Proskauer

EEOC Issues New Guidance on Religious Garb and Grooming in the Workplace

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On March 6, 2014, the Equal Employment Opportunity Commission ("EEOC") released a new question-and-answer guide and accompanying fact sheet on religious dress and grooming in the workplace, under Title VII of the Civil Rights Act of 1964. The EEOC indicates that religious discrimination charges have increased steadily, so the agency is attempting to improve employer awareness and compliance.

The guide answers sample employers' questions about how federal employment discrimination law applies to religious dress and grooming practices, and gives employers advice on what steps to take to meet their legal obligations in this area. While the guide does not create any new obligations, it does attempt to clarify several important and complex issues regarding how Title VII applies to issues of religion in the workplace including, among others:

- The basics of the application of Title VII to religious dress and grooming in the workplace;
- What it means for a religious practice to be "sincerely held";
- What an employer should do if an applicant or employee's religious garb violates an employer's appearance policy or dress code;
- Examples of appropriate accommodations for an employee's religious dress or grooming practice;
- What constitutes retaliation against an employee for requesting a religious accommodation; and
- What constitutes religious harassment under Title VII, and what obligations an employer has to stop it.

The question-and-answer guide includes illustrative examples for each question, and provides a list of other resources for employers related to the topic of religious accommodation. This client alert summarizes the key aspects of the question-and-answer guide.

I. Employer Guide at a Glance

The guide outlines practices prohibited by Title VII with respect to religion in the workplace, including disparate treatment based on religion in any aspect of employment, denial of reasonable accommodation for sincerely held religious beliefs (unless it would cause an undue hardship for the employer), workplace or job segregation based on religion, workplace harassment based on religion, and retaliation for requesting an accommodation. Title VII protects all aspects of religious observance, practice, and belief, and defines religion very broadly to include not only traditional, organized religions, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that may seem illogical or unreasonable to others. Title VII applies to any practice motivated by religious belief, even if other people may engage in the same practice for secular reasons. If an employer questions whether an employee's belief is sincerely held, and an accommodation has been requested, it may ask for information reasonably needed to evaluate the request. However, the sincerity of an employee's stated religious belief is not usually in dispute in religious discrimination cases according to the EEOC guidance.

The guide continues by answering questions related to actions that an employer may or may not take in response to an employee's religious dress or grooming practices. It explains that employers may not take action against an employee based on the discriminatory religious preferences of others, including customers, clients, or co-workers. It also explains that employers may not assign employees to non-customer contact positions because of customer preference. Additionally, it explains that employers may not automatically refuse to accommodate an applicant's religious garb or grooming practice, even if it violates the employer's appearance or dress policy. Rather, the employer must make an exception to allow the religious practice unless it would be an undue hardship.

The guide then discusses various types of reasonable accommodations, such as covering the religious attire or item at work if permitted by the religious belief. It indicates that in some instances, an employer's reliance on a company's "image" or marketing strategy to deny a requested religious accommodation may be insufficient to demonstrate that making an exception would be an undue hardship. It makes clear, however, that an employer may bar an employee's religious dress or grooming practice based on workplace safety, security, health concerns, or if the practice actually poses an undue hardship on the operation of the business.

Finally, the guide discusses Title VII's prohibition on retaliation and harassment in the context of protected religious activity, including requesting religious accommodation, or opposing an allegedly discriminatory practice.

II. What Does This Mean for Employers?

Although the guide creates no new obligations, it illustrates the complexity of an employer's obligation to respect, and at times accommodate, its employees' religious beliefs or practices. It also signals the EEOC's commitment to vigorously enforcing Title VII's prohibition on religious discrimination. To reduce the risk of religious discrimination claims, employers should consider the following pro-active steps:

- Articulate a commitment to providing reasonable accommodations, and carefully evaluate when a religious accommodation would or would not be an undue hardship;
- Have a process in place for addressing religious accommodation requests;
- Publicize and apply an anti-harassment policy that clearly explains what is prohibited, and provides avenues for complaints to management; and
- Take note of any applicable state or local laws addressing religious discrimination and harassment, which may be broader than required by federal law. For example, the New York City Workplace Religious Freedom Act [see our client alert of August 31, 2011] is more protective of employee rights requiring affirmative religious accommodation obligations from covered employers.

If you have any questions regarding the new EEOC guidance, or compliance with Title VII or applicable state or local laws, please contact your Proskauer lawyer or any of the lawyers listed on this alert.