CLIENT ALERT: EEOC Issues Guidance on Workplace Discrimination on the Basis of Religion

There is new guidance for employers when addressing religious discrimination and accommodations in the workplace. The United States Equal Employment Opportunity Commission ("EEOC") recently published a revised section to its Compliance Manual that addresses employment-based religious discrimination and summarizes the current state of the law. The revised section addresses the provisions of Title VII of the Civil Rights Act of 1964 ("Title VII") that pertain to religious discrimination and accommodation. The EEOC also issued two companion guidance documents along with the revised Compliance Manual: Questions and Answers: Religious Discrimination in the Workplace and Best Practices for Eradicating Religious Discrimination in the Workplace.

Title VII prohibits employers with at least fifteen (15) employees from discriminating in employment on the basis of race, color, religion, sex, or national origin. With respect to religion, Title VII protects all aspects of religious observance and practice and defines "religion" very broadly. Religion includes not only traditional organized religions (e.g., Christianity, Judaism, Islam, Hinduism, Buddhism) but also religious beliefs that are new, uncommon, not part of a formal church, only subscribed to by a few, or those that seem illogical to others. Title VII prohibits employers from making employment decisions that are based on religion and prohibits unlawful harassment based on religion. Title VII also requires employers to accommodate an employee's sincerely held religious beliefs. Religious accommodations could include (without limitation) changing an employee's schedule, modifying an employee's job or tasks, making an exception to dress or grooming codes, or providing a work facility for religious observance. An employer need not provide a religious accommodation if it would pose an "undue hardship." Relevant factors to consider include the type of workplace, the nature of the employee's duties, the identifiable cost of the accommodation in relation to the size of the employer, and the number of employees who will need to be accommodated. The determination of whether a proposed accommodation would pose an undue hardship is based on concrete, fact-specific considerations.

The Compliance Manual contains examples of circumstances where the EEOC has concluded the existence of prohibited religious discrimination, including:

- refusing to grant an employee's request for a day off when a supervisor considers the employee's religion to be spurious;
- placing at job posting at a Hindu house of worship for management positions within a convenience store chain when the posting prompts the reader to refer only Hindu friends;
- promoting a Christian employee who is less qualified than a Buddhist counterpart because the employees' manager believes the Christian employee would be better able to identify with the firm's numerous Christian clients;

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- continuing to pressure a co-worker into accepting one's personal religious beliefs after the co-worker explicitly requested cessation of the commentary; and
- refusing to permit a Jehovah's Witness server at a restaurant to refrain from singing "Happy Birthday" to customers (when there were enough other servers on duty at any give time to perform this singing without affecting service) because her religious beliefs do not allow her to celebrate holidays, including birthdays.

The Best Practices publication provides suggestions to employers concerning religious discrimination in the workplace. These suggestions, while not surprising, provide a helpful synopsis of steps employers may take to minimize liability. A few of the suggestions include:

- When faced with a request for a religious accommodation which cannot be promptly implemented, an employer should consider offering alternative methods of accommodation on a temporary basis, while a permanent accommodation is being explored. In this situation, an employer should also keep the employee apprised of the status of the employer's efforts to implement a permanent accommodation.
- Employers should work with employees who need an adjustment to their work schedule to accommodate their religious practices.
- Employers should incorporate a discussion of religious expression, and the need for all employees to be sensitive to the beliefs or non-beliefs of others, into any anti-harassment training provided to managers and employees.
- Employees should provide enough information to enable the employer to understand what accommodation is needed, and why it is necessitated by a religious practice or belief.
- Employers can help reduce the risk of retaliation claims by carefully and timely recording the accurate business reasons for disciplinary or performance-related actions and sharing these reasons with the employee.

Employers must be sensitive to issues related to religion in the workplace and recognize that a religious discrimination claim should be treated as seriously as any other discrimination claim. In addition to Title VII, employers should be aware that state law may also provide protection from religious discrimination. If you have any questions or concerns about religious discrimination, or any other discriminatory issue, you should contact your MBJ attorney.

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