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Description of document: Equal Employment Opportunity Commission (EEOC)
Office of Federal Operations training slides "Religious
Garb and Grooming in the Workplace" from the internal
website, undated

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May 2, 2019

Re: FOIA No.: 820-2019-000378 (Religious Garb Training Slides)

Your Freedom of Information Act (FOIA) request, received on April 24, 2019, is processed. Our search began on April 24, 2019. All agency records in creation as of April 24, 2019 are within the scope of EEOC's search for responsive records. The paragraph(s) checked below apply.

[X] Your request is granted.

[X] You may contact the EEOC FOIA Public Liaison, Stephanie D. Garner, for further assistance or to discuss any aspect of your request. In addition, you may contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer.

The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at (202) 741-5770; toll free 1-877-684-6448; or facsimile at (202)741-5769.

The contact information for the FOIA Public Liaison: (see contact information in the above letterhead or under signature line).

[X] See the attached Comments page for further information.

Sincerely,

/s/Sdgarner

Stephanie D. Garner
Assistant Legal Counsel
Phone: (202) 663-4634
FOIA@eeoc.gov

Re: FOIA No.: 820-2019-000378

Comments

This is in response to your Freedom of Information Act (FOIA) request. You request a copy of the EEOC's Office of Federal Operations training slides, regarding Religious Garb from the internal website. Your request is granted.

Attached for your review are the slides for "Religious Garb and Grooming in the Workplace" (26 pages).

This response was prepared by Tracy L. Smalls, Government Information Specialist, who may be reached at 202-663-4331.



Religious Garb and Grooming in the Workplace:



Rights and Responsibilities Under Title VII of the Civil Rights Act of 1964



What Is a “Garb and Grooming” Practice?

- **Wearing religious clothing or articles**
e.g., a Muslim hijab (headscarf), a Sikh turban, or a Christian cross
- **Observing a religious prohibition against wearing certain garments**
e.g., a Muslim, Pentecostal Christian, or Orthodox Jewish woman's practice of not wearing pants or short skirts
- **Adhering to shaving or hair length observances**
e.g., Sikh uncut hair and beard, Rastafarian dreadlocks, or Jewish peyes (sidelocks)
- **Wearing a religious object or a religious marking**



Is a Garb and Grooming Practice Religious?

- Determining whether a practice is “religious” under Title VII turns not on the nature of the activity, but on the employee’s motivation
- *Examples: beards, dreadlocks, tattoos, piercings, modest clothing*
 - “religious” under Title VII if worn for religious reason
 - not protected as “religious” if worn for fashion or other secular reason



Example: Disparate Treatment or Segregation Based on “Customer Preference”

- Adarsh, who wears a turban as part of his Sikh religion, is hired to work at the counter in a coffee shop. After Adarsh begins working, the crew from the construction site near the shop stops coming in for coffee. The crew complains to the shop manager that Adarsh, whom they mistakenly believe is Muslim, makes them uncomfortable in light of the September 11th attacks, and that he ought to be fired.
- *Will the manager violate Title VII if he terminates Adarsh because the coffee shop is losing the construction crew's business?*
- *What if the manager transfers Adarsh to a kitchen position in order to keep him out of customers' sight?*



Religious Accommodation: Exceptions to Dress and Grooming Codes

- When an employer's dress and grooming policy or preference conflicts with an employee's known ***sincerely held religious beliefs or practices***, the employer must make an exception unless it would pose an undue hardship on the operation of the business.
- An employer may still hold other employees to the usual dress and grooming rules and expectations.



Undue Hardship

- a religious accommodation poses an “undue hardship” if it would pose “more than a *de minimis* burden” on the operation of the business
 - case-by-case, fact -specific determination.
 - much lower (i.e., easier for an employer to show) than the “undue hardship” defense to disability accommodation (defined in the ADA as “significant difficulty or expense”)



Religious Accommodation: “Sincerely Held” Religious Beliefs or Practices

- Like the "religious" nature of a belief or practice, whether it is “sincerely held” is usually not in dispute
 - An employer should not automatically assume that a practice is not sincere just because
 - it is novel
 - the belief or degree of observance changed over time (e.g., employee converts, or becomes more observant), or
 - is only observed on a particular holiday (e.g., only wearing a Muslim headscarf during Ramadan).



How Does an Employer Know To Consider a Religious Accommodation?

- Typically, the employer will advise an applicant or employee of its dress code or grooming policy, and subsequently the applicant or employee will indicate that an exception is needed for religious reasons.
- But applicants and employees will not know to ask for an accommodation until the employer makes them aware of a workplace requirement that conflicts with their religious practice.



How Does an Employer Know? (cont'd)

- The applicant or employee need not use any "magic words" to make the request, such as "accommodation" or "Title VII."
- If the employer reasonably needs more information, however, the employer and the employee should discuss the request.
- In some instances, even without a request, it is obvious that the practice is religious and conflicts with a work policy, and therefore that accommodation is needed.



Example: Employer Does Not Have Knowledge

- James is hired based on an online application and a telephone interview. When he arrives the first day with an unshorn beard, his supervisor informs him of the company's "clean-shaven" policy, and tells him he must comply or be terminated.
- James refuses to shave, but fails to inform his supervisor that he wears his beard for religious reasons. He is fired.

Does James have a viable claim for denial or religious accommodation?



Example: Employer Has Knowledge

- Aatma, an applicant for a rental car sales position who is an observant Sikh, wears a chunni (religious headscarf) to her job interview.
- The interviewer does not advise her that there is a dress code prohibiting head coverings, and Aatma does not ask whether she would be permitted to wear the headscarf if she were hired.
- The manager believes that the headscarf is a religious garment, presumed it would be worn at work, and refused to hire her because the company requires sales agents to wear a uniform with no additions or exceptions. *What result?*



Example: Corporate “Image” and Religious Accommodation

- Jon, a clerical worker who is an observant Jew, wears tzitzit (ritual knotted garment fringes at the four corners of his shirt) and a yarmulke (or skull cap) in conformance with his Jewish beliefs. XYZ Temps places Jon in a long-term assignment with one of its client companies.
- The client asks XYZ to notify Jon that he must remove his yarmulke and his tzitzit while working at the front desk, or assign another person to Jon's position.
- According to the client, Jon's religious attire presents the "wrong image" and also violates its dress code prohibiting any headgear and requiring "appropriate business attire."
- If XYZ Temps complies with the client's request, it will violate Title VII.



What About Government Agencies Whose Employees Work with the Public?

- Government agency employers, like private employers, must generally allow exceptions to dress and grooming codes as a religious accommodation.
- There may be limited situations in which the need for uniformity of appearance is so important that modifying the dress or grooming code would pose an undue hardship.
- Therefore, it is advisable in all instances for employers to make a case-by-case determination of any needed religious exceptions.



Example: Public Employee

- Elizabeth, a librarian at a public library, wears a cross as part of her Catholic religious beliefs. In addition, after church services she attends on Ash Wednesday each year, Elizabeth arrives at work with a black ash mark on her forehead in the shape of a cross, which she leaves on until it wears off.
- Her new supervisor directs her not to wear the cross in the future while on duty, and to wash off the ash mark before reporting to work.



Example: Public Employee (cont'd)

- Because Elizabeth's duties require her to interact with the public as a government employee, the supervisor fears that her cross and ash mark could be mistaken as government endorsement of religion in violation of the Establishment Clause of the First Amendment to the U.S. Constitution. He cites the need to avoid any appearance of religious favoritism by government employees interacting with the public, and emphasizes that librarians must be viewed as impartial with respect to any information requests from library patrons.
- ***Has the supervisor violated Title VII?***



Safety, Security, or Health Concerns

- Safety, security, or health concerns can justify denial of accommodation *if the practice actually poses an undue hardship on the operation of the business.*
- The employer should not assume that the accommodation would pose an undue hardship.
- In many instances, there may be an available accommodation that will permit the employer to provide accommodation without more than a minimal burden on safety, security, and health, and thereby avoid undue hardship.



Ensure a Case-By-Case Determination of Accommodation Requests

- Consider requests to wear religious headgear on a case-by-case basis to determine whether the identified risks actually exist in that situation and pose an undue hardship.
- Relevant facts may include: the individual's job, the particular garb at issue, and the available accommodations.
- *Example: Even in a correctional setting, if an individual's religious headgear can be worn in a manner that does not inhibit visual identification of the employee, and if temporary removal may be accomplished for security screens and to address smuggling concerns without undue hardship, the individual can be accommodated.*



Examples

U.S. v. New York State Dep't of Corr. Servs., Civil Action No. 07-2243 (S.D.N.Y. settlement approved Jan. 18, 2008): DOJ case on behalf of Muslim correctional officers who were barred from wearing religious headgear. Settlement: employee requests for religious exemptions from uniform and grooming requirements would be determined on a case-by-case basis.

U.S. v. New York City Transit Auth., 2010 WL 3855191 (E.D.N.Y. Sept. 28, 2010): DOJ prevailed in case on behalf of Muslim and Sikh bus drivers, train operators, and subway station agents sought exception to required logo hat, asking to affix the employer's logo to a shirt or jacket pocket or collar rather than to their turbans or headscarves (khimars).



Example: Kirpan

- Harvinder, a Sikh who works in a hospital, wears a small (4-inch), dull, and sheathed kirpan (symbolic miniature sword) strapped and hidden underneath her clothing, as a symbol of her religious commitment to defend truth and moral values.
- When Harvinder's supervisor, Bill, learned about her kirpan from a co-worker, he instructed Harvinder not to wear it at work because it violated the hospital policy against weapons in the workplace.
- Harvinder explained to Bill that her faith requires her to wear a kirpan in order to comply with the Sikh code of conduct, and gave him literature explaining that the kirpan is a religious artifact, not a weapon. She also showed him the kirpan, allowing him to see that it was no sharper than the butter knives found in the hospital cafeteria. Nevertheless, Bill told her that her employment at the hospital would be terminated if she continued to wear the kirpan at work.
- ***Has Bill's decision violated Title VII?***



Harassment and Retaliation

- *Coercion*: Requiring or coercing an employee to abandon, alter, or adopt a religious practice as a condition of employment can be disparate treatment or harassment.
- *Hostile Work Environment*: Religious harassment may also occur when an employee is subjected to unwelcome statements or conduct based on religion, i.e., offensive remarks about a person's religious beliefs or practices, or verbal or physical mistreatment that is motivated by the victim's religious beliefs or practices.
- *Retaliation*: remember that requests for religious accommodation are protected activity.



Compliance Tips

- Train managers to allow employees to wear religious garb absent undue hardship, even if it requires making an exception to a dress code or uniform policy.
- Train managers that the law does not permit employment decisions, including assignment to a non-customer contact position, because of “customer preference.”
- Train managers not to assume that atypical dress will create an undue hardship. Consider accommodation requests based on the facts.
- Train all staff to avoid stereotyping based on religious dress and grooming.



Resources for Additional Information

- **Religious Garb and Grooming in the Workplace: Rights and Responsibilities**

www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm

- **Fact Sheet on Religious Garb and Grooming In the Workplace**

www.eeoc.gov/eeoc/publications/fs_religious_garb_grooming.cfm



Resources (cont'd)

EEOC Compliance Manual: Religious Discrimination (2008)

*[www.eeoc.gov/policy/docs/
religion.html](http://www.eeoc.gov/policy/docs/religion.html)*



Questions and Answers: Religious Discrimination in the Workplace (2008)

*[www.eeoc.gov/policy/
docs/qanda_religion.html](http://www.eeoc.gov/policy/docs/qanda_religion.html)*

Best Practices for Eradicating Religious Discrimination in the Workplace (2008)

*[www.eeoc.gov/policy/docs/
best_practices_
religion.html](http://www.eeoc.gov/policy/docs/best_practices_religion.html)*



Resources (cont'd)

- **Guidelines on Religious Discrimination**

29 CFR Part 1605

- **Questions and Answers About Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians, and Sikhs**

www.eeoc.gov/eeoc/publications/backlash-employer.cfm

- **Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the Equal Employment Opportunity Laws**

www.eeoc.gov/eeoc/publications/backlash-employee.cfm



Resources (cont'd)

- **Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (1997)**

<http://clinton2.nara.gov/WH/New/html/19970819-3275.html>



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