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Worshiping at the altar of ink:

Tattoos and religious discrimination in the workplace

by Jennifer K. Wyatt
Lane Powell PC

Most employers rely upon their employees to project a certain image to the public. In an effort to control their company's image, employers may institute appearance policies that set forth grooming and dress standards. These policies often include provisions prohibiting employees from displaying tattoos. These policies may violate federal law.

Tattoo nation

According to a recent Pew Research Center study, approximately 40 million Americans have tattoos. Tattoos are most popular among those in the 18-25 and 25-40 age brackets. One in three Americans ages 18-25 has a tattoo. That number is slightly larger for those in the 25-40 age bracket, 40 percent of whom have at least one tattoo. While not every tattoo represents religious expression, many do. Religious tattoos present an area of caution for employers because such tattoos may be considered religious expression and employers may be required to accommodate such expression or face a potential claim of religious discrimination.

Learning the hard way

When Edgar Rangel began working for Red Robin, he had two tattoos encircling his wrist. Written in the ancient Egyptian language of Coptic, the tattoos translated into English state, "My father Ra is Lord. I am the son who exists of his Father; I am the Father who exists of his son." Mr. Rangel practices the ancient Egyptian religion of Kemeticism and, according to his good faith religious beliefs, intentionally covering his tattoos is a sin.

While Mr. Rangel worked for Red Robin, the company's "Uniform/Appearance" policy stated that employee tattoos must not be visible. Mr. Rangel worked for several months before his immediate manager asked him to cover his tattoos. After explaining their religious significance, Mr. Rangel's manager allowed him to display the tattoos. Several months later, however, a general manager and regional op-

erations director told Mr. Rangel to cover the tattoos in accordance with Red Robin's policy or go home. Mr. Rangel went home and was later terminated.

The Equal Employment Opportunity Commission subsequently filed a lawsuit on behalf of Mr. Rangel. Red Robin argued for dismissal, characterizing Mr. Rangel's belief in Kemeticism as merely "personal preference" and not a religious belief. Red Robin also argued that accommodating Mr. Rangel's request to leave his tattoos uncovered was an "undue hardship." Both arguments were rejected by the court. After litigating the case for several years, Red Robin eventually agreed to settle the matter for \$150,000 and make policy and procedure changes to ensure its employees' religious beliefs were fairly considered.

Religious discrimination and accommodation

As more employees with religious tattoos enter the work force, employers are faced with the challenge of projecting their company image while accommodating their employee's right to religious expression.

Title VII prohibits employers from taking an adverse employment action against an employee based on the individual's "religion." 42 U.S.C. § 2000e-2(a)(1).¹ Broadly defined, "religion" includes "all aspects of religious observances and practice, as well as belief" unless the employer demonstrates it is unable to reasonably accommodate an employee's religious observance or practice without "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). Title VII only applies to companies with at least 15 employees. However, many states, like Oregon, have antidiscrimination laws that are similar to Title VII and which may apply to employers with fewer than 15 employees

When an employer takes adverse action against an employee for failing to cover or remove a

¹ While the subject matter of this article pertains to an employee-employer relationship, employers should be aware that Title VII also protects job applicants from religious discrimination as well.



Jennifer K. Wyatt

tattoo, the employee may make a religious discrimination claim by asserting that:

- (1) he/she has a bona fide religious belief or practice which conflicts with an employment duty;
- (2) he/she notified his/her employer that the belief conflicted with his/her job duties; and
- (3) the employer took adverse action because of the employee's inability to perform the job requirements (i.e., cover or remove the tattoo pursuant to company policy).

If the employee proves these elements, the employer must rebut the claim by showing that the employer offered a reasonable accommodation or that it could not reasonably accommodate the employee without undue hardship.

Title VII does not define the phrases "reasonable accommodation" or "undue hardship." Therefore, courts will evaluate what constitutes a reasonable accommodation and undue hardship on a case-by-case basis. However, the United States Supreme Court has provided some guidance for employers and employees alike. The Supreme Court has explained that a reasonable accommodation is one that "eliminates the conflict between employment requirements and religious practice." The high court has also held that undue hardship can be established by proof of actual imposition on coworkers or disruption of the work routine.

Best practices

To avoid costly litigation associated with religious discrimination claims, employers should revisit appearance policies to ensure that they are neutral and designed to meet legitimate company interests. Employers should train managers and supervisors about the policy and make sure it is consistently enforced. Finally, if an employee claims the employer's policy violates his or her religious belief, the employer should work with legal counsel to determine if there is a reasonable accommodation available.

Jennifer K. Wyatt, attorney at Lane Powell and member of the Firm's Labor and Employment Practice Group, defends employers in employment disputes, including claims of discrimination, harassment, wrongful discharge, and wage and hour violations. She can be reached by emailing wyattj@lanepowell.com, or by calling direct to (206) 223-7043 or toll-free (800) 426-5801.