VSSP
Employment Law Bulletin

Vol. 3, Issue 4 • July 2006

Reasonable Accommodation of Employees' Religious Beliefs

Title VII of the Civil Rights Act requires an employer to reasonably accommodate an employee's sincerely held religious beliefs, as long as such accommodation does not impose an undue hardship on the employer. However, the employer's burden of establishing undue hardship in a religious accommodation case is less onerous than in a disability discrimination case. To show undue hardship in a religious accommodation case, an employer must show only that the requested accommodation would result in more than a minimal cost.

Reasonable accommodation claims frequently arise when employees request not to work on a particular day of the week due to their religious beliefs. Two recent cases illustrate the risks entailed when an employer does not accommodate such requests.

In *Baker v. The Home Depot*, a Home Depot employee was fired for refusing to work on Sundays so that he could observe the Sabbath. Home Depot had offered to allow the employee to work on Sunday afternoons or evenings, which would allow him to attend church services in the morning. The trial court entered summary judgment in favor of the employer, but the court of appeals reversed. The appellate court held that the employer's offered accommodation was not a reasonable accommodation of his religious beliefs because the employee's objection to working on Sunday was also based on his belief that the Sabbath is a day of rest and meditation.

In *EEOC v. Robert Bosch Corp.*, the EEOC brought suit on behalf of an employee who was fired after four unexcused absences on Saturdays, his day of worship. The trial court entered summary judgment in favor of the employer, holding that employer had reasonably accommodated the employee by permitting him to find a substitute and swap overtime shifts. The Sixth Circuit Court of Appeals reversed, holding that allowing voluntary shift swaps is not always a reasonable accommodation. In this instance, the appellate court found that there was evidence that the company had refused to assist the employee in finding workers from other departments to work or swap overtime shifts.

Reasonable accommodation claims can also arise out of company uniform policies. A recent case, *Mohamed-Sheik v. Golden Foods/Golden Brands LLC*, involved two female Muslim workers who refused to tuck in their shirts in compliance with the employer's uniform policy because of their religious beliefs. The employer had argued that the uniform policy was based on safety concerns, but the trial court denied the employer's motion for summary judgment, because there was evidence that the uniform policy had not been consistently enforced and that the workers' supervisor began to enforce the policy at the same time he began making hostile comments to them about praying at work, wearing head scarves, and speaking in their native language.

Employers should engage in open communication with employees and fairly and reasonably examine employees' request for accommodations. If you have any concerns about religious discrimination issues, please contact your Vorys attorney.

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In This Issue:

Employment Law Enters The Blogosphere

Blogs, or weblogs, are personal journals that individuals publish on the internet. By some estimates, 9% of all internet users have created blogs. Many bloggers use these internet forums as platforms to voice opinions and vent frustrations. As blogs proliferate, employers are realizing that the blogging activities of their employees can create significant employment issues.

Blogging Dangers. Employers need to consider the following questions when evaluating possible consequences of employee blogging activities:

- Will the public read an employee's posting to be an official company communication?
- Does the blog disclose confidential and proprietary business information?
- Do statements in the blog defame the company, its employees, or customers?
- Do statements in the blog by an employee create a hostile work environment or negatively impact other employees' ability to work in a harassment-free environment?

The instantaneous, seemingly anonymous nature of blogging exacerbates the dangers employers face, because bloggers are less likely to exercise personal restraint in their statements. Intemperate and offensive blog comments about co-workers and management can have a disastrous impact on workplace relations and foster a sense of ill will among the workers.

The case of *Permanente Medical Group v. Cooper* illustrates the dangers of employee blogging. There, a disgruntled former website coordinator disclosed confidential patient data on her blog. As soon as the employer discovered the disclosure, it immediately moved to enjoin the breach of confidentiality. Ultimately the employee was enjoined, but not before the employer was fined by a state agency for the unauthorized disclosure of private health information.

Blogging and the Law. Some general legal principles are pertinent. First Amendment free speech protections only apply to government restrictions of speech, and therefore the First Amendment generally does not restrict private employers from limiting blog speech or disciplining employees for blog speech. However, the law does impose some limitations on an employer's ability to control employee speech. For example, certain provisions of Section 7 of the National Labor Relations Act may protect blog communications relating to wages, working conditions, organizing conduct or other protected activities. In addition, federal and state anti-discrimination and whistleblower statutes may protect the blogging activities of employees under limited circumstances. Thus, before taking any blogging-related disciplinary action, employers must determine if the employee's blogging activities are protected under law.

Avoiding the Dangers of Employee Blogging. Employers can best protect themselves by addressing issues relating to employee blogging in advance. Accordingly, employers should consider implementing practices to safeguard against the dangers of employee blogging:

- Establish a written policy regarding blog activity. Employers may limit or prohibit blogging on company time and hold bloggers personally responsible for the contents of their blogs. Blogs that contain defamatory, unlawful, or disruptive messages may subject employees to corrective action, up to and including termination of employment.
- Communicate in writing to employees that they may not represent or imply that they are expressing the opinion of the company in their blogs.
- Educate management about blogs and how they might affect the company's business.
- Consider updating non-disclosure agreements and acceptable use policies to specifically include blog-related issues.
- Consider implementing a system to monitor the internet for blogs that contain the company's name, product, and/or personnel.

If you have any concerns about issues relating to blogs, please contact your Vorys attorney.

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