Religion and the Workplace: Legal Analysis of Title VII of the Civil Rights Act of 1964 as It Applies to Religion and Religious Organizations

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Summary

Title VII of the Civil Rights Act of 1964 protects employees against discrimination by certain employers. Among other things, Title VII generally prohibits employers from discriminating against employees on the basis of their religious beliefs and requires employers to make reasonable accommodations for employees' religious practices. Religious organizations, however, may be exempt from some of the prohibitions of Title VII.

Congress regularly has proposed legislation that would amend the definition of religion under Title VII and has introduced proposals to clarify which actions would qualify as religious discrimination under the act. At times, legislative proposals that would not directly affect Title VII's prohibition on religious discrimination raise questions related to the protections provided for religion. In other cases, legislative proposals incorporate protections offered by Title VII into new civil rights bills.

This report reviews the scope of Title VII's prohibition on religious discrimination, its exemptions for religious organizations, and its requirements for accommodations. It also analyzes the exemptions available to religious organizations for the non-discrimination requirements. Finally, it addresses protections based on Title VII's religious exemption that have been included in the proposed Employment Non-Discrimination Act (ENDA; H.R. 1397/S. 811).

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General Application of Title VII

The Civil Rights Act (CRA) of 1964 created protections for civil rights across a wide spectrum, including religion. Title VII of the CRA prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex.[1] Title VII applies to employers with 15 or more employees, including the federal government and state and local governments. Individuals who believe they are victims of employment discrimination may file a complaint with the Equal Employment Opportunity Commission (EEOC), which is responsible for enforcing individual Title VII claims against private employers. The Department of Justice enforces Title VII against state and local governments but may do so only after the EEOC has conducted an initial investigation.[2]

Scope of Protection for Religion and Religious Belief

Section 701 of Title VII defines religion to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."[3]

This definition of religion forms the basis of requirements for employers under Title VII. Under the statutory definition, employers cannot use an employee's (or applicant's) religious observance or religious practice against the employee if the employer can reasonably accommodate the observance or practice without undue hardship on the business. If an employer does discriminate based on a religious observance or practice that can be reasonably accommodated, the employer may be in violation of Title VII's prohibition on discrimination on the basis of religion.

Sometimes whether a particular observance or practice is religious is disputed. Religious practices and observances are generally considered "to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views."[4] The belief does not need to be accepted by any religious group and does not need to be accepted by the religious group to which the individual belongs in order to qualify as religious under Title VII.[5] Courts have upheld this understanding that a religious belief does not need to meet objective tests of reasonableness, but instead must be a sincerely held belief of the individual regardless of its broader acceptance.[6]

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[1] 42 U.S.C. §2000e et seq.

[2] For more information on Title VII, see the EEOC website http://www.eeoc.gov/ and the DOJ's Employment Litigation Section website http://www.usdoj.gov/crt/emp/index.html. For general information on the Civil Rights Act and other legislation protecting civil rights, see CRS Report RL33386, *Federal Civil Rights Statutes: A Primer*, by Jody Feder.

[3] 42 U.S.C. §2000e(j).

[4] 29 C.F.R. §1605.1. *See* United States v. Seeger, 380 U.S. 163 (1965); Welsh v. United States, 398 U.S. 333 (1970).

[5] 29 C.F.R. §1605.1.

[6] *See, e.g.*, Van Koten v. Family Health Management, Inc., 955 F.Supp. 898 (N.D. Ill. 1997); Redmond v. GAF Corp., 574 F.2d 897 (7th Cir. 1978); Weitkenaut v. Goodyear Tire & Rubber Co., 381 F.Supp. 1284 (D.C. Vt. 1974).

Unlawful Employment Practices Related to Religion

While Title VII and the related regulations provide a broad prohibition on discrimination based on religion as it is defined alone, Section 703 of Title VII more specifically defines unlawful employment practices under the CRA. This section prohibits employers from using religion as a basis for hiring or discharging any individual. It further prohibits employers from discriminating "with respect to his compensation, terms, conditions, or privileges of employment" because of the individual's religion.[7] The section also prohibits employers from limiting or separating employees or applicants "in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee...."[8]

Title VII generally prohibits employers from treating employees of one religion differently from the way they treat employees of another religion. Employers cannot consider religion when scoring results of employment-related tests;[9] cannot use religion as a motivating factor for any action, even if other factors also motivated the action;[10] cannot retaliate against any individual who opposed an employer's action that is unlawful under Title VII or participated in the investigation of the unlawful action;[11] and cannot publish or advertise any preference based on religion, unless that preference is based on a bona fide occupational qualification.[12] The discrimination prohibited by Title VII includes harassment that is "sufficiently severe or pervasive to alter the conditions of [the victim's] employment and create an abusive working environment."[13] Furthermore, an employee cannot be required to participate in any religious activity as part of his or her employment.[14]

Exemptions

Title VII does not apply to all situations of religious discrimination. In addition to exempting employers with fewer than 15 employees, Title VII includes exceptions that allow certain employers to consider religion in employment decisions. Specifically, Title VII's prohibition against religious discrimination does not apply to "a religious corporation, association, educational institution, or society with respect to the employment [i.e., hiring and retention] of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."[15] However, the

[7] 42 U.S.C. §2000e-2(a)(1).

[8] 42 U.S.C. §2000e-2(a)(2).

[9] 42 U.S.C. §2000e-2(l).

[10] 42 U.S.C. §2000e-2(m).

[11] 42 U.S.C. §2000e-3(a).

[12] 42 U.S.C. §2000e-3(b).

[13] Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 67 (1986) (citations and internal quotation marks omitted)(interpreting the extent of discrimination protection provided by Title VII's prohibition on discrimination in terms, conditions or privileges of employment).

[14] *See* Young v. Sw. Sav. And Loan Ass'n, 509 F.2d 140 (5th Cir. 1975) (holding an employer could not discharge an employee for not attending weekly meetings that included prayers led by a minister).

[15] 42 U.S.C. §2000e-1(a). The U.S. Supreme Court unanimously upheld this exemption, allowing a religiously affiliated, non-profit entity to make employment decisions based on religion, even if the position related to non-religious activity of the organization. *See* Corp. of the Presiding Bishop v. Amos, 483 U.S. 327 (1987). Faith-based service providers are also eligible for the exemption, but if they receive government funding, the funds cannot be used (continued...)

statute does not define "religious corporation, association, educational institution, or society." There is no definitive judicial standard to determine whether an organization qualifies for the exemption. In an example of the varied understanding of the scope of the exemption, a three-judge panel from the U.S. Court of Appeals for the 9th Circuit issued three opinions, each applying a different standard.[16] The court later amended its decision and issued a majority opinion adopting four criteria that a religious organization must satisfy to qualify for the exemption. The court's standard requires that an entity is not subject to Title VII "if it is organized for a religious purpose, is engaged primarily in carrying out that religious purpose, holds itself out to the public as an entity for carrying out that religious purpose, and does not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts."[17]

The Supreme Court denied the petition to review the case, leaving lower courts without a uniform standard to apply.[18] However, lower court decisions generally have appeared to agree upon several factors relevant to deciding whether an organization qualifies for the exemption. Courts have considered (1) the purpose or mission of the organization; (2) the ownership, affiliation, or source of financial support of the organization; (3) requirements placed upon staff and members of the organization (faculty and students if the organization is a school); and (4) the extent of religious practices in or the religious nature of products and services offered by the organization.[19]

Title VII also provides two more specific exemptions. One separate, but similar, exemption applies specifically to religious educational institutions. That exemption allows such institutions "to hire and employ employees of a particular religion if [the institution] is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular [organization], or if the curriculum of [the institution] is directed toward the propagation of a particular religion."[20] The other exemption provided in Title VII allows employers to discriminate on the basis of religion, sex, or national origin if those factors are "a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."[21] This exemption based on bona fide occupational qualifications has been construed narrowly.[22] Accordingly, courts have deemed valid discriminatory qualifications to arise only in situations where religion plays an extremely significant part of the work environment, including, for example, jobs where employee safety is threatened because of the employee's religious affiliation.[23]

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to advance directly the organization's religious practices. *See* Zelman v. Simmons-Harris, 536 U.S. 639 (2002).

[16] Spencer v. World Vision, Inc., 619 F.3d 1109 (9th Cir. 2010).

[17] Spencer v. World Vision, Inc., 633 F.3d 723 (9th Cir. 2011).

[18] Spencer v. World Vision, Inc., 181 L.Ed.2d 25 (2011).

[19] *See* LeBoon v. Lancaster Jewish Community Center Association, 503 F.3d 217, 226-27 (3rd Cir. 2007) (providing a summary discussion of circuit courts' interpretations of organizations that qualify under Title VII's exemption).

[20] 42 U.S.C. §2000e-2(e)(2).

[21] 42 U.S.C. §2000e-2(e)(1).

[22] *See* Dothard v. Rawlinson, 433 U.S. 321 (1977).

[23] *See* Kern v. Dynalectron Corp., 577 F.Supp. 1196 (N.D. Tex. 1983) (allowing an employer to require that helicopter pilots convert to Islam in order to be hired for air surveillance over Mecca because Saudi Arabian law prohibited any non-Muslim from entering the holy area, a violation punishable by death), *aff'd*, 746 F.2d 810 (5th Cir. 1984).

Exemptions for religious organizations in the context of Title VII are not absolute. Once an organization qualifies as an entity eligible for Title VII exemption, it is permitted to discriminate on the basis of religion in its employment decisions. The exemption does not allow qualifying organizations to discriminate on any other basis forbidden by Title VII. Thus, although a religious organization may consider an employee or applicant's religion without violating Title VII, the organization may still violate Title VII if it considers the individual's race, color, national origin, or sex.[24] Furthermore, the exemptions in Title VII appear to apply only with respect to employment decisions regarding hiring and firing of employees based on religion. Once an organization makes a decision to employ an individual, the organization may not discriminate on the basis of religion regarding the terms and conditions of employment, including compensation, benefits, privileges, etc. In other words, religious organizations that decide to hire individuals with other religious beliefs cannot later choose to discriminate against those individuals with regard to wages or other benefits that the organization provides to employees.[25]

It is important to note one more exemption relevant to Title VII's prohibition on employment discrimination. The First Amendment of the U.S. Constitution protects religious organizations' right to choose spiritual leaders.[26] Even before Title VII granted an exemption to religious organizations' hiring decisions generally, the U.S. Supreme Court recognized that the "freedom to select the clergy" has "federal constitutional protection as part of the free exercise of religion against state interference."[27] Title VII's nondiscrimination requirements, for example, prohibitions on discrimination based on sex, may interfere with this constitutional freedom specific to clergy. The constitutional "ministerial exception," as this protection has become known, reconciles Title VII with the First Amendment by allowing religious organizations to select clergy without regard to any of Title VII's restrictions but requires that employment decisions made regarding other positions within the organization comply with Title VII's requirements or exemptions.

Prior to the Supreme Court's recognition of the ministerial exception in 2012, each of the circuit courts also recognized the exception.[28] However, the circuit courts differed on the scope of the

[24] *See* EEOC v. Pacific Press Publ'g. Ass'n, 676 F.2d 1272, 1276 (9th Cir. 1982); EEOC Notice, N-915, September 23, 1987. In some cases, an employer may claim that it had a valid discriminatory reason for the discharge based on religion under the Title VII exemption, while the employee claims the discharge is based on some other Title VII prohibition and therefore improper. For example, in several cases, employees of religious organizations, particularly private religious schools, have been discharged after becoming pregnant. In one of these cases, the employer claimed that the termination was based on a violation of an organization policy against extra-marital sex, stemming from the religion's teachings. The employee claimed that the action was unlawful sex discrimination based on her pregnancy. The court held that the termination did not violate Title VII because the employer's decision was based on a violation of its faith-based policy, not the resulting pregnancy. *See* Boyd v. Harding Academy of Memphis, Inc., 88 F.3d 410 (6th Cir. 1996).

[25] EEOC Notice, N-915, September 23, 1987.

[26] Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 132 S.Ct. 694 (2012).

[27] Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952). For an analysis of the extent to which courts may decide religious disputes, see CRS Report R41824, *Application of Religious Law in U.S. Courts: Selected Legal Issues*, by Cynthia Brougher.

[28] *See, e.g.,* Natal v. Christian & Missionary Alliance, 878 F.2d 1575 (1st Cir. 1989); Rweyemamu v. Cote, 520 F.3d 198 (2nd Cir. 2008); Petruska v. Gannon Univ., 462 F.3d 294, 303-04 (3rd Cir. 2006); EEOC v. Roman Catholic Diocese of Raleigh, 213 F.3d 795 (4th Cir. 2000); Combs v. Central Texas Annual Conf. of the United Methodist Church, 173 F.3d 343 (5th Cir. 1999); Hollins v. Methodist Healthcare, 474 F.3d 223, 226 (6th Cir. 2007); Alicea-Hernandez v. Catholic Bishop of Chicago, 320 F.3d 698 (7th Cir. 2003); Scharon v. St. Luke's Episcopal Presbyterian Hosp., 929 F.2d 360 (8th Cir. 1991); Elvig v. Calvin Presbyterian Church, 375 F.3d 951 (9th Cir. 2004); Bryce v. Episcopal Church, 289 F.3d 648 (10th Cir. 2002); Gellington v. Christian Methodist Episcopal Church, 203 F.3d 1299 (continued...)

exemption, particularly which employees qualified as ministerial employees. The Supreme Court declined to "adopt a rigid formula for deciding when an employee qualifies as a minister," deciding only the status of the employee in the case before it.[29] Although the Court did not identify a definitive standard, it considered four factors that may be relevant to determining whether an employee is ministerial: (1) the formal title given to the employee by the religious institution; (2) the substantive actions reflected by the title (i.e., the qualifications required to be granted such a title); (3) the employee's understanding and use of the title; and (4) the important religious functions performed by employees holding that title.[30]

Accommodations Requirement

Under Title VII, employers are prohibited from acting on the basis of employees' observances and practices only if they can be reasonably accommodated without undue hardship on the employer's business. In other words, the employer may discriminate on the basis of observances and practices that cannot be reasonably accommodated without undue hardship.[31] EEOC regulations provide guidelines for what constitutes reasonable accommodation and undue hardship. Once an employee requests religious accommodation, the employer must consider whether the requested accommodation is reasonable or what reasonable alternatives might be provided.[32] If more than one accommodation is possible without causing undue hardship, the EEOC determines the reasonableness of the chosen accommodation by examining the alternatives considered by the employer and the alternatives actually offered to the employee.[33] If more than one manner of accommodation would not cause undue hardship, "the employer ... must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities."[34]

Employee requests for accommodation arise most often because religious practices conflict with work schedules. EEOC guidelines suggest three possible accommodation alternatives in such situations. First, the employer may permit a voluntary substitute policy under which employees can find substitutes to cover their tasks during the conflict. Second, employers may create a flexible work schedule, including flexible arrival and departure times, floating holidays, flexible breaks, use of lunch time for early departure, and staggered work hours. Third, the employer may consider a lateral transfer for individuals whose religious practices cannot be accommodated in their current position.[35] Another common scenario in which employees request accommodations is under a provision in collective bargaining agreements that the employee must join a labor organization or pay an amount equivalent to dues to that organization. When an employee objects to this requirement on religious grounds, the EEOC recommends that the organization make an exception for that employee or allow the employee to donate the equivalent of the amount due to

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(11th Cir. 2000); EEOC v. Catholic Univ. Of Amer., 83 F.3d 455 (D.C. Cir. 1996)).

[29] *Hosanna-Tabor*, 132 S.Ct. at 707.

[30] *Id.* at 708.

[31] 42 U.S.C. §2000e(j).

[32] *See* 29 C.F.R. §1605.2.

[33] 29 C.F.R. §1605.2(c)(2).

[34] *Id*.

[35] 29 C.F.R. §1605.2(d)(1).

a charitable organization.[36] Requests for accommodation may also arise when an employee's religious beliefs conflict with a work requirement, such as performing abortions, treating gay patients, or complying with dress codes.[37]

In order for these accommodations to be appropriate under Title VII, they must not cause undue hardship to the employer. Employers cannot claim undue hardship on "a mere assumption that many more people ... may also need accommodation."[38] The regulations provide two general bases that may justify undue hardship: cost and seniority rights. An employer may refuse to accommodate an employee's religious practice if "the accommodation would require more than a de minimis cost."[39] The EEOC determines whether an accommodation exceeds a de minimis cost by evaluating the cost incurred to the particular employer and the number of employees that will need the accommodation.[40] Generally, administrative costs of rescheduling are considered de minimis costs.[41] An employer may also refuse to accommodate because the accommodation would interfere with the preference guaranteed by a seniority system.[42] Because seniority systems create "a neutral way of minimizing the number of occasions when an employee must work on a day that he would prefer to have off," Title VII does not require that seniority systems "must give way when necessary to accommodate religious observances."[43]

Congressional Interest

Congress regularly has considered legislation that would amend the definition of religion under Title VII and has introduced proposals to clarify which actions would qualify as religious discrimination under the act.[44] At times, legislative proposals that would not directly affect Title VII's prohibition on religious discrimination raise questions related to the protections provided for religion.

For instance, the scope of Title VII's exemption for religious organizations has been significant in the debate over other non-discrimination legislation. Both the House and Senate have introduced bills known as the Employment Non-Discrimination Act (ENDA) that would make discrimination based on sexual orientation an unlawful employment practice. H.R. 1397 and S. 811 would prohibit employers, employment agencies, and labor organizations from discriminating against employees or applicants based on actual or perceived sexual orientation or gender identity.[45] As

[36] 29 C.F.R. §1605.2(d)(2).

[37] For more information on cases relating to these requests, see EEOC Compliance Manual, §12, Religious Discrimination, *available at* http://www.eeoc.gov/policy/docs/religion.pdf. For a comprehensive legal analysis of employment protections available to employees who object to employment duties related to abortion, *see* CRS Report R40722, *Health Care Providers' Religious Objections to Medical Treatment: Legal Issues Related to Religious Discrimination in Employment and Conscience Clause Provisions*, by Cynthia Brougher and Edward C. Liu.

[38] 29 C.F.R. §1605.2(c)(1).

[39] 29 C.F.R. §1605.2(e)(1) (internal quotations omitted).

[40] *Id*.

[41] *Id*.

[42] 29 C.F.R. §1605.2(e)(2). *See also* Trans World Airlines v. Hardison, 432 U.S. 63 (1977) (holding that employer did not violate Title VII when it used a religiously neutral seniority system to determine employee work schedules).

[43] *Hardison*, 432 U.S. at 78-79.

[44] *See, e.g.*, H.R. 1431, 110th Cong. (2007); S. 3628, 110th Cong. (2008).

[45] H.R. 1397, 112th Cong. (2011); S. 811, 112th Cong. (2011). For a complete legal analysis of the issues raised by these (continued...)

with religious organizations' objections to limitations on employment practices based on employees' and applicants' religious beliefs generally, some religious organizations that have religious objections to homosexuality object to hiring requirements that would conflict with these beliefs. Accordingly, both bills include an exemption for religious organizations. These exemptions would provide that ENDA would not apply to certain religious organizations and religious educational institutions that are included in the religious exemptions provided in Title VII.[46] As a result, the proposed legislation likely would not interfere with religious organizations' employment practices involving considerations of sexual orientation or gender identity of employees and applicants.

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proposals, see CRS Report R40934, *Sexual Orientation and Gender Identity Discrimination in Employment: A Legal Analysis of the Employment Non-Discrimination Act (ENDA)*, by Jody Feder and Cynthia Brougher.

[46] H.R. 1397, §6; S. 811, §6.