title VII requires an employer, once on notice that a religious accommodation is needed, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship. Under Title VII, the undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation in a particular case poses a "more than de minimis" cost or burden. Note that this is a lower standard for an employer to meet
than undue hardship under the Americans with Disabilities Act (ADA) which is defined in that statute as "significant difficulty or expense."

7. How does an employer learn that accommodation may be needed?

An applicant or employee who seeks religious accommodation must make the employer aware both of the need for accommodation and that it is being requested due to a conflict between religion and work.

Employer-employee cooperation and flexibility are key to the search for a reasonable accommodation. If the accommodation solution is not immediately apparent, the employer should discuss the request with the employee to determine what accommodations might be effective. If the employer requests additional information reasonably needed to evaluate the request, the employee should provide it. For example, if an employee has requested a schedule change to accommodate daily prayers, the employer may need to ask for information about the religious observance, such as time and duration of the daily prayers, in order to determine whether accommodation can be granted without posing an undue hardship on the operation of the employer's business. Moreover, even if the employer does not grant the employee's preferred accommodation, but instead provides an alternative accommodation, the employee must cooperate by attempting to meet his religious needs through the employer's proposed accommodation if possible.

8. Does an employer have to grant every request for accommodation of a religious belief or practice?

No. Title VII requires employers to accommodate only those religious beliefs that are religious and "sincerely held," and that can be accommodated without an undue hardship. Although there is usually no reason to question whether the practice at issue is religious or sincerely held, if the employer has a bona fide doubt about the basis for the accommodation request, it is entitled to make a limited inquiry into the facts and circumstances of the employee’s claim that the belief or practice at issue is religious and sincerely held, and gives rise to the need for the accommodation.

Factors that – either alone or in combination – might undermine an employee’s assertion that he sincerely holds the religious belief at issue include: whether the employee has behaved in a manner markedly inconsistent with the professed belief; whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons; whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

However, none of these factors is dispositive. For example, although prior inconsistent conduct is relevant to the question of sincerity, 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. 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.

9. When does an accommodation pose an "undue hardship"?

An accommodation would pose an undue hardship if it – would cause more than de minimis cost on the operation of the employer's business. Factors relevant to undue hardship may include the type of workplace, the nature of the employee's duties, the identifiable cost of the accommodation in relation to the size and operating costs of the employer, and the number of employees who will in fact need a particular accommodation.

Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's business. For example, courts have found undue hardship where the accommodation diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee’s share of potentially hazardous or burdensome work. Whether the proposed accommodation conflicts with another law will also be considered.

To prove undue hardship, the employer will need to demonstrate how much cost or disruption a proposed accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather should rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.
If an employee's proposed accommodation would pose an undue hardship, the employer should explore alternative accommodations.

10. Does an employer have to provide an accommodation that would violate a seniority system or collective bargaining agreement?

No. A proposed religious accommodation poses an undue hardship if it would deprive another employee of a job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement (CBA). Of course, the mere existence of a seniority system or CBA does not relieve the employer of the duty to attempt reasonable accommodation of its employees' religious practices; the question is whether an accommodation can be provided without violating the seniority system or CBA. Often an employer can allow co-workers to volunteer to substitute or swap shifts as an accommodation to address a scheduling need without violating a seniority system or CBA.

11. What if co-workers complain about an employee being granted an accommodation?

Although religious accommodations that infringe on co-workers' ability to perform their duties or subject co-workers to a hostile work environment will generally constitute undue hardship, general discontent, resentment, or jealousy of co-workers will not. Undue hardship requires more than proof that some co-workers complained; a showing of undue hardship based on co-worker interests generally requires evidence that the accommodation would actually infringe on the rights of co-workers or cause disruption of work.

12. Can a requested accommodation be denied due to security considerations?

If a religious practice actually conflicts with a legally mandated security requirement, an employer need not accommodate the practice because doing so would create an undue hardship. If a security requirement has been unilaterally imposed by the employer and is not required by law or regulation, the employer will need to decide whether it would be an undue hardship to modify or eliminate the requirement to accommodate an employee who has a religious conflict.

13. What are common methods of religious accommodation in the workplace?

Under Title VII, an employer or other covered entity may use a variety of methods to provide reasonable accommodations to its employees. Some of the most common methods are:

- **Scheduling Changes, Voluntary Substitutes, and Shift Swaps**
  
  An employer may be able to reasonably accommodate an employee by allowing flexible arrival and departure times, floating or optional holidays, flexible work breaks, use of lunch time in exchange for early departure, staggered work hours, and other means to enable an employee to make up time lost due to the observance of religious practices. Eliminating only part of the conflict is not sufficient, unless entirely eliminating the conflict will pose an undue hardship by disrupting business operations or impinging on other employees' benefits or settled expectations.

  Moreover, although it would pose an undue hardship to require employees involuntarily to substitute for one another or swap shifts, the reasonable accommodation requirement can often be satisfied without undue hardship where a volunteer with substantially similar qualifications is available to cover, either for a single absence or for an extended period of time. The employer's obligation is to make a good faith effort to allow voluntary substitutions and shift swaps, and not to discourage employees from substituting for one another or trading shifts to accommodate a religious conflict. However, if the employer is on notice that the employee's religious beliefs preclude him not only from working on his Sabbath but also from inducing others to do so, reasonable accommodation requires more than merely permitting the employee to swap, absent undue hardship.

  An employer does not have to permit a substitute or swap if it would pose more than de minimis cost or burden to business operations. If a swap or substitution would result in the employer having to pay premium wages (such as overtime pay), the frequency of the arrangement will be relevant to determining if it poses an undue hardship. The Commission will presume that the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing reasonable accommodation. 29 C.F.R. Part 1605.

- **Changing an employee's job tasks or providing a lateral transfer**
When an employee’s religious belief or practice conflicts with a particular task, appropriate accommodations may include relieving the employee of the task or transferring the employee to a different position or location that eliminates the conflict. Whether such accommodations pose an undue hardship will depend on factors such as the nature or importance of the duty at issue, the availability of others to perform the function, the availability of other positions, and the applicability of a CBA or seniority system.

The employee should be accommodated in his or her current position if doing so does not pose an undue hardship. If no such accommodation is possible, the employer needs to consider whether lateral transfer is a possible accommodation.

• Making an exception to dress and grooming rules

When an employer has a dress or grooming policy that conflicts with an employee’s religious beliefs or practices, the employee may ask for an exception to the policy as a reasonable accommodation. Religious grooming practices may relate, for example, to shaving or hair length. Religious dress may include clothes, head or face coverings, jewelry, or other items. Absent undue hardship, religious discrimination may be found where an employer fails to accommodate the employee’s religious dress or grooming practices.

Some courts have concluded that it would pose an undue hardship if an employer was required to accommodate a religious dress or grooming practice that conflicts with the public image the employer wishes to convey to customers. While there may be circumstances in which allowing a particular exception to an employer’s dress and grooming policy would pose an undue hardship, an employer’s reliance on the broad rubric of “image” to deny a requested religious accommodation may amount to relying on customer religious bias (“customer preference”) in violation of Title VII. There may be limited situations in which the need for uniformity of appearance is so important that modifying the dress code would pose an undue hardship. However, even in these situations, a case-by-case determination is advisable.

• Use of the work facility for a religious observance

If an employee needs to use a workplace facility as a reasonable accommodation, for example use of a quiet area for prayer during break time, the employer should accommodate the request under Title VII unless it would pose an undue hardship. If the employer allows employees to use the facilities at issue for non-religious activities not related to work, it may be difficult for the employer to demonstrate that allowing the facilities to be used in the same manner for religious activities is not a reasonable accommodation or poses an undue hardship. The employer is not required to give precedence to the use of the facility for religious reasons over use for a business purpose.

• Accommodations relating to payment of union dues or agency fees

Absent undue hardship, Title VII requires employers and unions to accommodate an employee who holds religious objections to joining or financially supporting a union. Such an employee can be accommodated by allowing the equivalent of her union dues (payments by union members) or agency fees (payments often required from non-union members in a unionized workplace) to be paid to a charity agreeable to the employee, the union, and the employer. Whether a charity-substitute accommodation for payment of union dues would cause an undue hardship is an individualized determination based upon, among other things, the union’s size, operational costs, and the number of individuals that need the accommodation.

If an employee’s religious objection is not to joining or financially supporting the union, but rather to the union’s support of certain political or social causes, possible accommodations include, for example, reducing the amount owed, allowing the employee to donate to a charitable organization the full amount the employee owes or that portion that is attributable to the union’s support of the cause to which the employee has a religious objection, or diverting the full amount to the national, state, or local union in the event one of those entities does not engage in support of the cause to which the employee has a religious objection.

• Accommodating prayer, proselytizing, and other forms of religious expression

Some employees may seek to display religious icons or messages at their work stations. Others may seek to proselytize by engaging in one-on-one discussions regarding religious beliefs, distributing literature, or using a particular religious phrase when greeting others. Still others may seek to engage in
Questions and Answers about Religious Discrimination in the Workplace

prayer at their work stations or to use other areas of the workplace for either individual or group prayer or study. In some of these situations, an employee might request accommodation in advance to permit such religious expression. In other situations, the employer will not learn of the situation or be called upon to consider any action unless it receives complaints about the religious expression from either other employees or customers.

Employers should not try to suppress all religious expression in the workplace. Title VII requires that employers accommodate an employee’s sincerely held religious belief in engaging in religious expression in the workplace to the extent that they can do so without undue hardship on the operation of the business. In determining whether permitting an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, relevant considerations may include the effect such expression has on co-workers, customers, or business operations.

For example, if an employee’s proselytizing interfered with work, the employer would not have to allow it. Similarly, if an employee complained about proselytizing by a co-worker, the employer can require that the proselytizing to the complaining employee cease. Moreover, if an employee was proselytizing an employer’s customers or clients in a manner that disrupted business, or that could be mistaken as the employer’s own message, the employer would not have to allow it. Where the religiously oriented expression is limited to use of a phrase or greeting, it is more difficult for the employer to demonstrate undue hardship. On the other hand, if the expression is in the manner of individualized, specific proselytizing, an employer is far more likely to be able to demonstrate that it would constitute an undue hardship to accommodate an employee’s religious expression, regardless of the length or nature of the business interaction. An employer can restrict religious expression where it would cause customers or co-workers reasonably to perceive the materials to express the employer’s own message, or where the item or message in question is harassing or otherwise disruptive.

14. What if an employee objects on religious grounds to an employer-sponsored program?

Some private employers choose to express their own religious beliefs or practices in the workplace, and they are entitled to do so. However, if an employer holds religious services or programs or includes prayer in business meetings, Title VII requires that the employer accommodate an employee who asks to be excused for religious reasons, absent a showing of undue hardship.

Similarly, an employer is required to excuse an employee from compulsory personal or professional development training that conflicts with the employee’s sincerely held religious beliefs or practices, unless doing so would pose an undue hardship. It would be an undue hardship to excuse an employee from training, for example, where the training provides information on how to perform the job, or how to comply with equal employment opportunity obligations, or on other workplace policies, procedures, or legal requirements.

15. Do national origin, race, color, and religious discrimination intersect in some cases?

Yes. Title VII’s prohibition against religious discrimination may overlap with Title VII’s prohibitions against discrimination based on national origin, race, and color. Where a given religion is strongly associated – or perceived to be associated – with a certain national origin, the same facts may state a claim of both religious and national origin discrimination. All four bases might be implicated where, for example, co-workers target a dark-skinned Muslim employee from Saudi Arabia for harassment because of his religion, national origin, race, and/or color.

16. Does Title VII prohibit retaliation?

Yes. Title VII prohibits retaliation by an employer, employment agency, or labor organization because an individual has engaged in protected activity. Protected activity consists of opposing a practice the employee reasonably believes is made unlawful by one of the employment discrimination statutes or of filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the statute. EEOC has taken the position that requesting religious accommodation is protected activity.

17. How might First Amendment constitutional issues arise in Title VII religion cases?

The First Amendment religion and speech clauses ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech") protect individuals against restrictions imposed by the government, not by private entities, and therefore do not apply to rules imposed on private sector employees by their employers. The First Amendment, however, does protect private

https://www.eeoc.gov/policy/docs/qanda_religion.html
sector employers from government interference with their free exercise and speech rights. Moreover, government employees’ religious expression is protected by both the First Amendment and Title VII. See Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (Aug. 14, 1997) (available at http://clinton2.nara.gov/WH/New/html/19970819-3275.html). For example, a government employer may contend that granting a requested religious accommodation would pose an undue hardship because it would constitute government endorsement of religion in violation of the Establishment Clause of the First Amendment.

18. What should an applicant or employee do if he believes he has experienced religious discrimination?

Employees or job applicants should attempt to address concerns with the alleged offender and, if that does not work, report any unfair or harassing treatment to the company. They should keep records documenting what they experienced or witnessed, as well as other witness names, telephone numbers, and addresses. Employees may file a charge with the EEOC, and are legally protected from being punished for reporting or opposing job discrimination or for participating in an EEOC investigation. Charges against private sector and local and state government employers may be filed in person, by mail, or by telephone by contacting the nearest EEOC office. If there is no EEOC office in the immediate area, call toll free 1-800-669-4000 or 1-800-669-6820 (TTY) for more information. Federal sector employees and applicants should contact the EEO office of the agency responsible for the alleged discrimination to initiate EEO counseling. For more details, see How to File a Charge of Employment Discrimination, https://www.eeoc.gov/employees/charge.cfm.

Footnotes

1 Undue hardship under Title VII is defined as “more than de minimis” cost or burden -- a lower standard for employers to satisfy than the “undue hardship” defense under the Americans with Disabilities Act (ADA), which is defined instead as “significant difficulty or expense.” Various state and local laws may have provisions that are broader than Title VII in terms of the protected bases covered, the discrimination prohibited or accommodation required, or the legal standards and defenses that apply.

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Religious Garb and Grooming in the Workplace: Rights and Responsibilities

This publication by the U.S. Equal Employment Opportunity Commission (EEOC) answers questions about how federal employment discrimination law applies to religious dress and grooming practices, and what steps employers can take to meet their legal responsibilities in this area.

Examples of religious dress and grooming practices include wearing religious clothing or articles (e.g., a Muslim hijab (headscarf), a Sikh turban, or a Christian cross); observing a religious prohibition against wearing certain garments (e.g., a Muslim, Pentecostal Christian, or Orthodox Jewish woman’s practice of not wearing pants or short skirts), or adhering to shaving or hair length observances (e.g., Sikh uncut hair and beard, Rastafarian dreadlocks, or Jewish peyes (sidelocks)).

In most instances, employers are required by federal law to make exceptions to their usual rules or preferences to permit applicants and employees to observe religious dress and grooming practices.

1. What is the federal law relating to religious dress and grooming in the workplace?

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended ("Title VII"), prohibits employers with at least 15 employees (including private sector, state, and local government employers), as well as employment agencies, unions, and federal government agencies, from discriminating in employment based on race, color, religion, sex, or national origin. It also prohibits retaliation against persons who complain of discrimination or participate in an EEO investigation. With respect to religion, Title VII prohibits among other things:

- disparate treatment based on religion in recruitment, hiring, promotion, benefits, training, job duties, termination, or any other aspect of employment (except that "religious organizations" as defined under Title VII are permissible to prefer members of their own religion in deciding whom to employ);
- denial of reasonable accommodation for sincerely held religious practices, unless the accommodation would cause undue hardship for the employer;
- workplace or job segregation based on religion;
- workplace harassment based on religion;
- retaliation for requesting an accommodation (whether or not granted), for filing a discrimination charge with the EEOC, for testifying, assisting, or participating in any manner in an EEOC investigation or EEOC proceeding, or for opposing discrimination.

There may be state or local laws in your jurisdiction that have protections that are parallel to or broader than those in Title VII.

2. Does Title VII apply to all aspects of religious practice or belief?

Yes. Title VII protects all aspects of religious observance, practice, and belief, and defines religion very broadly to include not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Buddhism, and Sikhism, 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 may seem illogical or unreasonable to others.

Religious practices may be based on theistic beliefs or non-theistic moral or ethical beliefs as to what is right or wrong that are sincerely held with the strength of traditional religious views. Religious observances or practices include, for example, attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expression, or refraining from certain activities. Moreover, an employee’s belief or practice can be "religious" under Title VII even if it is not followed by others in the same religious sect, denomination, or congregation, or even if the employee is unaffiliated with a formal religious organization.[1]

The law’s protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs. For example, an employer that is not a religious organization (as legally defined under Title VII) cannot make employees wear religious garb or articles (such as a cross) if they object on grounds of non-belief.

Because this definition is so broad, whether or not a practice or belief is religious typically is not disputed in Title VII religious discrimination cases.

3. Does the law apply to dress or grooming practices that are religious for an applicant or employee, even if other people engage in the same practice for non-religious reasons?

Yes. Title VII applies to any practice that is motivated by a religious belief, even if other people may engage in the same practice for secular reasons. However, if a dress or grooming practice is a personal preference, for example, where it is worn for fashion rather than for religious reasons, it does not come under Title VII’s religion protections.

https://www1.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm?renderforprint=1
4. What if an employer questions whether the applicant’s or employee’s asserted religious practice is sincerely held?

Title VII’s accommodation requirement only applies to religious beliefs that are “sincerely held.” However, just because an individual’s religious practices may deviate from commonly-followed tenets of the religion, the employer should not automatically assume that his or her religious observance is not sincere. Moreover, an individual’s religious beliefs - or degree of adherence - may change over time, yet may nevertheless be sincerely held. Therefore, like the “religious” nature of a belief or practice, the “sincerity” of an employee’s stated religious belief is usually not in dispute in religious discrimination cases. However, if an employer has a legitimate reason for questioning the sincerity or even the religious nature of a particular belief or practice for which accommodation has been requested, it may ask an applicant or employee for information reasonably needed to evaluate the request.

EXAMPLE 1
New Observance

Eli has been working at the Burger Hut for two years. While in the past he has always worn his hair short, he has recently let it grow longer. When his manager advises him that the company has a policy requiring male employees to wear their hair short, Eli explains that he is a newly practicing Nazirite and now adheres to religious beliefs that include not cutting his hair. Eli’s observance can be sincerely held even though it is recently adopted.[3]

EXAMPLE 2
Observance That Only Occurs at Certain Times or Irregularly

Afzah is a Muslim woman who has been employed as a bank teller at the ABC Savings & Loan for six months. The bank has a dress code prohibiting tellers from wearing any head coverings. Although Afzah has not previously worn a religious headscarf to work at the bank, her personal religious practice has been to do so during Ramadan, the month of fasting that falls during the ninth month of the Islamic calendar. The fact that Afzah adheres to the practice only at certain times of the year does not mean that her belief is insincere.[4]

5. Can an employer exclude someone from a position because of discriminatory customer preference?

No. If an employer takes an action based on the discriminatory religious preferences of others, including customers, clients, or co-workers, the employer is unlawfully discriminating in employment based on religion. Customer preference is not a defense to a claim of discrimination.

EXAMPLE 3
Employment Decision Based on Customer Preference

Adarsh, who wears a turban as part of his Sikh religion, is hired to work at the counter in a coffee shop. A few weeks after Adarsh begins working, the manager notices that the work crew from the construction site near the shop no longer comes in for coffee in the mornings. When the manager makes inquiries, the crew complains that Adarsh, whom they mistakenly believe is Muslim, makes them uncomfortable in light of the anniversary of the September 11th attacks. The manager tells Adarsh that he will be terminated because the coffee shop is losing the construction crew’s business. The manager has subjected Adarsh to unlawful religious discrimination by taking an adverse action based on customer preference not to have a cashier of Adarsh’s perceived religion. Adarsh’s termination based on customer preference would violate Title VII regardless of whether he was correctly or incorrectly perceived as Muslim, Sikh, or any other religion.[5]

Employers may be able to prevent this type of religious discrimination from occurring by taking steps such as training managers to rely on specific experience, qualifications, and other objective, non-discriminatory factors when making employment decisions. Employers should also communicate clearly to managers that customer preference about religious beliefs and practices is not a lawful basis for employment decisions.

6. May an employer automatically refuse to accommodate an applicant’s or employee’s religious garb or grooming practice if it would violate the employer’s policy or preference regarding how employees should look?

No. Title VII requires an employer, once it is aware that a religious accommodation is needed, to accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship. Therefore, when an employer’s dress and grooming policy or preference conflicts with an employee’s known religious beliefs or practices, the employer must make an exception to allow the religious practice unless that would be an undue hardship on the operation of the employer’s business. Fact patterns illustrating whether or not an employer is aware of the need for accommodation appear below at examples 4-7.

For purposes of religious accommodation, undue hardship is defined by courts as a “more than de minimis” cost or burden on the operation of the employer’s business. For example, if a religious accommodation would impose more than ordinary administrative costs, it would pose an undue hardship. This is a lower standard than the Americans with Disabilities Act (ADA) undue hardship defense to disability accommodation.
When an exception is made as a religious accommodation, the employer may nevertheless retain its usual dress and grooming expectations for other employees, even if they want an exception for secular reasons. Co-workers’ disgruntlement or jealousy about the religious accommodation is not considered undue hardship, nor is customer preference.

EXAMPLE 4
Exception to Uniform Policy as a Religious Accommodation

Based on her religious beliefs, Ruth adheres to modest dress. She is hired as a front desk attendant at a sports club, where her duties consist of checking members’ identification badges as they enter the facility. The club manager advises Ruth that the club has a dress code requiring all employees to wear white tennis shorts and a polo shirt with the facility logo. Ruth requests permission as a religious accommodation to wear a long white skirt with the required shirt, instead of wearing shorts. The club grants her request, because Ruth’s sincerely held religious belief conflicts with the workplace dress code, and accommodating her would not pose an undue hardship. If other employees seek exceptions to the dress code for non-religious reasons such as personal preference, the employer is permitted to deny their requests, even though it granted Ruth a religious accommodation.

7. How will an employer know when it must consider making an exception to its dress and grooming policies or preferences to accommodate the religious practices of an applicant or employee?

Typically, the employer will advise the applicant or employee of its dress code or grooming policy, and subsequently the applicant or employee will indicate that an exception is needed for religious reasons. Applicants and employees will not know to ask for an accommodation until the employer makes them aware of a workplace requirement that conflicts with their religious practice. The applicant or employee need not use any “magic words” to make the request, such as “accommodation” or “Title VII.” If the employer reasonably needs more information, however, the employer and the employee should discuss the request. In 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.

EXAMPLE 5
Employer Knowledge Insufficient

James’s employer requires all of its employees to be clean-shaven. James is a newly hired employee, and was hired based on an online application and a telephone interview. When he arrives the first day with an unshorn beard, his supervisor informs him that he must comply with the “clean-shaven” policy or be terminated. James refuses to comply, but fails to inform his supervisor that he wears his beard for religious reasons. James should have explained to his supervisor that he wears the beard pursuant to a religious observance. The employer did not have to consider accommodation because it did not know that James wore his beard for religious reasons.

EXAMPLE 6
Employer Knowledge Sufficient

Same facts as above but, instead, when James’s supervisor informs him that he must comply with the “clean-shaven” policy or be terminated, James explains that he wears the beard for religious reasons, as he is a Messianic Christian. This is sufficient to request accommodation. The employer is permitted to obtain the limited additional information needed to determine whether James’s beard is worn due to a sincerely held religious practice and, if so, must accommodate by making an exception to its “clean-shaven” policy unless doing so would be an undue hardship. [5]

EXAMPLE 7
Employer Believes Practice Is Religious and Conflicts with Work Policy

Aatma, an applicant for a rental car sales position who is an observant Sikh, wears a chunni (religious headscarf) to her job interview. The interviewer does not advise her that there is a dress code prohibiting head coverings, and Aatma does not ask whether she would be permitted to wear the headscarf if she were hired. There is evidence that the manager believes that the headscarf is a religious garment, presumed it would be worn at work, and refused to hire her because the company requires sales agents to wear a uniform with no additions or exceptions. This refusal to hire violates Title VII, even though Aatma did not make a request for accommodation at the interview, because the employer believed her practice was religious and that she would need accommodation, and did not hire her for that reason. Moreover, if Aatma were hired but then instructed to remove the headscarf, she could at that time request religious accommodation.

8. May an employer assign an employee to a non-customer contact position because of customer preference?

No. Assigning applicants or employees to a non-customer contact position because of actual or feared customer preference violates Title VII’s prohibition on limiting, segregating, or classifying employees based on religion. Even if the employer is following its uniformly applied employee policy or practice, it is not permitted to segregate an employee due to fear that customers will have a biased response to religious garb or grooming. The law requires the employer to make an exception to its policy or practice as a religious accommodation, because customer preference is not undue hardship.

EXAMPLE 8
Assigning Employee to “Back Room” Because of Religious Garb

https://www1.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm?renderforprint=1
Nasreen, a Muslim applicant for an airport ticket counter position, wears a headscarf, or hijab, pursuant to her religious beliefs. Although Nasreen is qualified, the manager fears that customers may think an airport employee who is identifiably Muslim is sympathetic to terrorist hijackers. The manager, therefore, offers her a position in the airline's call center where she will only interact with customers by phone. This is religious segregation and violates Title VII. [7]

As a best practice, managers and employees should be trained that the law may require making a religious exception to an employer's otherwise uniformly applied dress or grooming rules, practices, or preferences. They should also be trained not to engage in stereotyping about work qualifications or availability based on religious dress and grooming practices. Many EEOC settlements of religious accommodation cases provide for the employer to adopt formal religious accommodation procedures to guide management and employees in handling these requests, as well as annual training on this topic.

9. May an employer accommodate an employee's religious dress or grooming practice by offering to have the employee cover the religious attire or item while at work?

Yes, if the employee's religious beliefs permit covering the attire or item. However, requiring an employee's religious garb, marking, or article of faith to be covered is not a reasonable accommodation if that would violate the employee's religious beliefs.

EXAMPLE 9
Covering Religious Symbol Contrary to Individual's Religious Beliefs

Edward practices the Kemetic religion, an ancient Egyptian faith, and affiliates himself with a tribe numbering fewer than ten members. He states that he believes in various deities and follows the faith's concept of Ma'at, a guiding principle regarding truth and order that represents physical and moral balance in the universe. During a religious ceremony he received small tattoos encircling his wrist, written in the Coptic language, which express his servitude to Ra, the Egyptian god of the sun. When his employer asks him to cover the tattoos, he explains that it is a sin to cover them intentionally because doing so would signify a rejection of Ra. Therefore, covering the tattoos is not a reasonable accommodation, and the employer cannot require it absent undue hardship. [8]

10. May an employer deny accommodation of an employee's religious dress or grooming practice based on the "image" that it seeks to convey to its customers?

An employer's reliance on the broad rubric of "image" or marketing strategy to deny a requested religious accommodation may amount to relying on customer preference in violation of Title VII, or otherwise be insufficient to demonstrate that making an exception would cause an undue hardship on the operation of the business.

EXAMPLE 10
"Image"

Jon, a clerical worker who is an observant Jew, wears tzitzit (ritual knotted garment fringes at the four corners of his shirt) and a yarmulke (or skull cap) in conformance with his Jewish beliefs. XYZ Temps places Jon in a long-term assignment with one of its client companies. The client asks XYZ to notify Jon that he must remove his yarmulke and his tzitzit while working at the front desk, or assign another person to Jon's position. According to the client, Jon's religious attire presents the "wrong image" and also violates its dress code prohibiting any headgear and requiring "appropriate business attire." XYZ Temps may not comply with this request without violating Title VII.

The client also would violate Title VII if it changed Jon's duties to keep him out of public view, or if it required him not to wear his yarmulke or his tzitzit when interacting with customers. Assigning Jon to a position out of public view is segregation in violation of Title VII. Moreover, because notions about customer preference (real or perceived) do not establish undue hardship, the client must make an exception to its dress code to let Jon wear his religious garb during front desk duty as a religious accommodation. XYZ should strongly advise its client that the EEO laws require allowing Jon to wear this religious garb at work and that, if the client does not withdraw its request, XYZ will place Jon in another assignment at the same rate of pay and decline to assign another worker to the client. [9]

EXAMPLE 11
"Image"

Tahera, an applicant for a retail sales position at a national clothing company that carries current fashions for teens, wears a headscarf in accordance with her Muslim religious beliefs. Based on its marketing strategy, the company requires sales personnel to wear only clothing sold in its stores, and no headgear, so that they will look like the clothing models in the company's sales catalogues. Although the company believes that Tahera wears a headscarf for religious reasons, the company does not hire her because it does not want to make an exception. While the company may maintain its dress and grooming rules for other sales personnel, it must make an exception for Tahera as a religious accommodation in the absence of employer evidence of undue hardship. [10]

In many jobs for which employers require employees to wear uniforms (e.g., certain food service jobs or service industry jobs), the employee's beliefs may permit accommodation by, for example, wearing the item in the company uniform color(s).
Employers should ensure that front-line managers and supervisors understand that if an employee's proposed accommodation would pose an undue hardship, the employer should explore alternative accommodations.

11. Do government agencies whose employees work with the public have to make exceptions to uniform policies or otherwise allow religious dress and grooming practices if doing so would not cause an undue hardship?

Yes, Government agency employers, like private employers, must generally allow exceptions to dress and grooming codes as a religious accommodation, although there may be limited situations in which the need for uniformity of appearance is so important that modifying the dress or grooming code would pose an undue hardship. Therefore, it is advisable in all instances for employers to make a case-by-case determination of any needed religious exceptions.

EXAMPLE 12
Public Employee

Elizabeth, a librarian at a public library, wears a cross as part of her Catholic religious beliefs. In addition, after church services she attends on Ash Wednesday each year, Elizabeth arrives at work with a black ash mark on her forehead in the shape of a cross, which she leaves on until it wears off. Her new supervisor directs her not to wear the cross in the future while on duty, and to wash off the ash mark before reporting to work. Because Elizabeth's duties require her to interact with the public as a government employee, the supervisor fears that her cross and ash mark could be mistaken as government endorsement of religion in violation of the Establishment Clause of the First Amendment to the U.S. Constitution. He cites the need to avoid any appearance of religious favoritism by government employees interacting with the public, and emphasizes that librarians must be viewed as impartial with respect to any information requests from library patrons. However, because the librarian's cross and ash mark are clearly personal in this situation, they would not cause a perception of government endorsement of religion. Accordingly, accommodating Elizabeth's religious practice is not an undue hardship under Title VII.

EXAMPLE 13
Public Employee

Gloria, a newly hired municipal bus driver, was terminated when she advised her supervisor during new-employee orientation that due to the tenets of her faith (Apostolic Pentecostal), she needs to wear a skirt rather than the pants required by the transit agency dress code. Absent evidence that the type of skirt Gloria must wear would pose an actual safety hazard, no undue hardship would have been posed by allowing this dress code exception, and Gloria's termination would violate Title VII.

12. May an employer bar an employee's religious dress or grooming practice based on workplace safety, security, or health concerns?

Yes, but only if the practice actually poses an undue hardship on the operation of the business. The employer should not assume that the accommodation would pose an undue hardship. While safety, security, or health may justify denying accommodation in a given situation, the employer may do so only if the accommodation would actually pose an undue hardship. In many instances, there may be an available accommodation that will permit the employee to adhere to religious practices and will permit the employer to avoid undue hardship.

EXAMPLE 14
Long Hair

David wears long hair pursuant to his Native American religious beliefs. He applies for a job as a server at a restaurant that requires its male employees to wear their hair "short and neat." When the restaurant manager informs David that if offered the position he will have to cut his hair, David explains that he keeps his hair long based on his religious beliefs and offers to wear it in a ponytail or held up with a clip. The manager refuses this accommodation and denies David the position because he has long hair. Since David could have been accommodated without undue hardship by wearing his hair in a ponytail or held up neatly with a clip, the employer violated Title VII.

EXAMPLE 15
Facial Hair

Prakash, who works for CutX, a surgical instrument manufacturer, does not shave or trim his facial hair because of his Sikh religious observance. When he seeks a promotion to manage the division responsible for sterilizing instruments, his employer tells him that he must shave or trim his beard because it may contaminate the sterile field. All division employees are required to be clean shaven and wear a face mask. When Prakash explains that he does not trim his beard for religious reasons, the employer offers to allow Prakash to wear two face masks instead of trimming his beard. Prakash thinks that wearing two masks is unreasonable and files a Title VII charge. CutX will prevail because it offered a reasonable accommodation that would eliminate Prakash's religious conflict with the hygiene rule.

EXAMPLE 16
Facial Hair

Raj, a Sikh, interviews for an office job. At the end of the interview, he receives a job offer but is told he will have to shave his beard because all office staff are required to be "clean shaven" to promote discipline.
advises the hiring manager that he wears his beard unshorn because of his Sikh religious practice. Since no undue hardship is posed by allowing Raj to wear his beard, the employer must make an exception as an accommodation.[15]

EXAMPLE 17
Clothing Requirements Near Machinery

Mirna alleges she was terminated from her job in a factory because of her religion (Pentecostal) after she told her supervisor that her faith prohibits her from wearing pants as required by the company's new dress code. Mirna requested as an accommodation to be permitted to continue wearing a long but close-fitting skirt. Her manager replies that the dress code is essential to safe and efficient operations on the factory floor, but there is no evidence regarding operation of the machinery at issue to show that close-fitting clothing like that worn by Mirna poses a safety risk. Because the evidence does not establish that wearing pants is truly necessary for safety, the accommodation requested by Mirna does not pose an undue hardship.

EXAMPLE 18
Head Coverings That Pose Security Concerns

A private company contracts to provide guards, administrative and medical personnel, and other staff for state and local correctional facilities. The company adopts a new, inflexible policy barring any headgear, including religious head coverings, in all areas of the facility, citing security concerns about the potential for smuggling contraband, interfering with identification, or use of the headgear as a weapon. To comply with Title VII, the employer should consider requests to wear religious headgear on a case-by-case basis to determine whether the identified risks actually exist in that situation and pose an undue hardship. Relevant facts may include the individual's job, the particular garb at issue, and the available accommodations. For example, if an individual's religious headgear is or can be worn in a manner that does not inhibit visual identification of the employee, and if temporary removal may be accomplished for security screens and to address smuggling concerns without undue hardship, the individual can be accommodated.[16]

EXAMPLE 19
Kirpan

Harvinder, a Sikh who works in a hospital, wears a small (4-inch), dull, and sheathed kirpan (symbolic miniature sword) strapped and hidden underneath her clothing, as a symbol of her religious commitment to defend truth and moral values. When Harvinder's supervisor, Bill, learned about her kirpan from a co-worker, he instructed Harvinder not to wear it at work because it violated the hospital policy against weapons in the workplace. Harvinder explained to Bill that her faith requires her to wear a kirpan in order to comply with the Sikh code of conduct, and gave him literature explaining that the kirpan is a religious artifact, not a weapon. She also showed him the kirpan, allowing him to see that it was no sharper than the butter knives found in the hospital cafeteria. Nevertheless, Bill told her that her employment at the hospital would be terminated if she continued to wear the kirpan at work. Absent any evidence that allowing Harvinder to wear the kirpan would pose an undue hardship in the factual circumstances of this case, the hospital is liable for denial of accommodation.[17]

13. Are applicants and employees who request religious accommodation protected from retaliation?

Yes. Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, which includes requesting religious accommodation. Protected activity may also include opposing a practice the employee reasonably believes is made unlawful by one of the employment discrimination statutes, or filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the statute.

EXAMPLE 20
Retaliation for Requesting Accommodation

Salma, a retail employee, requests that she be permitted to wear her religious headscarf as an exception to her store's new uniform policy. Joe, the store manager, refuses. Salma contacts the human resources department at the corporate headquarters. Despite Joe's objections, the human resources department instructs him that in the circumstances there is no undue hardship and that he must grant the request. Motivated by reprisal, Joe shortly thereafter gives Salma an unjustified poor performance rating and denies her request to attend training that he approves for her co-workers. This violates Title VII.

14. What constitutes religious harassment under Title VII, and what obligation does an employer have to stop it?

Religious harassment under Title VII may occur when an employee is required or coerced to abandon, alter, or adopt a religious practice as a condition of employment. Religious harassment may also occur when an employee is subjected to unwelcome statements or conduct based on religion. Harassment may include offensive remarks about a person's religious beliefs or practices, or verbal or physical mistreatment that is motivated by the victim's religious beliefs or practices. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, such conduct rises to the level of illegal harassment when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment action (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or even a third party who is not an employee of the employer, such as a client or customer.
An employer is liable for harassment by co-workers and third parties where it knew or should have known about the harassment and failed to take prompt and appropriate corrective action. An employer is always liable for harassment by a supervisor if it results in a tangible employment action, such as the harassment victim being fired or demoted. Even if the supervisor's harassment does not result in a tangible employment action, the employer will still be liable unless it exercised reasonable care to prevent and correct promptly any harassing behavior (such as having an effective complaint procedure) and the harassed employee unreasonably failed to take advantage of opportunities to prevent or correct it (such as failing to use the complaint procedure).

Example 21
Co-Worker Harassment

XYZ Motors, a large used car business, has several employees who are observant Sikhs or Muslims and wear religious head coverings. A manager becomes aware that an employee named Bill regularly calls these co-workers names like “diaper head,” “bag head,” and “the local terrorist,” and that he has intentionally embarrassed them in front of customers by claiming that they are incompetent. Managers and supervisors who learn about objectionable workplace conduct based on religion or national origin are responsible for taking steps to stop the conduct by anyone under their control.

Workplace harassment and its costs are often preventable. Clear and effective policies prohibiting ethnic and religious slurs and related offensive conduct are essential. Confidential complaint mechanisms for promptly reporting harassment are critical, and these policies should encourage both victims and witnesses to come forward. When harassment is reported, the focus should be on action to end the harassment and correct its effects on the complaining employee. Employers should have a well-publicized and consistently applied anti-harassment policy that clearly explains what is prohibited, provides multiple avenues for complaints to management, and ensures prompt, thorough, and impartial investigations and appropriate corrective action.

The policy should also assure complainants that they are protected against retaliation.

Employees who are harassed based on religious belief or practice should report the harassment to their supervisor or other appropriate company official in accordance with the procedures established in the company's anti-harassment policy.

Once an employer is on notice of potential religious harassment, the employer should take steps to stop the conduct. To prevent conflicts from escalating to the level of a Title VII violation, employers should immediately intervene when they become aware of abusive or insulting conduct, even absent a complaint.

15. What should an applicant or employee do if he believes he has experienced religious discrimination?

Employees or job applicants should attempt to address concerns with management. They should keep records documenting what they experienced or witnessed and any complaints they have made about the discrimination, as well as witness names, telephone numbers, and addresses. If the matter is not resolved, private sector and state and local government applicants and employees may file a charge of discrimination with the EEOC.

To locate the EEOC office in your area regarding questions or to file a charge of discrimination within applicable time deadlines, call toll free 1-800-669-4000 or 1-800-669-6820 (TTY) for more information.

Federal sector applicants and employees should contact the EEO office of the agency responsible for the alleged discrimination to initiate EEO counseling. For more details, see “How to File a Charge of Employment Discrimination,” http://www.eeoc.gov/employees/charge.cfm.

16. Where can employers and employees obtain more information?

In addition to Title VII’s prohibitions on religious, race, color, national origin, and sex discrimination, the EEOC enforces federal statutes that prohibit employment discrimination based on age, disability, or genetic information of applicants or employees. The EEOC conducts various types of training and can help you find a format that is right for you. More information about outreach and training programs is available at http://www.eeoc.gov/eeoc/outreach/index.cfm. You should also feel free to contact the EEOC with questions about effective workplace policies that can help prevent discrimination, or for more specialized questions, by calling 1-800-669-4000 (TTY 1-800-669-6820), or sending written inquiries to: Equal Employment Opportunity Commission, Office of Legal Counsel, 131 M Street, NE, Washington, D.C. 20507.

Other resources related to this topic:

Questions and Answers About Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians, and Sikhs
http://www.eeoc.gov/saoc/publications/backlash-employer.cfm

Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the EEO Laws
http://www.eeoc.gov/eeoc/publications/backlash-employee.cfm

Questions and Answers on Religious Discrimination in the Workplace
http://www.eeoc.gov/policy/docs/qanda_religion.html

Best Practices for Eradicating Religious Discrimination in the Workplace
http://www.eeoc.gov/policy/docs/best_practices_religion.html

https://www1.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm?renderforprint=1
Compliance Manual on Religious Discrimination
http://www.eeoc.gov/policy/docs/religion.html

Guidelines on Discrimination Because of Religion, 29 C.F.R. Part 1605


[4] Id.


[9] EEOC v. 704 HTL Operating, LLC and Investment Corporation of America, d/b/a MCM Elegante Hotel, 11-cv-00845 JCH/FLG (D.N.M. consent decree entered Nov. 2013) (settlement on behalf of individual whom employer hired for hotel housekeeping position but then barred from working unless she removed her Muslim head scarf); EEOC v. Lawrence Transportation Systems, Civil Action No. 5:10CV 97 (W.D. Va. consent decree entered August 2011) (settlement on behalf of applicant for storage company loading position who alleged he was not hired due to his Rastafarian dreadlocks); EEOC v. LAX Parking, LLC, Case No. 1:10-CV-1384 (N.D. Ga. consent decree entered Nov. 2010) (settlement on behalf of Muslim parking facility employee who was terminated for refusing to remove her hijab); EEOC v. Comair, Inc., Civil Action No. 1:05-cv-0601 (W.D. Mich. consent decree entered Nov 2006) (settlement on behalf of Rastafarian airline applicant alleging he was not hired because he refused to cut his hair to conform with the company's grooming standard); EEOC v. Pilot Travel Ctrs. LLC, Civil Action No. 2:03-0106 (M.D. Tenn. consent decree entered April 2004) (settlement on behalf of Messianic Christian maintenance worker who wore beard as part of his religious practice, and was terminated for refusing to shave in compliance with employer's no-beard policy).

[10] EEOC v. United Galaxy Inc., d/b/a Tri-County Lexus, No. 2:10-CV-04987 (D.N.J. consent decree entered Nov. 2013) (settlement of case alleging car dealership violated Title VII religious accommodation obligation when it refused to hire as a sales associate an applicant who wore a beard, uncut hair, and a turban pursuant to his Sikh faith, unless he agreed to shave his beard to comply with the dealership's dress code).

[11] Draper v. Logan County Pub. Library, 403 F. Supp. 2d 608 (W.D. Ky. 2005) (public library employee's First Amendment free speech and free exercise rights were violated when she was prohibited from wearing a necklace with a cross ornament).

[12] U.S. v. Washington Metro. Area Transit Auth., No. 1:08-CV-01661 (RMC) (D.D.C. consent decree entered Feb. 2009) (lawsuit filed and settled by U.S. Department of Justice on behalf of city bus driver applicants and employees who were denied religious accommodation to wear skirts instead of pants, and to wear religious head coverings); EEOC v. Brink's Inc., No. 1:02-CV-0111 (C.D. Ill.) (consent decree entered Dec. 2002) (settlement of case alleging that messenger employee was denied reasonable accommodation when she sought to wear culottes made out of uniform material, rather than the required trousers, because her Pentecostal Christian beliefs precluded her from wearing pants); see also EEOC v. Scottish Food Systems, Inc. and Laurinburg KFC Take Home, 1:13-CV00796 (M.D.N.C. consent decree entered Dec. 2013) (settlement of case alleging denial of accommodation to Pentecostal Christian employee in food service position who adhered to a scriptural interpretation that women should wear only skirts or dresses, and therefore needed an exception to restaurant's requirement of uniform pants); EEOC v. Fries Restaurant Management d/b/a Burger King, No. 3:12-CV-3169-M (N.D. Tex. consent decree entered Jan. 2013) (same).

[13] EEOC Compliance Manual on Religious Discrimination (2008) at Example 35. See also EEOC v. Grand Central Partnership, Civil Action No. 08-8023 (S.D.N.Y. consent decree entered Aug. 2009) (settlement, along with policy and procedure changes and related training, in case alleging failure to accommodate long dreadlocks and short beards worn pursuant to Rastafarian religious practice by workers performing sanitation, maintenance and public safety duties; company grooming policy had required that long hair, including dreadlocks, be worn inside hats, which was impracticable; settlement included agreement to allow the dreadlocks to be worn down but clipped back in neat ponytails).
Fact Sheet on Recent EEOC Religious Discrimination Litigation

(Last updated 2-19-15)

Highlights

- Since the start of FY 2010, the Commission has filed 68 lawsuits involving claims of religious discrimination under Title VII of the Civil Rights Act of 1964.
  - In FY 2014, we filed 8 religious-related lawsuits. This was 10% of all Title VII suits.
  - In FY 2013, we filed 12 religious-related lawsuits. This was 15% of all Title VII suits.
  - In FY 2012, we filed 9 religious-related lawsuits. This was 13% of all Title VII suits.
  - In FY 2011, we filed 15 religious-related lawsuits. This was 9% of all Title VII suits.
  - In FY 2010, we filed 24 religious-related lawsuits. This was 12.5% of all Title VII suits.
- Since the start of FY 2010, the Commission has recovered approximately $4,000,000 (as well as important injunctive and other case-specific "make whole" relief) for victims of religious discrimination through its litigation program. The Commission secured this relief through jury verdicts, appellate court victories, court-entered consent decrees, and other litigation-related resolutions.
- Religious-related lawsuits filed since FY 2010 have involved workers in all segments and sectors of the workforce - e.g., in healthcare, social services, hospitality, retail, staffing, manufacturing, wholesale supply, energy, and food/beverage service, among others.
- Violations have involved a variety of fact patterns, including:
  - Refusing to hire or firing religious workers after learning their religion;
  - Discharging workers who take leave for religious-related events (such as observing the Sabbath);
  - Failing to accommodate religious-related garb choices;
  - Retaliating against employees who requested a reasonable accommodation or complained about religious discrimination.

Notable Court Victories

- **EEOC v. Abercrombie and Fitch**, 2013 WL 1435290 (N.D. Cal., Apr. 9, 2013) (No. 5:10-cv-03911-EJD) (resolved 9/19/2013) (CP Hala Banafa). The EEOC sued Abercrombie alleging that it violated Title VII when it failed to accommodate Charging Party's religious beliefs and practice of wearing a hijab (headscarf) and by failing to hire her because of her religion (Islam). Charging Party Banafa, a Muslim teenager, applied for a job stocking merchandise at the Abercrombie store in Milpitas, California. In accordance with her religious beliefs, she wore a colorful head scarf to her interview. The manager who interviewed her asked if she was Muslim and required her to wear a head scarf. The manager then marked "not Abercrombie look" on Ms. Banafa's interview form. The EEOC alleged that Abercrombie refused to accommodate Ms. Banafa's religious practices by granting an exception to its "Look Policy," an internal dress code that includes a prohibition against head coverings. The district judge held that Abercrombie could not meet its "undue hardship" defense and granted the EEOC partial summary judgment, citing the "dearth of proof" linking store performance or the Abercrombie brand image to "Look Policy" compliance. (See Docket No. 106). The parties subsequently consolidated this case with another EEOC lawsuit (see below) on behalf of another Muslim teenager and entered into a consent decree to resolve both cases.
- **EEOC v. Khan v. Abercrombie and Fitch**, 966 F. Supp.2d 949 (N.D. Cal. 2013) (No. 4:11-cv-03162-YGR) (resolved 9/19/2013) (CP Umme-Hani Khan). The district judge found Abercrombie liable for religious discrimination when it fired a Muslim employee for wearing her hijab (religious headscarf). (See Docket No. 129). In this case, the EEOC alleged that Abercrombie discriminated against Charging Party Khan when it failed to accommodate her religious beliefs and practice of wearing a hijab (head scarf) and terminated her because of her religion (Islam) in violation of Title VII. Charging Party Khan started working at the Hollister store (an Abercrombie & Fitch brand targeting teenagers aged 14 through 18) in San Mateo, California in October 2009. As an "impact associate" she worked primarily in the stockroom. At first she was asked to wear headscarves in Hollister colors, which she did. However, in mid-February 2010, she was informed that her hijab violated Abercrombie's "Look Policy," a company-wide dress code, and was told she would be taken off schedule unless she removed her headscarf while at work. Charging Party Khan was subsequently fired for refusing to take off the hijab that her religious beliefs compelled her to wear.

In her summary judgment order, the district judge noted: "It is undisputed that Khan was terminated 'for non-compliance with the company's Look Policy.' Khan's only violation of the Look Policy was the headscarf." (See Docket No. 129 at 14). The court dismissed Abercrombie's argument that "its Look Policy goes to the 'very heart of [its] business model' and thus any requested accommodation to deviate from the Look Policy threatens the company's success." The court held that Abercrombie "only offers unsubstantiated opinion testimony of its own employees to support its claim of undue
hardship. The deposition testimony and declarations from Abercrombie witnesses demonstrate their personal beliefs, but are not linked to any credible evidence.\(^*\)\(^{16}\).

The EEOC and Abercrombie resolved both California cases for $71,000 in monetary relief ($48,000 for Ms. Khan and $23,000 for Ms. Banafs). Abercrombie also entered into a three year consent decree which required it adhere to a revised "Accommodation Policy" that includes an appeals process through which an applicant or employee may appeal a denial of a request for religious accommodation to the "Look Policy" and requires Abercrombie to inform applicants during interviews that it may be possible to get an exception to the "Look Policy."

- **EEOC v. AutoZone, Inc.** (D. Mass. No. 1:10-cv-11648-WGY) (resolved 3/29/2012). The EEOC sued AutoZone under Title VII alleging that Charging Party, a Sikh, was denied a religious accommodation as well as subjected to religious harassment by management and customers. The Commission alleged that AutoZone refused to allow Charging Party to wear a turban and kara (religious bracelet) and subjected him to disparaging questions such as whether Charging Party was a terrorist and whether he had joined Al-Qaeda, as well as referring to him as "Bin Laden" and subjecting him to terrorist jokes. Finally, the EEOC alleged that AutoZone terminated Charging Party because of his religion and in retaliation for requesting an accommodation and complaining about discrimination. The district court granted partial summary judgment to the EEOC on the failure to accommodate religion claim but determined there were genuine issues of material fact on both the retaliation and harassment claims. (See Docket No. 61). The parties subsequently settled the case for $75,000 and entered into a three year consent decree requiring AutoZone to, among other things, adopt a new policy prohibiting religious discrimination, train its managers and human resource employees and provide a notice regarding the consent decree to its 65,000 employees nationwide in more than 4,500 U.S. stores.

**Cases Involving Religious Garb and Grooming**

- **EEOC v. Mims Distributing Co., Inc.** (E.D. N.C. No. 5:14-cv-00538) (resolved 1/24/2015). The EEOC sued Mims Distributing alleging that it refused to accommodate Charging Party's religious beliefs, and failed to hire him because of his religion, Rastafarian, in violation of Title VII. Charging Party is a practicing Rastafarian who holds the religious belief that he cannot cut his hair. In accordance with these religious beliefs, has not cut his hair since at least 2009. Charging Party applied for a job as a delivery driver with Mims Distributing in May 2014. The EEOC contended, at that time, the company informed him that he could have the position if he cut his hair. The EEOC further alleged Charging Party told Mims Distributing that he could not cut his hair because of his religious beliefs. The company ultimately refused to hire Charging Party. Mims Distributing agreed to pay $50,000 to settle the case and entered into a two year consent decree requiring it to adopt, implement and distribute an anti-discrimination and religious accommodation policy to all employees, provide annual training to its management staff on Title VII and religious discrimination, and submit reports to the EEOC.

- **EEOC v. 704 HTL Operating, LLC, and Investment Corporation of America, d/b/a MCM Elegante** (D. N.M. No. 1:11-cv-00845 JCH/LFG) (resolved 11/15/13). The EEOC sued MCM Elegante for failing to accommodate Charging Party's religious beliefs (Islam) and practices as required by Title VII. Specifically, the EEOC alleged that Charging Party was not permitted to work as a housekeeper unless she removed her religious head covering. When Charging Party explained that as part of her religious beliefs and practices she was required to wear a hijab, the EEOC alleged MCM Elegante refused to accommodate her. Charging party was subsequently fired. MCM Elegante agreed to pay $100,000 to settle the case and entered into a two year consent decree which required it to institute policies and procedures to address religious discrimination and retaliation as well as reasonable accommodation requests. The company will also train its staff on religious discrimination and posting a notice advising employees of their rights under Title VII.

- **EEOC v. ABM Security Services, Inc.** (E.D. Pa. No. 2:12-cv-04075) (resolved on 7/19/13). The EEOC sued ABM under Title VII alleging that it refused to accommodate Charging Party's religious beliefs when it fired her after she refused to remove her khimar, an Islamic religious head scarf that covers her head, ears and neck. Charging Party, an observant Muslim, wore her khimar at the time she was interviewed and offered a job as a security officer for ABM. The EEOC contended when she reported to work the following day, ABM asked her to remove her khimar if she wanted to work for ABM. After Charging Party refused to remove the khimar due to her religious beliefs, the EEOC alleged ABM fired her instead of providing a reasonable accommodation. ABM agreed to pay $65,000 to settle the case and entered into a three year consent decree requiring it to implement a new dress code policy allowing for religious accommodations, post a notice of this policy for all employees, re-train its management and human resource personnel about religious discrimination, and maintain complaint and investigation procedures for any employee who complains of discrimination.

- **EEOC v. McDonald's Restaurants of California, Inc.** (E.D. Cal. No. 1:13-cv-02065AWJ-SAB) (resolved on 12/20/13). The EEOC sued McDonald's under Title VII for refusing to allow Charging Party, a Muslim crew trainer, to grow a beard for religious reasons. Charging Party had been working for McDonald's since 2001. In 2005, the EEOC alleged he informed McDonald's of his religious beliefs and sought an accommodation to grow a beard. When McDonald's denied the accommodation, the EEOC alleged Charging Party was forced to resign, i.e., constructively discharge. McDonald's agreed to pay $50,000 to settle the case and entered into a two year consent decree which required McDonald's to train its managers and staff, and redistribute its existing policies related to religious discrimination and accommodation.

- **EEOC v. United Galaxy Inc., d/b/a Tri-County Lexus** (D. N.J. No. 2:10-cv-04957-ES-SCM) (resolved on 11/18/13). The EEOC sued Tri-County Lexus under Title VII alleging that it refused to hire Charging Party based on his religion (Sikhism) and failed to provide him with a religious accommodation to the dress code policy that forbids beards for sales and administrative personnel. Charging Party's religious beliefs require him to wear a beard, uncut hair and a turban. Despite the fact that Charging Party was qualified for the sales position, the EEOC contended Tri-County Lexus strictly enforced its dress code policy and refused to grant him a reasonable accommodation. Tri-County Lexus agreed to pay...
$50,000 to settle the case and entered into a two year consent decree requiring it to provide anti-discrimination training to its employees, and appoint an EEOC coordinator to ensure compliance with the anti-discrimination laws.

- **EEOC v. Scottish Food Systems, Inc. d/b/a Kentucky Fried Chicken and Laurinburg KFC Take Home, Inc. d/b/a Kentucky Fried Chicken** (M.D. N.C. No. 1:13-CV-00796) (resolved on 4/25/14). The EEOC sued KFC alleging that it failed to accommodate Charging Party’s religious beliefs and terminated her in violation of Title VII. Charging Party, a KFC employee since 1992, converted to Pentecostalism in 2010. As a member of the Pentecostal church, Charging Party holds the religious belief that she cannot wear pants because she is a woman. In accordance with this religious belief, Charging Party stopped wearing pants in the fall of 2010 and began wearing skirts to work. In 2013, the EEOC alleged Defendant Scottish Food Systems purchased KFC and at that time informed Charging Party that she must wear pants to work because of their dress code policy. The EEOC further claimed Charging Party notified Scottish Food Systems that she could not wear pants because of her religious beliefs. Instead of reasonably accommodating her, Scottish Foods Systems terminated her for refusing to wear pants to work. Defendant agreed to pay $40,000 to settle the case and entered into a three year consent decree requiring it to adopt, implement, post, and distribute to all employees its anti-discrimination and religious accommodation policy as well as train its management staff on that policy.

- **EEOC v. Fries Restaurant Management, LLC d/b/a Burger King** (N.D. Tex. No. 3:12-cv-3169-M) (resolved on 1/18/13). The EEOC sued Burger King alleging it failed to accommodate Charging Party’s religious beliefs and subsequently terminated her, in violation of Title VII. Charging Party, a teenager and member of the Christian Pentecostal Church, adheres to an interpretation of the Scripture that requires women to wear only skirts or dresses. The EEOC alleged, at the time she applied to work as a cashier, she informed the interviewer of her need to wear a black skirt instead of black uniform pants as a religious accommodation. She was hired by a shift manager, who assured her that she could wear a skirt to work. However, when Charging Party attended orientation, the EEOC contended she was told by store management that the employer would not allow her to wear a skirt and that she had to leave the store. Charging Party attempted to explain her religious accommodation request, but was allegedly told that she could not work in the skirt. Charging Party was subsequently discharged. Burger King agreed to settle the case for $25,000 and entered into a two year consent decree requiring it to post a notice regarding its policy against religious discrimination and duty to accommodate, and conduct annual training of its management staff.

- **EEOC v. Family Foods d/b/a Taco Bell** (E.D. N.C. No. 5:11-cv-00394-FL) (resolved 4/30/2012). The EEOC sued Taco Bell alleging that if refused to accommodate the religious belief and practice of Charging Party and discharged him because of his religion (Nazirite). Charging Party, a practicing Nazirite, began working for Taco Bell in 2004. In 2010, Taco Bell informed him that he had to cut his hair in order to comply with its grooming policy. Charging Party informed Taco Bell that he could not cut his hair because of his religion. Charging Party did not volunteer his religious belief that long hair is a way of showing their devotion to God). The EEOC alleged when Charging Party refused to cut his hair, Taco Bell terminated him. Taco Bell agreed to pay $27,000 to settle the case and entered into a two year consent decree requiring it to adopt, implement, and distribute its anti-discrimination and religious accommodation policy to all employees, provide annual training to all employees and report information pertaining to reasonable accommodation requests to the EEOC.

Other Cases Involving Reasonable Accommodations

- **EEOC v. United Parcel Service, Inc.** (D. N.J. No. 2:12-cv-7334) (resolved on 11/1/2013). The EEOC filed suit alleging that UPS discriminated against Charging Party when it failed to accommodate his religious beliefs by denying his request to change his work schedule to attend an annual religious service and subsequently terminated him in violation of Title VII. Charging Party, a Jehovah's Witness, was hired by UPS as a part-time loader in April 2011. The EEOC alleged shortly after his new-employee orientation, Charging Party learned he was scheduled to work on the day of his church's annual religious service. He requested a schedule change but UPS denied the request. UPS subsequently terminated him for failing to report to work on his scheduled work day. The EEOC further alleged that after Charging Party was terminated, he was placed on a company-wide "do not hire" list and was unable to get another job with UPS after re-applying elsewhere. UPS agreed to pay $70,000 to settle the case and entered into a three year consent decree requiring it to post its religious accommodation policy in conspicuous places, conduct anti-discrimination training for managers and supervisors, and discuss the policy with employees during pre-work meetings.

- **EEOC v. Maita Chevrolet Geo** (N.D. Cal. No. 4:11-cv-4815-JSC; transferred to E.D. Cal. No. 2:11-cv-03133-MCE-KCNJ) (resolved on 9/25/2013). The EEOC filed suit under Title VII alleging that Maita failed to accommodate Charging Party's religious practices and instead harassed, disciplined, and discharged him because of his religion, Seventh-day Adventist. Charging Party, a Nigerian immigrant and a Seventh-day Adventist, worked for Maita as a car salesman from April 2005 until he was fired in May 2007. A key tenet of his faith is to observe the Sabbath by refraining from secular work from sundown Friday to sundown Saturday. The EEOC alleged that Maita persistedently scheduled Charging Party to work shifts during his Sabbath despite numerous requests from him and his pastor for an accommodation due to his religious practices and beliefs. The Commission also alleged that Charging Party was harassed, denied work on Sundays, and ultimately disciplined and discharged for taking leave to observe his Sabbath. Maita agreed to pay $158,000 to settle the case and entered into a two year consent decree requiring it to revise its personnel manual to include a section on reasonable accommodation of religious beliefs and practices, train its management on religious discrimination, and provide regular reports regarding religious accommodation requests or complaints of religious discrimination to the EEOC.

- **EEOC v. Ozarks Electric Cooperative** (W.D. Ark. No. 5:12-cv-05014) (resolved on 3/25/2013). The EEOC filed suit under Title VII alleging that Ozarks failed to provide Charging Party with a religious accommodation and then fired her because of her religious beliefs. Specifically, the EEOC alleged that Ozarks denied Charging Party a day off to attend a Jehovah’s Witness convention and then terminated her when she chose to attend the convention rather than report to work. Ozarks agreed to pay $95,000 to settle the case and entered into a two year consent decree requiring it to modify its leave policy to include an appeals process for employees who are denied a religious accommodation, provide...
training to its management on religious discrimination, as well as post a notice reinforcing the company's policies regarding Title VII and its procedures for reporting and preventing discrimination in the workplace.

- **EEOC v. Boca Group LLC, d/b/a Menorah House** (S.D. Fla. Nos. 9:11-cv-80825-KLR and 9:12-cv-80172-KLR) (consolidated cases) (resolved on 3/9/12). The EEOC filed two lawsuits under Title VII alleging that Menorah House denied a religious accommodation to two certified nursing assistants who were Seventh-Day Adventists and fired them because of their religious beliefs. As part of their religious beliefs and practices, Charging Parties did not perform work on the Sabbath, (i.e. from sundown on Friday to sundown on Saturday). Menorah House had accommodated the two women's religious practices for more than ten years, until management instituted a policy requiring all employees to work on Saturdays, regardless of their religious beliefs. The EEOC alleged both Charging Parties informed Menorah House of their religious beliefs and practices and requested a reasonable accommodation. The Charging Parties did not report to work on Saturday as scheduled and Menorah House subsequently terminated them. Menorah House agreed to pay $125,000 to settle the case and entered into a three year consent decree requiring it to revise its religious discrimination policies, conduct anti-discrimination training with an emphasis on accommodating religion in the workplace to all employees and to post anti-discrimination notices at all of its facilities.

- **EEOC v. Aviation Concepts** (D. Guam No. 11-cv-00028) (resolved on 4/2/12). The EEOC filed suit under Title VII alleging that Aviation Concepts terminated Charging Party, an assistant mechanic, after he refused to raise the flags of the United States and Guam, an activity that is against his religious beliefs as a Jehovah's Witness. Aviation Concepts was aware of the Charging Party's religious beliefs and initially accommodated him. However, the EEOC contended when a different manager ordered him to perform that duty and he refused, Aviation Concepts terminated him for insubordination. Aviation Concepts agree to pay $51,000 to settle the case and entered into a two-and-a-half year consent decree requiring it to revise its policies regarding reasonable religious accommodations, hire a consultant to monitor compliance of the terms of the decree, provide training on religious discrimination to its employees and provide annual reports to the EEOC.

**Cases Involving Harassment based on Religion and National Origin**

- **EEOC v. Swift Aviation Group, et al** (D. Ariz. No. 2:12-cv-01867-NVW) (resolved on 7/29/13). The EEOC filed suit alleging that Swift Aviation subjected the Charging Party to unlawful harassment because of his national origin, Palestinian/Turkish (Arab/Middle Eastern) and because of his religion (Islam) in violation of Title VII. The alleged harassment included statements from supervisors such as, "I don't know why we don't just kill all them towel heads," "Can you tell me why you came to work today dressed like you gonna blow up the World Trade Center?" and derogatory jokes about Arabs as well as defacing Charging Party's Quran. The EEOC also alleged that Swift Aviation failed to stop the harassment despite complaints by Charging Party. Ultimately, the EEOC alleged the harassment became intolerable that Charging Party was forced to resign his employment. Swift Aviation agreed to pay $50,000 to settle the case and entered into a two year consent decree requiring it to revise its anti-discrimination policies pertaining to national origin, religious harassment and retaliation, provide training to all employees on the revised policies and to provide reports to the EEOC about future harassment complaints.

- **EEOC v. Rizza Cadillac et al** (N.D. Ill. No. 13-cv-6696) (resolved on 8/24/14). The EEOC alleged that Rizza Cadillac, a car conglomerate in the business of selling cars, violated Title VII by subjecting three Arab Muslim employees to a hostile work environment based upon their national origin and religion. The alleged harassment consisted of Rizza's managers using offensive slurs, such as "terrorist," "sand n-----" and "Hezbollah," and made mocking and insulting references to the Quran and the manner in which Muslims pray. Rizza Cadillac agreed to pay $100,000 to settle the case and entered into a two year consent decree requiring it to train all of its employees regarding national origin and religious harassment as well as retaliation. It also required posting of the notice pertaining to the resolution of the case, and other recordkeeping and reporting requirements.
At the time, the Council of American-Islamic Relations said that the company told workers prayer breaks were no longer allowed, while a Cargill spokesman said that no changes had been made to the company's religious accommodation policies.

Tensions are being felt across the spectrum of faiths. A 2013 Tanenbaum survey of 2,024 workers showed that white evangelicals were equally as likely as non-Christians to say they felt their faiths weren't respected at work, and 28% of workers said discrimination against Christians is as serious an issue as discrimination against religious minorities.

The two easiest accommodations companies can make, according to Mr. Fowler, are allowances for Sabbath observances or religious holidays and providing kosher, halal or vegetarian options at company-sponsored events.

Religion is often missing from conversations about corporate diversity policies, said Ms. Daqit. During her time at Merck, the company started faith-based employee resource groups and educated employees on religious traditions during the holiday season. Even small things, like celebrating winter holidays, such as Hanukkah and Kwanzaa, help workers feel more included, she said.

Tanenbaum's survey found that workers at companies with religious nondiscrimination policies were less likely to say they were seeking a new job. And, those with access to flexible hours for religious observance were more than twice as likely to say they look forward to coming to work.

Every afternoon, Nazneen Nathani, an associate manager at consulting firm Accenture PLC, stops in a designated prayer room in her Los Angeles office. A Shiite Muslim, she prays up to five times daily, but just once at the office.

"It's not an easy time to be a Muslim in America," said Ms. Nathani, a 14-year company veteran who works in risk management and quality. The accommodations "show me that I'm valued, and not just for my contributions as an employee, but also for who I am underneath all of that."

—Neanda Salvaterra contributed to this article.

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