



ACCOMMODATING RELIGIOUS BELIEFS IN THE WORKPLACE: WHAT'S KOSHER?

Charles H. Saul
Kyle T. McGee

PHILADELPHIA OFFICE
170 S. Independence Mall West
The Curtis Center, Suite 400E
Philadelphia, PA 19106-3337
215-922-1100

HARRISBURG OFFICE
3510 Trindle Road
Camp Hill, PA 17011
717-975-8114

WESTERN PA OFFICE:
983 Third Street
Beaver, PA 15009
724-774-6000

SCRANTON OFFICE
220 Penn Avenue
Suite 305
Scranton, PA 18503
570-342-4231

MARGOLIS EDELSTEIN

Charles H. Saul, Esquire
412-355-4961

csaul@margolisedelstein.com

Kyle T. McGee, Esquire
412-355-4971

kmcgee@margolisedelstein.com

525 William Penn Place
Suite 3300
Pittsburgh, PA 15219

CENTRAL PA OFFICE
P.O. Box 628
Hollidaysburg, PA 16648
814-695-5064

SOUTH JERSEY OFFICE
100 Century Parkway
Suite 200
Mount Laurel, NJ 08054
856-727-6000

NORTH JERSEY OFFICE
Connell Corporate Center
400 Connell Drive
Suite 5400
Berkeley Heights, NJ 07922
908-790-1401

DELAWARE OFFICE:
300 Delaware Avenue
Suite 800
Wilmington, DE 19806
302-888-1112

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I. INTRODUCTION

The issue of religious discrimination in the workplace has come front and center with the recent arguments before the U.S. Supreme Court in the case of EEOC v. Abercrombie & Fitch, No. 14-86 (U.S.). This paper presents an update on some of the recent Title VII religious discrimination cases and developments. Some of the basic legal principles regarding religious discrimination cases are presented in order to provide a framework for the cited recent cases. However, a much more detailed article would be needed to cover the broad spectrum of religious discrimination law.

II. RECENT DEVELOPMENTS AT THE EEOC

In fiscal year 2014 the EEOC received 3,549 charges alleging religious discrimination. This number is a slight decrease from the previous year. However, it is more than double the number of Charges filed in 1997 and about 25% more than in 2007. The EEOC entered into 268 settlements in fiscal 2014 and 34 successful conciliations. In fiscal 2014, there were "no reasonable cause" determinations by the EEOC in 65.1% of the religious-based cases it decided.

Only 3.2% of the religious-based cases decided by the EEOC in fiscal 2014 resulted in a "reasonable cause" determination; however, this figure does not include cases where there was a successful conciliation or other outcome providing some type of relief to the charging party. The EEOC reports that 15.7% of the cases resulted in merit resolutions, which include negotiated settlement, withdrawal with benefits, successful conciliations, and unsuccessful conciliations (See the materials at the end of this paper for the EEOC's statistical report for fiscal years 1997 through fiscal year 2014 and the EEOC's definitions of terms used in its report).

The EEOC filed 68 suits since the beginning of fiscal year 2010 through fiscal year 2014 in which it alleged religious discrimination. During the same period the Commission secured approximately \$4 million for alleged victims of religious discrimination, as well as injunctive and other "make whole" relief.

The EEOC reported the following recent settlements in religious discrimination law suits filed by the EEOC:

- EEOC v. Abercrombie and Fitch, and EEOC & Khan v. Abercrombie and Fitch: Abercrombie & Fitch agreed to pay \$71,000 and to change its policies to settle two separate religious discrimination lawsuits on behalf of Muslim teens wearing hijabs (headscarves) (not to be confused with the current Abercrombie and Fitch case before the Supreme Court).
- EEOC v. AutoZone, Inc.: AutoZone settled a discrimination lawsuit filed in September 2010 that charged that the company violated federal law when it subjected a Sikh employee to harassment and refused to accommodate his religious need to wear a turban.

- EEOC v. Scottish Food Systems, Inc. d/b/a Kentucky Fried Chicken and Laurinburg KFC Take Home, Inc. d/b/a Kentucky Fried Chicken: KFC franchise settled an EEOC lawsuit alleging that it failed to accommodate Charging Party's religious beliefs and terminated her in violation of Title VII. The EEOC alleged Defendant Scottish Food Systems purchased KFC and at that time informed Charging Party that she must wear pants to work because of their dress code policy. The EEOC further claimed Charging Party notified Scottish Food Systems that she could not wear pants because of her religious beliefs. Instead of reasonably accommodating her, Scottish Foods Systems terminated her for refusing to wear pants to work.

Recent guidance from the EEOC on religious discrimination issues are listed at Section IV hereof.

III. TITLE VII - THE BASIC LEGAL FRAMEWORK

Title VII provides that it is an unlawful employment practice for an employer to discriminate against an individual with respect to conditions of employment because of his/her religion. 42 U.S.C. § 2000e-2(a). Title VII prohibits:

Disparate treatment: treating applicants or employees differently based on their religious beliefs or practices - or lack thereof - in any aspect of employment;

Harassment/hostile workplace: subjecting employees to harassment because of their religious beliefs or practices - or lack thereof - or because of the religious practices or beliefs of people with whom they associate;

Denying reasonable accommodation: denying a requested reasonable accommodation of an applicant's or employee's sincerely held religious beliefs or practices - or lack thereof - if an accommodation will not impose more than a de minimis cost or burden on business operations; and,

Retaliation: retaliating against an applicant or employee who has engaged in protected activity, including participation (e.g., filing an EEOC Charge alleging religious discrimination or testifying as a witness in someone else's EEOC Charge), or opposition to religious discrimination (e.g., complaining to management about alleged religious discrimination).

A. DEFINITION OF RELIGIOUS BELIEFS AND PRACTICES

The term "religion" includes all aspects of religious observance and practice, as well as belief. 42 U.S.C. § 2000e(j). The EEOC defines religious practices to include "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." 29 C.F.R. § 1605.1. The regulations further provide: "The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. Id.

Therefore, the court's inquiry into whether a belief is "religious" is limited to determining whether the belief is (1) "sincerely held" and (2) religious within the plaintiff's "own scheme of things." See, *Welsh v. United States*, 398 U.S. 333, 339 (1970); *United States v. Seegar*, 380 U.S. 163, 185 (1969).

B. DISPARATE TREATMENT RELIGIOUS DEISCRIMINATION

In the absence of direct evidence of discrimination, the familiar three-step McDonnell Douglas test is used in "disparate treatment" religious discrimination cases. *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973).

To satisfy the first step of showing a prima facie case, the plaintiff must show he/she: (1) belongs to a protected class; (2) was qualified for the position; (3) was subject to an adverse employment action; and (4) nonmembers of the protected class were treated more favorably. *Sarullo v. U.S. Postal Serv.*, 352 F.3d 789, 797 (3d Cir.2003); *Abramson v. William Paterson College of New Jersey*, 260 F.3d 265 (3d Cir. 2001).

If the plaintiff establishes a prima facie case, the employer must proffer a legitimate, non-discriminatory reason for the adverse employment decision. Once the employer does so, the plaintiff must demonstrate that the proffered reason was pretextual. *Goosby v. Johnson & Johnson Med., Inc.*, 228 F.3d 313, 318-319 (3d Cir.2000).

C. RELIGIOUSLY HOSTILE WORK ENVIRONMENT

Employees subject to a religiously hostile work environment are entitled to recovery under Title VII pursuant to the same legal standards applied to sexually hostile work environment cases.

Thus, to establish a prima facie case for a religiously hostile work environment, a plaintiff must show: (1) the employee suffered intentional discrimination because of religion; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same religion in that position; and (5) the existence of respondeat superior liability. *Abramson*, 260 F.3d at 276-277.

D. FAILURE TO ACCOMMODATE BELIEFS AND PRACTICES

In a failure to accommodate religious claim, the employee must show that he/she: (1) holds a sincere religious belief that conflicts with a job requirement; (2) informed the employer of the conflict; and (3) was disciplined for failing to comply with the conflicting requirement. If these elements are established, the burden shifts to the employer to show either it made a good-faith effort to reasonably accommodate the religious belief, or such an accommodation would work an "undue hardship" upon the employer. *Webb v. City of Phila.*, 562 F.3d 256, 259 (3d Cir.2009).

. "An 'undue hardship' is one that results in more than a de minimis cost to the employer. Both

economic and non-economic costs can create an undue hardship upon employers. For example, violations of a seniority provision of a collective bargaining agreement or the threat of criminal sanctions could be considered as an undue hardship." *Webb*, 562 F.3d at 259-260

III. RECENT COURT CASES

Refusal to Accommodate Religious Beliefs: Garb

1. *EEOC (Elauf) v. Abercrombie & Fitch Stores, Inc.*, No. 14-86 (U.S.). This case is currently pending before the U.S. Supreme Court. Oral argument was held on February 25, 2015. The EEOC filed suit on behalf of a Muslim, Samantha Elauf, who wore a hijab (headscarf) in accordance with her religious beliefs. She applied for a job with Abercrombie, which had a "Look Policy" that prohibited the wearing of caps. When she interviewed for the job she wore a headscarf. She received good marks from the assistant manager who interviewed her. Before offering her the job, however, the assistant manager decided to check with a district manager to ask whether the headscarf violated the company's "Look Policy." When the district manager told the assistant manager that it violated the policy, the assistant manager stated that she believed Elauf was a Muslim and that she wore it for religious reasons. The assistant manager recommended that Elauf be hired. The district manager, however, ordered the assistant manager to lower her score in the category of "appearance and sense of style" and not to hire her.

The EEOC filed suit on behalf of Elauf alleging that the company had violated Title VII by refusing to hire Elauf because she wore a headscarf and by failing to accommodate her religious beliefs by making an exception to its "Look Policy." The District Court granted summary judgment to the EEOC. It found that the EEOC had made out a prima facie case of religious discrimination despite the failure of Elauf to have literally met the second criteria for a prima facie case, i.e., the notification to the employer of a religious belief. It found, in accordance with several Courts of Appeals, that the notice requirement was met when an employer has enough information to make it aware that the individual's religious belief or practice conflicted with a requirement for the job.

The 10th Circuit Court of Appeals, in a 2-1 decision, reversed and granted summary judgment to the company. It concluded that there could be no violation of Title VII based upon religious belief or practice unless the applicant or employee gave the employer explicit, verbal notice of a religious conflict so that the employer would have particularized, actual knowledge of the key facts necessary to trigger a duty to accommodate. By an evenly divide vote, the Court of Appeals denied a hearing en banc.

Refusal to Accommodate Religious Beliefs: "Onionhead" case

2. *EEOC v. United Health Programs of America, Inc.*, No. 14-3673 (E.D.N.Y.). The EEOC filed suit in June 2014, against United Health Programs and its parent company, Cost Containment Group, Inc., on behalf of three employees seeking class treatment for allegedly unlawful employment practices. The EEOC contends that the employees were required to engage in an "Onionhead" belief system, which includes requirements that employees pray, read spiritual texts, participate in prayer circles, and tell colleagues at work "I love you." The employers have denied any and all liability, and, among other defenses, contend that the

"Onionhead" belief system is not a religion and that the events the employees were required to attend were part of a corporate wellness program and/or self-improvement workshops. This matter is presently in the discovery stage before the District Court.

Refusal to Accommodate Religious Beliefs: Grooming

3. *EEOC v. Mims Distributing Company, Inc.*, Civil Action No. 5:14-CV-00538. Alston was a practicing Rastafarian. He applied for a job as a delivery driver with Mims in May 2014. As a Rastafarian, he cannot cut his hair and, in accordance with these religious beliefs, had not cut his hair since at least 2009. At that time, the company informed Alston that he would have to cut his hair if he wanted the position. Alston told Mims he could not cut his hair because of his religious beliefs. The EEOC alleged that the company refused to hire Alston because he refused to cut his hair and that in doing so it failed to reasonably accommodate an employee's religious beliefs. According to the EEOC, it would not have been an undue hardship for Mims to accommodate Alston's religious beliefs. In January 2015, the EEOC announced that under a settlement agreement, Mims would pay Alston \$50,000 and furnish other relief to resolve this religious discrimination lawsuit

Refusal to Accommodate Religious Beliefs: Garb

4. *EEOC v. Shadecrest Health Care Center*, No. 14-1253 (N.D. Ala.). The EEOC filed suit in June 2014, on behalf of a Muslim employee against her nursing home employer because the employer refused to allow her to wear a hijab headscarf at work and later terminated her after she filed an EEOC charge. The case is currently in the discovery phase.

Refusal to Accommodate Religious Beliefs: Jehovah's Witness

5. *Shepherd v. Gannondale*, 1:14-CV-8, 2014 WL 7338714 (W.D. Pa. Dec. 22, 2014). Plaintiff Sharon Shepherd filed a Complaint alleging a discriminatory discharge arising out of a refusal to accommodate her religious beliefs. She worked for Gannondale, a ministry of the Sisters of Our Lady of Charity, which provided holistic and therapeutic residential care for young women placed by the court. Shepard worked as the Bookkeeping Supervisor. She had been a practicing member of the Jehovah's Witness faith for more than twenty years.

Gannondale utilized the Sanctuary Model, "a theory-based, trauma-informed, evidence-supported, whole culture approach that has a clear and structured methodology for creating or changing an organizational culture." Central to the philosophy is the premise that trauma-informed change requires a change in the basic mental models upon which thought and action is based and without such change, treatment is bound to fall unnecessarily short of full recovery or fail entirely. The change in mental models must occur on the part of the clients, their families, the staff, and the leaders of the organization.

At Gannondale, it was required for employees to attend and participate in community meetings. These meetings were designed to involve staff and organizational leaders in establishing the "whole organization" implementation of the Sanctuary. During these meetings the employees were asked numerous questions about their feelings in goals. The answers to these questions had to be aligned with the Sanctuary Model. Some of the principles under the

Sanctuary Model deal with democracy, which Plaintiff alleges is in violation of her beliefs as a Jehovah's Witness. Shepherd does not vote, does not participate in politics, and tries to remain neutral and separate from worldly governments.

In the fall of 2012, Shepherd approached the HR Manager and said she could no longer attend community meetings because "I have my own religion." In response, the HR Manager stated, "I know." She told Shepherd if the meetings conflicted with her religious beliefs, she did not have to attend them. However, shortly thereafter Shepherd was told if she would not participate in such meetings, she should seek employment at a place where the philosophy was more suited to her. When Shepard continued to state that she would not attend these meetings, she was fired. Judge Mitchell denied the Defendant's motion for summary judgment, finding that Shepherd had a sincerely-held religious belief; that she had established a prima facie case of failure to accommodate; and that the Defendant had not demonstrated that an accommodation would have constituted an undue hardship.

The case settled in early March 2015.

Refusal to Accommodate Religious Beliefs: Atheist

6. *Mathis v. Christian Heating and Air Conditioning, Inc.*, 13-CV-3740, 2015 WL 1084308, (E.D. Pa. Mar. 12, 2015). The Plaintiff was employed as a sheet metal installer for defendant, Christian Heating and Air Conditioning, Inc. The company was owned by David Peppelman, who also served as Plaintiff's supervisor. The Plaintiff asserted that during his employment he was subjected to comments from Peppelman about his religious beliefs and that Peppelman repeatedly insisted that Plaintiff attend church.

The Plaintiff was also required to wear an identification badge with defendant's mission statement printed on the back, which read in part: "This company is not only a business, it is a ministry. It is set on standards that are higher than man's own. Our goal is to run this company in a way most pleasing to the lord [sic]...." The Plaintiff wore the badge during work hours but covered the mission statement with a piece of tape. Plaintiff claims that wearing the badge conflicted with his beliefs as an atheist.

The Plaintiff alleged that Peppelman approached Plaintiff and told him that he could not continue to work unless he removed the tape from the back of his identification badge. The Plaintiff informed Peppelman that the mission statement conflicted with his religious beliefs and he felt that the badge was an attempt to force religious beliefs on him. The Plaintiff contends that, as a result of this conversation, he was terminated from employment on January 23, 2012. Plaintiff alleged that he was denied a reasonable religious accommodation and terminated in retaliation for his religious beliefs. The company moved to dismiss for failure to state a claim under the doctrine of collateral estoppel based upon an unemployment compensation finding that Plaintiff had quit his employment and had not shown that it was for a necessitous and compelling reason. The Court granted defendant's Motion to Dismiss as to the discharge claim based upon collateral estoppel, but denied it as to the retaliation claim. Plaintiff filed a Motion for Clarification, citing for the 1st time the following provision of Pennsylvania Unemployment Compensation Law, 43 P.S. § 829:

No finding of fact or law, judgment, conclusion or final order made with respect to a claim for unemployment compensation under this act may be deemed to be conclusive or binding in any separate or subsequent action or proceeding in another forum.

The Court then reversed itself and denied the Motion to Dismiss in its entirety.

Refusal to Accommodate Religious Beliefs: Mark of the Beast

7. *Yeager v. FirstEnergy Generation Corp.*, 777 F.3d 362, 362-63 (6th Cir. 2015), reh'g denied (Feb. 11, 2015). Yeager filed a complaint against FirstEnergy Generation Corporation, alleging that the defendant discriminated against him on the basis of his religion, in violation of Title VII by refusing to hire him or by terminating his employment because he failed to provide a social security number. Yeager alleged that he had no social security number because he had disclaimed and disavowed it on account of his sincerely held religious beliefs.

Yeager was a Fundamentalist Christian who disavowed his social security number when he turned 18 years old. Yeager believes that his identification by any number-including a social security account number-causes him to have the "Mark of the Beast," which his religion prohibits. The Court of Appeals held that the employer did not violate Title VII by refusing to hire Yeager or by terminating his employment because he failed to provide his social security number. The Court found, in accordance with all four other Circuits which addressed the issue, that Title VII does not require an employer to reasonably accommodate an employee's religious beliefs if such accommodation would violate a federal statute. In this case, the IRS requires employers to collect and provide social security numbers of its employees. Therefore, the Court affirmed the district court's dismissal of the Complaint.

After a Motion for Rehearing was denied, Yeager filed a Petition for Certiorari on April 30, 2015. (Note: Plaintiff cited to 26 U.S.C.A. § 6724, which provides, "No penalty shall be imposed under this part with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect." However, the District Court did not find this argument persuasive on the basis that Plaintiff had not provided any evidence that religious beliefs would be considered reasonable cause. The Court of Appeals did not accept this argument.)

Refusal to Accommodate Religious Beliefs: Sabbath Observance

8. *Johnson v. Mobile Infirmary Med. Ctr.*, 13-0431-WS-M, 2015 WL 1538774, at *1 (S.D. Ala. Apr. 7, 2015). Johnson was an African-American female and a member of the Seventh Day Adventist Church. She alleged that Mobile Infirmary scheduled her to work in a manner that conflicted with her religious beliefs, in violation of Title VII. At the outset of her employment, Johnson notified Mobile Infirmary of her status as a Seventh Day Adventist and her resulting unavailability between the hours of sunset on Friday evenings and sunset on Saturday evenings in observance of her Sabbath.

Mobile Infirmary accommodated Johnson's religious beliefs for many years by not scheduling her to work during her Sabbath observances. A new supervisor, however, changed the work policy, stating that each nurse must work one weekend per month. Johnson wrote a letter to her supervisor stating that working on a Saturday would deeply conflict with her religious beliefs.

Ultimately, the employer agreed to an accommodation whereby Plaintiff worked an extra Sunday per month instead of Saturday

One week, however, Johnson left work early, was late several times, and had to miss two shifts to take care of a sick child. Her supervisor then changed the schedule to require Johnson to work on a Friday shift that would take her into Friday evening in contravention of Johnson's religious beliefs. When she so informed her supervisor, her supervisor refused to change the schedule because she said it would be inconvenient. On Friday Johnson received calls from her child's school that her child was vomiting. When Johnson told her supervisor at around noon that she had to leave to take her child to the doctor, the supervisor told her that if she left, she would get a final warning and a suspension.

Johnson left and did not return to work that day, claiming that she did not return to work because by the time she came home from the doctor, it was close to sundown. When Johnson returned to work the next week she received a final warning and a suspension.

The Judge found that Johnson was disciplined for leaving work early on Friday to take care of her child and not for refusing to work after sundown. Therefore, he granted the employer's Motion for Summary Judgment on the religious accommodation claim, but denied the Motion as to Johnson's Family Medical Leave Act claim.

Refusal to Accommodate Religious Beliefs: Sabbath Observance

9. *Davis v. Fort Bend County*, 13-20610, 2014 U.S. App. LEXIS 16470 (5th Cir. Aug. 26, 2014). The plaintiff told her supervisor she could not work to help install a computer network system in a new building on a Sunday morning because she needed to attend a special church service. The employee was willing to come into work once the service was over and arranged for a replacement during her absence as she had done in the past. Her supervisor did not approve the absence and told her an absence would be grounds for discipline. When plaintiff attended the service instead of working, she was terminated.

The district court granted the County's motion for summary judgment, finding that the employee's absence was due to a personal commitment rather than a religious commitment. The Fifth Circuit reversed, finding that the proper inquiry was whether the employee sincerely had a religious belief that attendance was religious. The appeals court also found that the County had not shown that accommodating plaintiff would be an undue hardship. It noted cases where courts had found that requiring a substitute would be an undue hardship, but distinguished such cases on the grounds that in this case plaintiff had found a ready and willing substitute. The County filed a Petition for Certiorari on January 16, 2015.

Refusal to Accommodate Religious Beliefs

10. *King v. Borgess Lee Meml. Hosp.*, 1:13-CV-397, 2015 WL 852324 (W.D. Mich. Feb. 26, 2015). Plaintiff, a Muslim, began working for Defendant Borgess Lee Memorial Hospital in 2003. Her duties included basic secretarial duties and patient interactions, including putting arm bands on patients. Plaintiff refused to put arm bands on male patients on religious grounds. She also voiced concerns about touching male patients.

In June 2012 a new supervisor was assigned to Plaintiff's department. Prior to that time Plaintiff's religious beliefs were accommodated. The new supervisor told Plaintiff that placing identification on male patients prior to treatment was a duty of the position. Plaintiff refused, indicating that she could only clip the armband to the chart and someone else could actually place the armband on the patient.

Later in June, as a result of Plaintiff refusing to put an armband on a male patient, a patient received an incorrect armband which created a safety risk for the patient. Plaintiff was immediately removed from her position and was given 60 days to locate other work in the hospital. Plaintiff was unable to secure other employment at which point her employment was terminated.

The Court granted Defendant's Motion for Summary Judgment, finding that accommodating Plaintiff's religious beliefs would patently cause an undue hardship to the employer. The Court also found that Plaintiff had been offered a reasonable accommodation of wearing gloves when she put the armband on male patients (Note: Plaintiff proceeded pro se after the filing of the MSJ).

Refusal to Accommodate Religious Beliefs: Sabbath Observance

11. **EEOC v. United Cellular, Inc.**, No. 13-1207 (N.D. Ala.). The EEOC filed suit in June 2013 on behalf of, Charles Embry, an employee who is a member of the Seventh-day Adventist Church, claiming that United Cellular repeatedly failed to provide reasonable accommodations to Mr. Embry's sincerely held religious beliefs and practices, reduced his hours of work for refusing to work on the Sabbath for his religion (from sundown Friday through sundown Saturday) and by ultimately terminating him based on his religion for not working on the Sabbath. United Cellular contends that it appropriately made accommodations for Mr. Embry's need to work on his Sabbath. United Cellular further contends that a scheduling oversight required Mr. Embry to work until 6:30 p.m. on the Sabbath, and, despite the fact that the schedule was known far in advance, Mr. Embry did not notify his employer of the conflict until he was already at work on the date in question wherein he abandoned his position. United Cellular further claims that the reduction in hours was lawful based upon seniority of other employees, arguing that it is not lawful to give preference to Mr. Embry based upon his religion. The EEOC moved for summary judgment and briefs were filed in May 2014. This matter, including the EEOC's motion for summary judgment, is currently pending before the court.

Refusal to Accommodate Religious Beliefs: Attendance at Religious Events

12. *EEOC v. Food Lion LLC*, No. 14-708 (M.D.N.C.). On August 20, 2014, the EEOC filed suit against a grocery retailer who fired an employee weeks after he was hired because he was unavailable to work on days he was required to attend Jehovah's Witness services and meetings on Sunday and Thursdays. The employee was a minister and elder in his congregation, and was required to attend church services and other religious meetings. Plaintiff alleged he told the employer in advance of his religious requirements, but that the manager of the store to which he was assigned refused to accommodate his request. When the employee missed work to attend a Jehovah's Witness convention, the manager fired him because he was not available to work on Sundays. Dispositive motions are due on July 30, 2015.

Refusal to Accommodate Religious Beliefs

13. *Knox v. Union Tp. Bd. of Educ.*, CIV. 2:13-5875, 2015 WL 769930 (D.N.J. Feb. 23, 2015). Knox was a public school teacher. At the school, she held two ancillary positions. She was the academic advisor for a Christian Bible study group, and she was the advisor for the School's Gospel Choir. Knox was also an ordained minister.

In September 2011, Knox posted a public message on Facebook stating that a school billboard that promoted alternative lifestyles did not accord with her religious beliefs. Knox's Facebook posts were not done using school equipment or during school hours. Facebook users commented on Knox's post, and Knox responded. Her responses included an explanation of her religious objections to the billboard; statements about the Bible and homosexuality; characterizations of homosexuality as a sin and disobedience to God; and descriptions of salvation through Jesus. Knox's comments prompted racist posts from other users.

The school board brought tenure charges against her before the Commissioner of Education, aimed at obtaining her dismissal. Knox entered into a settlement agreement with the board, under which she voluntarily resigned and refunded the salary paid to her during her suspension. The settlement agreement did not include a general release of federal or state law claims. Knox brought the action, claiming that the school board and its employees discriminated against her on the basis of her race and religion, violated her rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution, and violated her rights under the Free Exercise and Enjoyment of Religion Clauses of the New Jersey Constitution.

The Court granted Defendants' Motion to Dismiss under 12(b)(6) as to the constructive discharge on the basis that it was not an independent cause of action but granted Plaintiff leave to amend the Complaint. It left in the equal protection claim based upon religion. Plaintiff has not filed an Amended Complaint. The case is currently in the discovery phase of litigation.

Religiously Hostile Environment

14. *Kamel v. Sanofi Pasteur*, 3:CV-14-1658, 2015 WL 926427, (M.D. Pa. Mar. 4, 2015). Kamel was a practicing Muslim. His coworker, who knew that Kamel was Muslim, told him that only stupid people do not believe in or accept Jesus as God. Kamel reported this incident to his supervisor, however, the supervisor did nothing to discipline the co-worker. Rather the supervisor transferred the co-worker to first shift, which was considered a privilege.

Soon after Kamel began working, he informed his coworkers and his managers, that he did not eat pork for religious reasons. At various times throughout 2012, a manager told Kamel he would put pork on all food ordered by the company for its employees. One time, another manager brought food with pork on it to an office meeting and told Kamel to eat it. Kamel's coworkers repeatedly told him he was "crazy" for not eating pork and that he did not know what he was missing.

In about July 2012, Kamel requested to take off the first day of Ramadan for religious observance. From 2009 through 2011, Defendant had previously allowed such absences.

However, in 2012 his manager refused to change the schedule. In or around mid-January 2013, a co-worker told other employees that Plaintiff's home country, Egypt, and his religion, Muslim, allowed him to practice polygamy. When Kamel attempted to correct her by telling her that Muslims and Egyptians do not practice polygamy, the co-worker laughed and continued to repeat this to Kamel's coworkers. In or around February 2013, another coworker referred to Kamel's religious beliefs and practices as "crazy".

In April 2013, after a terrorist attack in Boston, two of Kamel's coworkers posted pictures and articles on their Facebook pages that were offensive to Kamel. One read: "The Boston Bombers were not: Right Wingers, Tea Partiers, Republicans, NRA 'Gun Nuts,' Militia Men. They were Muslims! All Muslims are not terrorists. But most terrorists are Muslims." Another post read: "All future visitors will be thoroughly checked and limited to 90 days unless given a special permit!!!! No one from a terrorist nation will be allowed in. If you don't like it there, change it yourself and don't hide here. Asylum would never be available to anyone. We don't need any more cab drivers or 7-11 cashiers. No foreign 'students' over the age of 21. The older ones are the bombers...." Plaintiff reported these comments to HR, who told Plaintiff they could not do anything as they had no control over employees' social media posts.

In June 2013, Defendant terminated Kamel, approximately two (2) months after he filed a second PHRC/EEOC complaint of discrimination. Defendant's stated reason for termination was that Plaintiff exhausted his leave under the company's short-term disability policy. Plaintiff alleged that this was a pretext as Defendant did not terminate others who did not make complaints of discrimination. Plaintiff alleged, inter alia, Title VII religious discrimination, hostile environment, and retaliation.

Defendant moved to dismiss on the grounds that Plaintiff failed to exhaust administrative remedies and to timely assert some of these claims. The Motion to Dismiss was denied.

Religiously Hostile Environment

15. *Harris v. Electro-Motive Diesel, Inc.*, 12 C 6258, 2015 WL 632389, at *1 (N.D. Ill. Feb. 12, 2015): Plaintiff Harris was a practicing member of the Voodoo religion. In 2006, he was hired as an employee of Defendant Electro-Motive Diesel, Inc. In 2007, Harris worked under the supervision of Keith King, a Christian, who conducted a daily prayer with all of the employees under his supervision. Harris discussed his own religion at work, and his coworkers and supervisors were aware that Harris practiced Voodoo. Another supervisor, Randolph called Harris "the devil" and that Harris' religion was "evil." Harris' locker was vandalized with writing "666" "Resputia," "Damien," "Ms. Melodie N Cliff," "Call me now!!!! Mon," "Dracula's locker," "Transylvanian Whore," and "Voodoo Bitch."

Harris was later suspended, purportedly for work rule violations, and subsequently never returned to work.

Harris alleged religious discrimination, particularly a religiously hostile work environment. The employer filed a Motion for Summary Judgment. The District Court found that there was

sufficient evidence from which a jury could find that Harris was subjectively offended by the work environment and could also find that the graffiti incident was motivated by Harris' religion. However, the Court found that Harris' claim primarily centered on a single incident of graffiti and a supervisor referring to him on two or three occasions over a 4 year period as "that devil." It found that the graffiti, though offensive, was verbal, not physical, and that this one time incident was not sufficiently severe or pervasive to support a hostile environment claim. The Court also noted that there was no evidence to show that the harassing conduct altered the terms or conditions of Harris' employment. Further, there was no evidence that a supervisor participated in the graffiti incident or was negligent in discovering or remedying workplace harassment. In fact, the employer sent out warning notices and took other actions in effectively making sure that the incident was never repeated.

Religiously Hostile Environment / Disparate Treatment

16. *Garcimonde-Fisher v. Area203 Mktg., LLC*, 1:13-CV-422, 2015 WL 1912679 (E.D. Tenn. Apr. 27, 2015): Defendant is a marketing company owned by Carey Brown. Brown believed his businesses should reflect his values and had the offices covered with Evangelical Christian imagery. The break room had a TV that looped Christian movies all day long. Materials with religious messages and solicitations for donations to religious charities were regularly distributed to employees. Religious charities were invited to give presentations and employees were required to attend, and the charities were allowed to solicit donations from employees. A chaplain was on staff, who hosted prayer meetings and bible studies scheduled during work.

Plaintiff Cole was hired as President of the company in November 2008. He alleged he reported his objections to the required religious events. Plaintiff was terminated in July 2009. After Plaintiff's termination, Brown told a newly hired employee that he had terminated Plaintiff because he was not the right kind of Christian.

In ruling on Defendant's Motion for Summary Judgment, the Court found that a jury could conclude that there was a religiously hostile work environment. It also denied Defendant's MSJ on Plaintiff Cole's religious discrimination claim. While dismissing two other plaintiffs' discrimination claims, the Court denied the MSJ as to all of the plaintiffs' retaliation claims.

Disparate Treatment

17. *Mimi Ma v. Westinghouse Elec. Co., LLC*, 559 Fed. Appx. 165 (3d Cir. 2014)(unpublished). Plaintiff, a Muslim woman, who wore a headscarf, filed suit against her employer alleging gender and religious discrimination and retaliation in violation of Title VII and Pennsylvania state law. After Ma was employed by Defendant for a year, the company added a new department, and Ma was assigned to report to a new supervisor. The relationship between the two was strained and the supervisor began giving Ma negative performance reviews. Due to these low performance reviews, the supervisor placed Ma on a performance improvement plan. Ma wrote a rebuttal to the performance reviews and began to think that she was being discriminated against due to her gender and religion.

Several months later, the Defendant terminated Ma "for work performance not meeting expectations-including a lack of consistency in meeting deadlines, a lack of good judgment, and an inability to consistently accomplish objectives through others-and her failure to treat other employees with dignity and respect, such as in extremely disrespectful and borderline insubordinate communications." A non-Muslim male took over her position and Ma filed suit. Summary judgment was granted in favor of the Employer.

Ma appealed the summary judgment dismissal. The Court found that the reasons for firing Ma "were legitimate and nondiscriminatory, rather than a pretext for sex or religious discrimination in violation of Title VII." There was no evidence that a male non-Muslim employee was treated more favorably than a female Muslim employee.

IV. RESOURCES REGARDING RELIGIOUS DISCRIMINATION LAW

The EEOC has prepared publications on its website concerning religious discrimination law, including:

Religious Garb and Grooming in the Workplace: Rights and Responsibilities (March 6, 2014)

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

and a *Fact Sheet* (March 6, 2014),

http://www.eeoc.gov/eeoc/publications/fs_religious_garb_grooming.cfm,

which together describe when an employer's clothing or grooming policies must yield to an employee's or applicant's sincerely-held religious beliefs or practices regarding clothing or grooming, such as a headscarfs for Muslims, Pentecostal women refusing to wear pants, or beards worn by Orthodox Jews or Sikhs.

What You Should Know about Workplace Religious Accommodation (published in fiscal year 2014)

http://www.eeoc.gov/eeoc/newsroom/wysk/workplace_religious_accommodation.cfm

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

<http://www.eeoc.gov/eeoc/publications/backlash-employer.cfm>

Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the EEO Laws

<http://www.eeoc.gov/eeoc/publications/backlash-employee.cfm>

Questions and Answers on Religious Discrimination in the Workplace

http://www.eeoc.gov/policy/docs/qanda_religion.html

Best Practices for Eradicating Religious Discrimination in the Workplace

http://www.eeoc.gov/policy/docs/best_practices_religion.html

Compliance Manual on Religious Discrimination
<http://www.eeoc.gov/policy/docs/religion.html>

Guidelines on Discrimination Because of Religion, 29 C.F.R. Part 1605
<http://www.gpo.gov/fdsys/pkg/CFR-2013-title29-vol4/xml/CFR-2013-title29-vol4-part1605.xml>

Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (Aug. 14, 1997),
<http://clinton2.nara.gov/WH/New/html/19970819-3275.html>)

Another excellent resource is the United States Court of Appeals for the Third Circuit Model Jury Instructions.



Charles H. Saul
Pittsburgh, Pa.
P. 412-355-4961

csaul@margolisedelstein.com



Kyle T. McGee
Pittsburgh, PA
P. 412-355-4971

kmcgee@margolisedelstein.com