

RELIGIOUS ACCOMMODATION AND THE COURTS: A REVIEW AND ANALYSIS

LAWRENCE S. KLEIMAN

JOAN BENEK-RIVERA

Bloomsburg University, Pennsylvania

ABSTRACT

This article reviews case law dealing with claims of religious accommodation discrimination filed under the Civil Rights Act. This article is intended to provide employers with a better understanding of how the courts adjudicate these types of cases. The article is divided into three sections. The first two sections examine the type of evidence needed by a plaintiff to establish a *prima facie* case of religious discrimination and the requirements for an effective defense. The third section addresses areas of potential concerns for organizations in light of the judicial decisions reviewed and offers recommendations for avoiding/defending claims of religious accommodation discrimination.

Title VII of the 1964 Civil Rights Act (CRA) prohibits religious discrimination at the workplace. One of the most challenging aspects of the law for employers is dealing with employees' requests for religious accommodation. As interpreted by the Supreme Court in its 1978 decision in *TWA vs. Hardison* [1], the CRA requires employers to provide religious accommodations, as long as the accommodation does not place an undue hardship on their business operations. The Court defined an undue hardship as one in which the cost of accommodation is more than minimal [1]. The determination of more than minimal depends on such factors as the size and nature of the business and the amount of expense involved.

As the result of such factors as immigration, globalization, and a changing political and religious climate, today's employers face a wide variety of

accommodation requests, making the goal of legal compliance a difficult one to achieve. The following real-life examples illustrate this point:

- A counselor requested to be excused from counseling homosexuals because this lifestyle conflicted with the counselor's religious beliefs [2].
- A nurse put a patient's life in jeopardy when, for religious reasons, she refused to perform a critical medical procedure [3].
- An employee insisted on using the phrase, "Have a blessed day," when communicating with others, including clients. One of the firm's major clients found it offensive and asked her to stop using the phrase. She refused [4].
- A job applicant refused to provide her social security number because of her belief that social security numbers represent the "mark of the beast" as described in the Bible's Book of Revelation [5].

In each of these cases, the employee lodged a formal complaint of religious discrimination that resulted in a potentially costly lawsuit. The number of such complaints has indeed risen sharply during the past several years. The number annually filed with the Equal Employment Opportunity Commission has increased by 40 percent since 1994 [6].

How can employers avoid or at least minimize the likelihood of a religious accommodation lawsuit? The aim of this article is to help employers better understand their legal responsibilities in this area so that they can respond appropriately (both proactively and reactively) to situations involving employees' requests for religious accommodations. The necessary information was gathered by reviewing a systematic sample of 25 religious accommodation cases, filed under Title VII, that have been tried in federal court during the years 2000 and 2001. The findings update and expand those of an earlier review conducted by Findley et al. [7].

Our discussion of case law is divided into two sections. The first section examines the type of evidence needed by a plaintiff to establish a *prima facie* case of religious discrimination. If a *prima facie* case is established, the employer must rebut it. Evidence needed for such a rebuttal is addressed in the second section. We then provide recommendations for employers on how to respond to various types of religious accommodation requests.

ESTABLISHING A *PRIMA FACIE* CASE

When hearing any Title VII case, the court first requires that the charging party establish a *prima facie* case of discrimination. To accomplish this aim in a religious accommodation lawsuit, most courts require the charging party to prove all of the following elements:

- S/He had a sincerely held religious belief that conflicted with an employment requirement.

- The employer was given proper notification of the need for accommodation.
- The charging party suffered an adverse employment consequence as the result of his/her religious belief.

Holding a Sincere Religious Belief that Conflicts with an Employment Requirement

Employers are not legally required to accommodate a worker's request unless the basis for that request is a sincerely held religious belief. Two evidentiary issues come into play here:

1. How does one prove that a belief is sincerely held?
2. How does one prove that such a belief necessitates the requested accommodation?

The first issue was addressed in *Bushouse v. Local Union 2209* [8]. The employee requested permission to pay the equivalent of union dues to a charity rather than to the union because the tenets of his religion prohibited union membership. Suspecting that the employee's motivation was political rather than religious, the union requested independent corroboration of his claim that he sincerely held such a religious conviction. Specifically, the union asked him to submit a certificate signed by a pastor or church elder attesting to the fact that he belonged to this religion and assumed its beliefs. Because he refused, he was not granted the accommodation.

In reaching its decision, the court had to decide whether the CRA gives employers/unions the right to make such an inquiry. The court ruled that they did have such a right, stating:

It is appropriate to examine or inquire into the sincerity of an individual's belief and whether the belief is, in fact, religious, before permitting special accommodation to be made based on that belief. . . . Absent any right of inquiry, the union's hands would be tied so that any member's self-serving statement that he had sincere religious beliefs that conflict with a job requirement would have to be accommodated unless such an accommodation posed an undue hardship [8, at 1073].

The court thus ruled for the company because the plaintiff had not met his burden of establishing a *prima facie* case of religious discrimination. In addressing the union's right to inquire about an employee's religious beliefs, the court stated that such a right is limited. Employers and unions do not have a right to decide what is and is not a valid religious belief or practice. However, they may be permitted to satisfy themselves that the employee is sincere and that the belief is religious under the broad definition of that term as provided in Title VII.

The issue of sincerity also arose in *Hussein v. Pierre Hotel* [9]. The plaintiff was a hotel waiter who was fired for violating the hotel's no-beard policy. He argued

that the beard was required by his religion. However, Hussein had made no previous references to his religion and had never before worn a beard. The employer thus questioned the sincerity of his religious belief, believing instead that he had simply appeared for work unshaven and used religion as an excuse. The judge agreed with the employer.

Proving that the accommodation requested is based on a sincere religious belief is a necessary, but not sufficient, condition for establishing this element of a *prima facie* case. The plaintiff must also prove that his/her religious belief dictates that such an accommodation should be allowed. The plaintiff was able to provide such proof in *Bushouse* by presenting written documentation from the church regarding its anti-union stance [8]. The plaintiff was also successful in meeting this evidentiary burden in *Jones v. N.Y.C. Department of Corrections* [10]. Here, the plaintiff requested that he should be allowed to use vacation time to attend a four-day religious convocation, arguing that as an ordained minister of his church, he needed to attend this meeting to better serve his parishioners. The employer argued that his religious beliefs did not *require* him to attend the meeting. The court disagreed, stating that the behavior in question need not be required by the religion. “It was a religious practice to attend the conference and Title VII encompasses all aspects of religious observance and practice, even those that are not specifically required by the religion” [10, at 6].

When applying this standard, however, the courts insist that the accommodation request be motivated by the person’s religious beliefs. The request should not merely reflect the personal preference of the individual. For example, in *Anderson v. U.S.F Logistics*, the employer was sued for refusing to allow an employee to use the phrase, “Have a blessed day,” when communicating with employees and customers [4]. The plaintiff, who argued that this practice was religiously motivated, was unable to establish a *prima facie* case because she did not have a sincere belief that her religion dictated the use of that phrase; its utterance was merely her personal preference. The court ruled that personal preferences are not protected under Title VII [4].

The courts’ view regarding personal preferences is further illustrated in *Hussein v. Hotel Employees and Restaurant Union* [11]. Here, the employee was denied the opportunity to work as a waiter because he failed to appear on time at the union hall to submit his application. He argued that he had missed the deadline because he had to attend a Muslim service in another town and was not able to get to the union hall on time. He thus requested that he be allowed to submit his application after the deadline. The union claimed that he could have avoided the problem had he attended services at a closer locale. The employee countered with the argument that he preferred going to the more distant mosque because after prayer he could visit friends’ homes, raise money, and engage in other personal pursuits. The court concluded that going to the more distant mosque was a personal preference, not a religiously based one. The employer was not obligated to accommodate that choice [11].

Giving the Employer Proper Notification

The second element that plaintiffs must meet in order to establish a *prima facie* case is to prove that they provided the employer with *proper* notification of their religious-based needs. The key question here is what constitutes a proper notification? The courts have addressed two issues related to this question:

1. When must the notification be given?
2. Who should provide the notification?

In *Stone v. West*, the plaintiff claimed that she was forced to work on Saturdays, despite the fact that her employer knew this day was her Sabbath [12]. The employer countered with the argument that she had made no mention of a religious conflict until she was first asked to work on a Saturday, three months after being hired. The employer argued that to be “proper,” the notification should have been made at the time of hire. The court was not swayed by the employer’s argument, stating that it should have considered her request at the time she made it [12].

While employees are not required to reveal their accommodation needs when hired, they are required to inform employers of such needs *prior* to acting on them. This point is illustrated in *Hussein v. Waldorf Astoria* [13]. As noted previously, the plaintiff showed up for work sporting a beard. It was at that moment that the employer first became aware of his need for accommodation. The judge ruled that the plaintiff’s notice was improper because it was given at the same time as the employee violated the employment requirement.

The second issue (Who should provide the notification?) was addressed in two cases (*Shelton v. University of Medicine & Dentistry of New Jersey* [3] and *Hussein v. Hotel Employees and Restaurant Union*) [11]. In each instance, the employer claimed improper notification because the employee failed to submit a note from a religious authority that would document the employee’s need for a religious-based absence. Both courts agreed that such a note was unnecessary. A plaintiff merely has to prove that s/he gave the employer prior notification. It is unnecessary to provide a verification letter from a church authority.

Suffering an Adverse Employment Consequence

Plaintiffs cannot establish a *prima facie* case of religious discrimination unless they can also prove that they suffered some adverse consequence because of their religious beliefs. In most of the cases reviewed, the plaintiffs were able to meet this *prima facie* element by proving that they were disciplined/fired for acting on their religious beliefs. For instance, in *Thomas v. National Association of Letter Carriers*, the employer refused the plaintiff’s request that he be excused from work on his Sabbath [14]. He was fired for missing work on that day [14].

In a few cases, however, the employer was able to withstand the plaintiffs’ charges. Two types of arguments were successfully employed:

1. The plaintiff suffered no adverse consequence.
2. The plaintiff suffered an adverse consequence, but the employer did not impose the consequence.

In *Stone v. West*, the employer denied the worker's request to be excused from work on her Sabbath, and she was thus forced to continue working on that day [12]. She was unable to establish a *prima facie* case because by agreeing to work on her Sabbath, she avoided suffering any adverse consequences as a result of her religious beliefs. The judge noted that

[i]n essence, although the plaintiff's religious beliefs ostensibly conflicted with the demands of her job, she subordinated the former to the latter, thereby avoiding a conflict which otherwise might have led the employer to take adverse action against her. . . . [The] plaintiff's failure to insist upon strict adherence to these beliefs effectively absolved her employer of the responsibility to reasonably accommodate her beliefs [12, at 14-15].

In *Hussein v. Hotel Employees and Restaurant Union*, the plaintiff claimed that observance of his religious beliefs economically disadvantaged him because missing Friday roll call prevented him from landing jobs on that day [11]. The judge, however, ruled that he failed to establish a *prima facie* case because, while he suffered an adverse consequence, the employer did not impose it. That is, the employer did not expressly punish him for his actions. In making this decision, the judge cited *Beam v. General Motors* as a precedent [15]. There, two employees sued their employer because their refusal to work on the Sabbath prevented them from having an opportunity to earn overtime pay. The court stated that while their beliefs put them in an economically inferior position, the employer did not impose this consequence [15]. That is, the employer did not reduce their pay.

In *Baltgalvis v. Newport News Shipbuilding*, the plaintiff was an applicant who refused to give her social security number because she believed that the number represents the "mark of the beast" as described by the Bible's Book of Revelation [5]. She asked that the employer request some other number. The employer denied this accommodation request and subsequently refused to consider her for the position. The employer argued that it had no choice in rejecting her application since the IRS requires that social security numbers be maintained on all employees. The court ruled for the employer, noting that the adverse employment consequence suffered by the plaintiff was imposed by an external agency (i.e., IRS Rule), not the employer [5].

REBUTTING A PRIMA FACIE CASE

The court's inquiry ends when the plaintiff is unable to establish a *prima facie* case of religious discrimination. When the plaintiff successfully establishes such a case, the burden of persuasion shifts to the employer, who must now justify the legality of its actions. As noted by the judge in *Baltgalvis v. Newport News*

Shipbuilding, an employer must, to an extent short of undue hardship, actively attempt to accommodate an employee's religious beliefs, expression, or conduct [5]. To do so, it must prove that it either made a reasonable accommodation or that any accommodation would result in undue hardship. We now discuss these alternatives, in turn.

Proving that a Reasonable Accommodation was Made

As noted by the judge in *Bruff v. North Mississippi Health Services*, an employer has the duty to cooperate in achieving accommodation and must be flexible in achieving that end [2]. This means that the process of finding a reasonable accommodation should be an interactive one between the employer and employee [16].

The landmark case that addresses this issue is *Ansonia Board of Education v. Philbrook*, a 1986 Supreme Court decision [17]. The Court noted that a reasonable accommodation is one that eliminates the conflict between the employment requirement and the religious practice. The majority decision of the Court went on to say:

A sufficient religious accommodation need not be the most reasonable one (in the employee's view), it need not be the one the employee suggests or prefers, and it need not be the one that least burdens the employee. In short, an employer may offer any reasonable accommodation. Where the employer has already accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodation would result in undue hardship [17, at 367].

Thus, the employer's chief legal responsibility is to prove that it offered the employee a reasonable accommodation. It need not offer the *best* accommodation from the employee's perspective.

There were a number of cases in which the employer rejected the employee's accommodation request, but offered alternatives that the employee deemed unreasonable. These cases involved requests to:

1. Engage or refuse to engage in certain job behaviors
2. Eliminate certain duties from the employee's job
3. Take time off to observe one's Sabbath
4. Take time off to engage in a religious practice

We examine cases falling under each of these categories to shed some light on how the courts assess the reasonableness of the accommodations suggested by employers.

Requests to Engage or Disengage from Certain Job Behaviors

Three cases dealt with this issue. One was discussed previously, *Anderson v. U.S.F Logistics* [4]. This case was filed by an employee who insisted on using the term, “Have a blessed day,” when conversing with co-workers and clients, despite client objections. The employer had a policy that forbids the use of religious phrases in any correspondence emanating from its offices. It offered to accommodate the employee by allowing her to use that phrase with other employees, but not with clients. The plaintiff argued that this accommodation was unreasonable—she should be allowed to use the phrase whenever she wanted. The court disagreed, stating that the employer’s offer was a reasonable one because it eliminated the conflict between the plaintiff’s religious practice and the employer’s policy, yet allowed her to use the phrase when conversing with people who did not object to it. The accommodation did not require the plaintiff to breach her religious vow [4].

Quental v. Connecticut Commission on the Deaf and Hearing Impaired also dealt with the situation in which an employee’s job behavior conflicted with organizational policy [18]. Here, the plaintiff provided interpreting services for deaf clients. She shared some of her personal history and religious beliefs with a client who was a mental health patient. Specifically, she told the client that she too had been sexually abused and that the Lord had helped her deal with it. She then gave the client religious material to read. A mental health professional complained about this behavior. Following an investigation, the employer issued a letter of reprimand that stated, “During the time you are being paid by the state of Connecticut to provide interpreting services, you should not promote your religious beliefs. Any further recurrences of this type of behavior may result in further disciplinary action, up to and including dismissal” [18, at p. 4]. The plaintiff said that she should have been allowed to behave that way because “it was obvious that the client was very upset and I was hopeful that the conversation would give her hope,” [18, at p. 4].

The court ruled that the employer properly accommodated the plaintiff by allowing her the opportunity to share her religious beliefs with others outside the context of providing interpretive services to her clients. The employer could not have accommodated her any further without undermining the organization’s purpose, mission, and credibility. The court stated:

In light of Quental’s position as a state employee interacting with the public, some of whom are mentally ill, there is a risk that these clients might confuse Quental’s statements concerning her religious beliefs and her distribution of religious tracts from the First Assembly of God church as the Commission’s endorsement of religion and/or the First Assembly of God church [18, at pp. 8-9].

The court wrestled with a different type of issue in *Daniels v. Arlington* [19]. This case involved a police officer’s request to wear a pin on his uniform that

symbolized his evangelical Christianity. The employer denied this request because it violated the department's written policy that no button, badge, medal, or similar symbol be worn on a uniform. The court again ruled for the employer, stating that forcing a police department to let individual officers add religious symbols to their official uniforms would create an undue hardship on the department. The Department met its legal burden by offering the officer alternate accommodations that were reasonable, namely:

- Wear a ring or bracelet instead of a pin
- Wear the pin under the uniform
- Transfer to a non-uniformed position

Requests to Eliminate Certain Duties from the Employee's Job

Two cases dealt with this issue. In *Bruff v. North Mississippi Health Services* [4], the plaintiff was a counselor for a medical center in its EAP program. Her patient informed the plaintiff that she was a homosexual and asked for help in improving her relationship with a female partner. The plaintiff declined to counsel on that subject, because homosexual behavior conflicted with her religious beliefs. The plaintiff then asked her employer if she could be excused from counseling homosexual clients, with such cases transferred to one of the other two counselors. The employer refused arguing that the sexual preference of a client may not become known for a while, and it would be unfair to the patient to switch counselors at midstream. It would also be unfair to force the other counselors to assume a heavier workload. The court agreed with the employer that such accommodations would constitute an undue hardship.

The employer then suggested that she apply for a position in the agency where this conflict would be less likely to occur, offering the assistance of its in-house employment counselor. The plaintiff followed that suggestion but without success. She then contended that the employer's accommodation was not a reasonable one; it merely offered her the same opportunity available to any other employee. The court disagreed, stating that the employer was:

[G]iving Bruff the opportunity to transfer once she stated that she would not perform all aspects of her job description, instead of simply terminating her as an at-will employee refusing to fulfill her job responsibilities, that served to treat her differently from other employees because her actions were protected by Title VII.

The court thus ruled that the employer had met its legal responsibility for offering a reasonable accommodation [2].

In *Shelton v. University of Medicine & Dentistry of New Jersey*, a nurse who worked in the labor and delivery section of a hospital was asked to participate in an emergency medical procedure [3]. She refused because the procedure would

terminate the patient's pregnancy. As a member of the Pentecostal faith, she is forbidden from participating in any procedure that would end a life. Her refusal delayed the emergency procedure by 30 minutes, thereby risking the patient's safety. The plaintiff then requested that she be excused from such situations in the future [3].

The hospital offered two possible accommodations: She could be transferred to a staff nurse position in the newborn intensive care unit (ICU) or she could apply for any other nursing job in the hospital. She refused both offers. She did not want to work in the ICU because she had heard that infants are purposely allowed to die in that unit. She refused to apply for a different nursing position because she believed that such a move would require her to give up eight years of specialized training and make her undertake retraining. The court ruled for the hospital, stating that both of the accommodations offered by the employer were reasonable. The first accommodation was deemed reasonable because the plaintiff offered no proof substantiating the charge that the newborn ICU allowed infants to die. The second accommodation was deemed reasonable because a transfer would resolve the religious conflict without harming the plaintiff's career. Her salary and benefits would remain unchanged, and the additional training she would require would not be all that burdensome [3].

Requests for Time Off to Observe the Sabbath

Four of the cases reviewed dealt with this issue. Three of them (*Durant v. Nynex and Bell Atlantic Corp* [20], *Stone v. West* [12], *Thomas v. National Association of Letter Carriers* [14]) involved the suggested use of employee replacements. The employers told the workers that they could be absent on the Sabbath if they could find other qualified workers to take their place. The workers claimed that their employers should have offered to help them find qualified replacements. The courts were split on this issue. The *Durant* and *Thomas* courts ruled that such assistance was unnecessary [14, 20]. The *Stone* court, however, stated that the employer should have helped the employee to find a replacement, citing the EEOC regulation that obligates employers to facilitate the securing of a voluntary substitute with substantially similar qualifications [12].

The fourth case, *Cosme v. Henderson*, involved the employer's offer to transfer the employee to the job of "floater" with no loss in pay or seniority [16]. The plaintiff refused the offer, arguing that the accommodation he sought (eliminate Saturday from his work schedule) should be allowed because it would pose no undue hardship on the employer. Citing the Supreme Court's decision in *Ansonia Board of Education v. Philbrook*, [17], the judge ruled that the plaintiff's argument is irrelevant, since the employer offered two reasonable accommodations, either of which would have permitted the employee to take Saturdays off with no discernable loss on his part [16].

Request for Time Off for Religious Reasons

The one case dealing with this issue was *Jones v. N.Y.C. Department of Corrections* [10]. As previously noted, this case concerned a correction officer who requested four days' leave to attend a religious convocation. The employer told him he could take the leave if he found a replacement. He refused. The court ruled in the plaintiff's favor on this issue, noting that, while such an accommodation is usually considered to be a reasonable one, it is not reasonable in this instance due to the employer's past behavior. A similar situation had arisen previously, and the employee had found a replacement. But when he returned from the convocation, he was told that the swap had been canceled, and he was marked absent without leave for the time missed. Given his prior experience (which the employer claimed had been an honest mistake), he asked to use vacation days in lieu of swaps. The employer never responded to these requests, so the employee decided not to attend the conference. The judge ruled for the plaintiff on this issue, stating that the employer should not have insisted on the use of swaps, given the plaintiff's past experience with them [10].

Proving that Any Accommodation Would Result in Undue Hardship

In the cases described in the previous section, the employers refused the workers' accommodation requests and offered alternatives that they argued were reasonable. In the cases described in this section, the employers refused to make any accommodations, claiming that no reasonable accommodation was possible; each would be an undue hardship. Three cases fit this classification.

In *Baltgalvis v. Newport News Shipbuilding*, the plaintiff was a job applicant who refused to give the employer her social security number for religious reasons (as described previously) [5]. The only possible accommodation would have been to allow her to use some other number. The employer argued that doing so would violate a federal law and result in a \$50 fine imposed by the IRS. The plaintiff argued that paying a \$50 fine would not pose an undue hardship on the employer. The court ruled for the employer, however, stating that any accommodation that forces an employer to violate a law would be considered an undue hardship [5].

In *Hussein v. Hotel Employees and Restaurant Union*, the case in which the plaintiff asked the union to accommodate his request to arrive late for roll call so that he could attend church, the court ruled in favor of the employer [11]. The judge reasoned that the employer would suffer an undue hardship by accommodating this request because it would allow the plaintiff to bypass a procedure with which all other union members were required to comply. To accommodate this request would compromise the rights of the other employees. For instance, it would cause an economic hardship on those waiters who attended roll calls and would have been assigned jobs, except for the fact that the plaintiff

got his/her spot. Thus, there is no reasonable accommodation the union could make without causing an undue hardship [11].

Finally, in *Weber v. Roadway Express*, the plaintiff worked for Roadway as a truck driver [21]. He requested that when an overnight assignment involving a female partner came up, it should be assigned to another driver. As a Jehovah's Witness, he is forbidden from spending the night with any female other than his wife. The plaintiff argued that this request did not pose an undue hardship on the employer. The court disagreed, however, ruling that Title VII does not obligate an employer to force employees to trade shifts to accommodate the religious practices of employees. The accommodation requested by the plaintiff burdens his co-workers with respect to pay and time-off concerns. For example, the run that the plaintiff skips might be shorter and pay less than the one the substitute employee would have been given. The mere possibility of this result is sufficient to constitute undue hardship [21].

DISCUSSION

In this section we identify the major legal trends uncovered by this review and suggest actions that organizations may take to proactively and reactively address requests for accommodation.

Minimizing the Establishment of a *Prima Facie* Case

An employer is legally required to accommodate a worker's request for accommodation, if it is based on a sincerely held religious belief, and the belief conflicts with employment and necessitates the accommodation. Furthermore, a specific behavior need not be *required* by the religion, so long as it is part of religious observance and practice.

- When a religious accommodation is requested, the employer may legally question the sincerity of the employee's religious belief and request independent corroboration. Such corroboration may take the form of written certification from a pastor or church elder.
- The employer may request proof that the religious practices in question necessitate accommodation since employers need only accommodate requests dictated by religious beliefs, and not by personal preference.

An employer is not legally required to accommodate a worker's request for accommodation if not properly notified of this need.

- Employees are responsible for notifying employers of their accommodation needs prior to acting upon them. A firm need not accommodate them if the requests are given *ex post facto*.

- The organization may not require that the notification be in the form of written verification, as from a church or other religious authority. Notification is considered proper as long as it comes from the employee.

Employers are liable for any adverse consequences imposed on employees as a result of not reasonably accommodating their religious beliefs. Adverse consequences include disciplinary action, loss of employment, reduction in pay, or other punishments imposed by the employer.

- Where appropriate, the employer should not punish employees for their first offense. Rather, they should be given an official warning that such behavior will not be tolerated in the future. For example, if an employee comes to work wearing inappropriate religious adornments, the employer should give him/her a chance to remove them prior to issuing a punishment. If there were no negative consequence, the employee would not be able to establish a *prima facie* case of discrimination.
- Employers suffer no legal consequences when offering an employee an alternative accommodation that results in a negative consequence, if the employer does not directly impose those consequences.
- Employers are not liable for religious discrimination when acting in compliance with the requirements imposed by government agencies like the IRS.

Rebutting a *Prima Facie* Case

Should a *prima facie* case of religious discrimination be established, employers must justify the legality of their actions. If an employer offers an alternate accommodation that the worker rejects, the employer must prove that its offer was a reasonable one. An accommodation would be deemed “reasonable” if it eliminates the conflict between company policy and the religious practice; it need not be considered the “best” in the employee’s view. When unable to grant any accommodation, the employer must be able to prove that doing so would create an undue hardship.

- In response to employee requests to engage/disengage in certain job behaviors, employers are not required to provide accommodations that would undermine the organization’s mission, credibility, or ethical standards. Such accommodations are considered an undue hardship.
- Employers may deny requests to eliminate certain duties from an employee’s job for religious reasons if compliance would create an undue hardship. In such instances employers may suggest that an employee apply for another position in the organization. They may do so without having to extend any sort of preferential treatment in selection. The employer may also offer to transfer the worker, without any loss of salary or benefits.
- In response to requests for time off for the Sabbath or for other religious events that cause an undue hardship, employers should follow EEOC guidelines by

assisting employees in finding a qualified replacement worker. Employers can achieve this aim by maintaining a list of workers who are available for replacement duties.

There are instances when a request for religious accommodation may legally be denied, so long as the employer can prove that such accommodation would result in undue hardship. For example, employers are under no legal obligation to offer an accommodation that would:

- Cause it to bypass a procedure that all other employees must follow if it creates a hardship for those employees.
- Compromise the rights of other employees by forcing them to trade shifts or duties that would deny them pay or time off.

CONCLUSION

The aim of this article was to increase managers' understanding of how the courts adjudicate religious accommodation cases tried under Title VII of the CRA. Our analysis of a representative sample of cases enabled us to make some rather specific recommendations. Managers should be cautious when attempting to follow them, however. The development of case law is a dynamic process, subject to frequent change. We thus encourage policy makers to consider these recommendations as a starting point for their own legal research. That is, view these recommendations as the "default option" and keep abreast of recent cases to identify any changes that have occurred since this writing.

ENDNOTES

1. *TWA v. Hardison*, 432 U.S. 63, 97 S. Ct. 2264 (1977).
2. *Bruff v. North Mississippi Health Services*, 244 F.3d 495 (5th Cir. 2001).
3. *Shelton v. University of Medicine & Dentistry of New Jersey*, 223 F.3d 220 (3rd Cir. 2000).
4. *Anderson v. U. S.F Logistics*, 274 F.3d 470 (7th Cir. 2001).
5. *Baltgalvis v. Newport News Shipbuilding*, 132 F. Supp. 2d 414 (2001, E.D, VA).
6. www.eeoc.gov/stats/religion.html
7. H. M. Findley, F. Ingram, and G. Amsler, Religious Accommodation Principles for Employers, *Journal of Individual Employment Rights*, 9:3, pp. 211-226, 2000-2001.
8. *Bushouse v. Local Union*, 164 F. Supp. 2d 1066 (2001, N.D., IN).
9. *Hussein v. Pierre Hotel*, 99 Civ. 2715 (2001, S.D., NY).
10. *Jones v. N.Y.C. Department of Corrections*, 99 Civ. 10031 (2000, S.D., NY).
11. *Hussein v. Hotel Employees and Restaurant Union*, 108 F. Supp 2d. 360 (2000, S.D., NY).
12. *Stone v. West*, 133 F. Supp. 2d. 972 (2001, E.D., MI).
13. *Hussein v. Waldorf Astoria*, 134 F. Supp 2d. 591 (2001, S.D., NY).
14. *Thomas v. National Association of Letter Carriers*, 225 F.3d. 1149 (10th Cir. 2000).

15. *Beam v. General Motors*, C78-1130A (1979, N.D. OH).
16. *Cosme v. Henderson*, 287 F.3d 152 (2nd Cir. 2002).
17. *Ansonia Board of Education v. Philbrook*, 479 U.S. 60, 107 S. Ct 367 (1986).
18. *Quental v. Connecticut Commission on the Deaf and Hearing Impaired*, 122 F. Supp. 2d. 133 (2000, D.C., CT).
19. *Daniels v. Arlington*, 246 F.3d. 500 (5th Cir. 2001).
20. *Durant v. Nynex and Bell Atlantic Corp.*, 101 F. Supp. 2d 227 (2000, S.D., NY).
21. *Weber v. Roadway Express*, 199 F.3d 270 (5th Cir. 2000).

Direct reprint requests to:

Lawrence S. Kleiman
Department of Management
Bloomsburg University
Bloomsburg, PA 17815
e-mail: kleiman@bloomu.com