

Religious Discrimination in the Workplace Gets More Attention from EEOC

Recently, the U.S. Equal Employment Opportunity Commission (EEOC) filed a federal lawsuit against retail giant Wal-Mart for disciplining and threatening to fire an assistant manager at its Colville, Wash., store when he refused to violate his religious beliefs.

According to the EEOC, Richard Nichols, a devout Mormon, began working for Wal-Mart in 1995 and started as a manager at the Colville store in 2002. As part of his religious practice, Nichols observes the Sabbath by refraining from work of any kind (including household chores or shopping) and limits his activities to church-related activities. From 1995 to 2009, Wal-Mart accommodated his request for leave on Sundays. However, in the fall of 2009, Wal-Mart revised its scheduling system and refused to continue accommodating Nichols. The suit seeks back pay and other monetary losses, compensatory and punitive damages for Nichols and appropriate injunctive relief to prevent any future discrimination.

Under federal and New Jersey state law, religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion. Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.

3,386 charges alleging religious discrimination were filed with the EEOC in 2009, slightly more than the prior year, although the agency found no probable cause, in about 6 of 10. Nevertheless, the agency has filed some high profile cases.

In addition to Wal-Mart, Altec Industries, Inc., a Birmingham, Ala. based manufacturing company was sued in 2010. According to the EEOC's suit, James Wright and other Sabbatarian applicants applied for employment at Altec's Burnsville, N.C. manufacturing facility. As Sabbatarians, Wright and the other class members held the sincere religious belief that they could not work on their Sabbath, which runs from sundown on Friday until sundown on Saturday. Wright is a Seventh-day Adventist. According to the complaint, when Altec learned that the applicants objected to working from sundown on Friday to sundown on Saturday based on their religion, it decided not to hire them.

Car dealerships have also been sued. Tri-County Lexus, a large dealership in Little Falls, N.J., was sued for refusing to hire a Sikh man for a sales position solely because he refused to shave his beard, which is required by his faith. Likewise, the EEOC has alleged in a lawsuit that AutoZone, Inc., a national

distributor and retailer of automobile parts, violated federal law when it subjected an employee who had converted to the Sikh religion to harassment and refused to accommodate his religious need to wear a turban.

The EEOC also charged that the T.A. Loving Company discriminated against Elvis Cifuentes Angel and two other individuals who worked for T.A. Loving Company as laborers when it fired them for refusing to work on their Sabbath. Cifuentes Angel and the other laborers are members of the Seventh-Day Adventist faith, which prohibits work on a member's Sabbath, which runs from sundown on Friday until sundown on Saturday. The case settled for \$47,500.

Under New Jersey religious accommodation law, it is unlawful for an employer to impose a condition of employment, or any privilege of term of employment, that would require a person to violate or forgo a sincerely held religious practice or observance, including working on the Sabbath or other holy day, unless, after engaging in a good faith effort, the employer demonstrates that it is unable to reasonably accommodate the employee's religious observance or practice without an undue hardship on the operations of the business.

"Undue hardship" means an accommodation requiring unreasonable expense or difficulty, unreasonable interference with the safe and efficient operation of the workplace or a violation of a bona fide seniority system or collective bargaining agreement.

United Parcel Service (UPS), learned about state law in a very undesirable way when a jury in New Jersey found against UPS and ordered it to pay \$10,000 in damages in a religious-accommodation claim. The plaintiff alleged, and the jury found, he was wrongfully denied a job based on his religious beliefs. The plaintiff, Ronnis Mason, a Rastafarian, applied for a job in 2004 as a driver's assistant but was denied the job because of his beard.

The company had a policy that prevented employees with beards from delivering packages to customers. He was, instead, offered a job as a package handler. In this position, Mason would have worked in a warehouse for a lower salary. Mason never completed the application process. The jury found that it was not unreasonable to modify the no beard policy.