5/05

SELECTED CASES ON RELIGIOUS DISCRIMINATION

Office of Legal Counsel
United States Equal Employment Opportunity Commission

1. Employee's Religious Discrimination

a. Definition of "Religion"

Welsh v. United States, 398 U.S. 333 (1970). In a case involving the Universal Military Training and Service Act, the Supreme Court held that the definition of "religion" is not dependent on a belief in a "Supreme Being." A person's beliefs may be deemed "religious beliefs" if those beliefs occupy in the life of that individual a place parallel to that of God in traditional religions. See also United States v. Seeger, 380 U.S. 163 (1965) (in a military induction case, the Court defined "religious belief" as one that is sincere and that occupies in the life of the believer a place parallel to that of God in traditional religions).

Cloutier v. Costco Wholesale Corp., 390 F.3d 126 (1st Cir. 2004). The court found it unnecessary to decide whether the church of Body Modification is a valid religion where the plaintiff unreasonably rejected the employer's efforts to reasonably accommodate her practice of wearing body piercings.

Storey v. Burns Int'l Sec. Servs., 390 F.3d 760 (3d Cir. 2004). The court declined to decide whether being a "Confederate Southern-American" is a sincere religious belief. Granting summary judgment to the employer, the court found no evidence of discriminatory animus and no adverse employment action when an employee was terminated for refusing to remove Confederate flag stickers from his lunch box and pickup truck. See also Chaplin v. Du Pont Advance Fiber Sys., 293 F. Supp. 2d 622 (E.D. Va. 2003) (although the court had no authority to determine whether "Confederate Southern American" is a valid religion, the plaintiffs were not subjected to an adverse employment action when prohibited from displaying the Confederate flag).

Campos v. City of Blue Springs, 289 F.3d 546 (8th Cir. 2002). The evidence was sufficient to demonstrate that an employee who followed the tenets of Native American spirituality was denied compensation for additional work, taken off counseling assignments, denied leave to meet with her dissertation professor, and ultimately forced to quit because her supervisor wanted someone in the job who shared the supervisor's religious beliefs. See also Backus v. Mena Newspapers, Inc., 224 F. Supp. 2d 1228 (W.D. Ark. 2002) (plaintiff stated a claim for disparate treatment based on religion when he alleged that he was terminated not because of his own religious beliefs, but because he did not hold the same religious beliefs as his supervisors).

Seshadri v. Kasraian, 130 F.3d 798 (7th Cir. 1997). An employee bringing a religious discrimination claim need not belong to an established church. An individual who seeks to obtain a privileged legal status because of his religion cannot preclude, however, inquiry into whether he or she has a religion.

Brown v. Pena, 441 F.Supp. 1382 (D.C. Fla. 1997), aff'd, 589 F.2d 1113 (5th Cir. 1979). Where plaintiff's religious discrimination claim was based on his "personal religious creed" that Kozy Kitten People/Cat Food contributed significantly to his state of well being, and thus, to his overall work performance by increasing his energy, it was a mere personal preference. The court cited three factors to determine whether a belief is religious (See Brown v. Dade Christian Schools, Inc., 556 F.2d 310, 324 (5th Cir. 1977) (dissent)): (1) whether the belief is based on a theory of "man's nature or his place in the Universe," (2) which is not merely a personal preference but has an institutional quality about it, and (3) which is sincere. Unique personal moral preferences cannot be characterized as religious beliefs.

Eatman v. United Parcel Serv., 194 F. Supp. 2d 256 (S.D.N.Y. 2002). The employer's policy of requiring its drivers with unconventional hairstyles, including dreadlocks, to wear hats did not constitute religious discrimination. The employee sincerely considered his locks to be a testament or outward expression of his commitment to Protestantism and the principles of Nubianisn. However, his impulse to grow dreadlocks was a personal choice, not a religious one, because it was not prompted by a dictate of his religious conscience or engendered by a divine command.

Peterson v. Wilmur Communications, Inc., 205 F. Supp. 2d 1014 (E.D. Wis. 2002). The plaintiff's White Supremacist belief system called "Creativity" is a religion within the meaning of Title VII because it "functions as religion in [his] life." The plaintiff had been a minister in the World Church of the Creator for more than three years, worked to put the church's teachings into practice by reading the "White Man's Bible," and actively proselytized.

Swartzentruber v. Gunite Corp., 99 F. Supp. 2d 976 (N.D. Ind. 2000). Membership in the Ku Klux Klan (KKK) is distinguishable from a religious belief. The employee had no claim for hostile environment harassment because the harassment occurred because of his self-identification as a member of the KKK and not because of his religious beliefs. See also Slater v. King Soopers, Inc., 809 F. Supp. 809 (D. Colo. 1992) (KKK is "political and social in nature" and is not a religion for Title VII purposes).

b. Sincerity

EEOC v. Union Independiete De La Autoridad De Acueductos y Alcantarillados De Puerto Rico, 279 F.3d 49 (1st Cir. 2002). A genuine issue of material fact existed as to whether a Seventh-Day Adventist's objection to union membership was the product of a sincerely held belief. Although the religious foundation of the Seventh-Day Adventist faith's opposition to union membership has long been recognized, there was evidence that this employee often acted in a manner inconsistent with his professed religious beliefs: he was divorced, took an oath before a notary upon becoming a public employee, worked five days a week (instead of the six days required by his faith), and there was some evidence that the alleged conflict between his beliefs and union membership was a moving target.

E.E.O.C. v. Ilona of Hungary, Inc., 108 F.3d 1569 (7th Cir. 1997) (en banc). The court upheld the district court's opinion that one of the former employees sincerely believed that she should refrain from work on Yom Kippur. Although she did not observe every Jewish holiday, recent family events, including her mother-in-law's death, her husband's growing faith, the birth of her son, and her father's death, caused religion to become more important to her. In fact, since her father's death in 1985, the employee had attended services on Yom Kippur in every year except 1987, when her work schedule would not permit it.

Bailey v. Associated Press, 2003 WL 22232967 (S.D.N.Y. Sept. 29, 2003). The employer did not violate Title VII when it denied a request for time off on Sundays from an employee who had not requested Sundays off during the entire 14 years of his employment, did not inform the employer that his request was for religious reasons, and testified that he did not attend religious services on Sundays and was subject to no religious prohibition against working on Sundays. See also Hussein v. Waldorf-Astoria, 134 F. Supp. 2d 591 (S.D.N.Y. 2001) (employer had a good-faith basis to doubt the employee's sincerity as he had never before engaged in the practice of wearing a beard in his 14 years of employment and had never mentioned his religious beliefs to anyone at the hotel).

EEOC v. Chemsico, Inc., 216 F. Supp. 2d 940 (E.D. Miss. 2002). A question of fact existed as to whether an employee who did not follow all of the teachings of her church and stopped attending church services had a sincere religious belief that precluded her from working on the Sabbath. A jury could conclude that the employee had a sincere religious belief because she continued to engage in Bible study and had consistently refused to work on the Sabbath.

Bushouse v. Local Union 2209, UAW, 164 F. Supp. 2d 1066 (N.D. Ind. 2001). The union did not violate Title VII when it required the plaintiff to provide a corroborating statement from a third party that he held a sincere religious belief that precluded him from financially contributing to labor unions.

Burns v. Warwick Valley Cent. Sch. Dist., 166 F. Supp. 2d 881 (S.D.N.Y. 2001). While an employer is not permitted to assess the objective accuracy of a religious belief, it is permitted to inquire into the religious basis of a request for accommodation in order to assess whether the belief is sincerely held.

EEOC v. IBP, Inc., 824 F. Supp. 147 (C.D. Ill. 1993). The sincerity of an employee's religious beliefs or practices must be determined at the time of the alleged discrimination. Although the employee did not continue to hold his religious beliefs after the employer fired him, he observed the Sabbath while employed by the defendant and lost a second job as a result of his religious practices.

2. Disparate Treatment

a. Religious-Based Statements as Evidence of Discrimination

EEOC v. WilTel Inc., 81 F.3d 1508 (10th Cir. 1996). A supervisor's statement, following the applicant's rejection, that she did not like the applicant because of her expression of evangelical Christian beliefs, did not constitute direct proof of discrimination. The supervisor did not play a dominant role in interviewing process, and there was no evidence that her aversion to the applicant's religious views was a factor in the final decision. The plaintiff did not demonstrate that she was as qualified as other applicants, and the employer hired an evangelical Christian for the position.

Burroughs v. Chase Manhattan Bank, 2005 WL 497790 (S.D.N.Y. Mar. 2, 2005). The court denied summary judgement to a bank that fired a teller who was an ordained minister. A representative of the bank's human resources department told the plaintiff that she was being terminated because her religious beliefs created a conflict of interest with the bank. There was also evidence that the stated reason for the termination was false.

Tyson v. Methodist Health Group, Inc., 2004 WL 1629538 (S.D. Ind. June 17, 2004). The employer's motion for summary judgment was denied because a jury could reasonably infer a discriminatory motive from the fact that the plaintiff's supervisor referred to Muslims as "you guys," warned her that people did not like Muslims, and, because he believed that married Muslim women did not work, expressed surprise that the plaintiff continued to work after she got married.

Fairclough v. Board of County Comm'rs, 244 F. Supp. 2d 581 (D. Md. 2003). A supervisor's one-time utterance of a derogatory comment to a Jewish employee was insufficient to show intentional religious discrimination where the remark was isolated, termination occurred six months later, and the supervisor did not take part in the termination decision.

Bernstein v. Sephora, Div. of DFS Group, 182 F. Supp. 2d 1214 (S.D. Fla. 2002). Statements by an official who was involved in the decision making can constitute direct proof of discrimination even though that person is not the ultimate deciding official. Statements of antipathy toward Jews made in temporal proximity to a promotion decision– such as "[we must] work together to get rid of that JAP bitch" and "[s]he and her princess ways ha[ve] to go" – constitute direct proof of discriminatory failure to promote.

EEOC v. Preferred Mgmt. Corp., 216 F. Supp. 2d 763 (S.D. Ind. 2002). The owner's statements that her company is a Christian company, that her religious beliefs permeate her thinking, and