

Employment Advisory: EEOC Issues New Compliance Guidance on Religious Discrimination in the Workplace in Response to a Dramatic Increase in Charge

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In July, the U.S. Equal Employment Opportunity Commission (EEOC) issued a new section (Section 12) to its Compliance Manual specifically related to religious discrimination in the workplace. Section 12 includes a comprehensive review of the relevant provisions of Title VII of the Civil Rights Act of 1964 and the EEOC's policies regarding religious discrimination, harassment, and accommodation. In addition to Section 12, the EEOC also issued a "Questions and Answers" fact sheet and a "Best Practices" booklet, which are intended to further clarify the EEOC's views on religious discrimination. The EEOC's regulations on religious discrimination, codified in C.F.R. § 1605, are unaffected by Section 12.

Section 12 provides guidance regarding key issues arising in religious discrimination cases, such as: (1) what constitutes "religion" within the meaning of Title VII; (2) disparate treatment based on religion; (3) reasonable accommodation of religious beliefs and practices; (4) religion-based harassment; and (5) retaliation. Section 12 also provides guidance to employers who are often forced to balance employees' rights regarding religious expression and their need to maintain efficient, productive workplaces.

The EEOC created Section 12 in response to a dramatic increase in religious discrimination charges, increased religious diversity in the United States (and therefore the workplace), and requests for guidance from employers, employees, practitioners, and EEOC personnel involved in the litigation of religious discrimination claims. Notably, the number of religious discrimination charges filed with the EEOC over the past fifteen years has more than doubled from 1,388 in 1992 to a record high of 2,880 in 2007.

Key Provisions:

The EEOC defines "religion" very broadly to include "all aspects of religious observance and practice as well as belief." 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. Title VII even protects an individual's religious belief if few—or no—other people adhere to it.

Also noteworthy is the duty to reasonably accommodate an employee's religious belief, which presents the greatest challenge to employers in this area of the law. Once on notice, employers must reasonably accommodate an employee whose sincerely held religious belief conflicts with a work requirement, unless providing the accommodation would create an undue hardship for the employer. To establish undue hardship, the employer must demonstrate that the religious accommodation would require more than *de minimis*, or minor, cost.

Section 12 clarifies that the standard for undue hardship in the religious discrimination context is easier 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." Despite this lower threshold, however, employers still maintain the burden of proof, and the EEOC expects them to consider alternative accommodations if an employee's proposed accommodation presents an undue hardship.

The EEOC's decision to create the new Section 12 on religious discrimination demonstrates the agency's heightened awareness of religion in the workplace. Both the EEOC's renewed focus, and the dramatic increase in charges alleging religious discrimination and failure to accommodate, send a strong signal to employers to pay closer attention to this area of the law.

Action Items for Employers:

Employers should review their anti-discrimination and anti-harassment policies to ensure they: (1) cover religious discrimination and harassment; (2) explain what conduct is prohibited; (3) detail the procedure for reporting harassment; and (4) provide that any complaints are protected against retaliation. Employers should also train managers on hiring, firing and taking other employment actions without regard to employees' religious beliefs, and recognizing and responding to requests for reasonable accommodation. Employers are encouraged to contact Mintz Levin immediately with any questions regarding the requirements of Title VII with respect to religious discrimination and accommodation.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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