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**Religious Harassment Claims:
A Delicate Balance In America's Melting Pot**

By Harry Jones

American business created an infrastructure to minimize and report sexual and racial harassment claims. Our companies lag, however, in creating reporting procedures, education, and resolution of religious harassment claims. As a result, religious harassment claims are one of the very few types of discrimination claims on the rise.

Religion-based charges of discrimination filed with the Equal Employment Opportunity Commission are on the rise, according to federal government statistics. Charges of all other types are on the decline. In a ten-year period from 1997-2006, the total charges filed with the EEOC fell from 80,680 to 75,768 (a 6% decline, during a time when the U.S. population *rose* by over 12%).

- Racial bias claims fell by almost 7%.
- Sex discrimination claims fell by almost 6%.
- Disability claims plummeted by almost 14%.
- **Religious bias charges rose by more than 45%.**

Religion as part of American politics and policy simply will not go away. Matters of faith have re-entered our public discourse in an increasing fashion. CNN has a bureau chief on religion. Mitt Romney felt compelled recently to give a speech about the pluralism inherent in American patriotism. Presidential candidates are routinely quizzed about their confessional status.

This trend is spurred, in part, by immigration. Immigration continues to multiply and diversify the faiths of America. No longer is there merely diversity within Christianity and Judaism. Muslims (with their Shia-Sunni fault line), Hindus, Atheists, Buddhists, Sikhs, Spiritists, Jainists, Rastafarianism, and Scientology stream into our workforce without sacrificing religious fervor in the name of the “melting pot.”

To complicate matters, human resource professionals and in-house counsel cannot simply plug religious harassment claims into their existing anti-harassment matrix. The training that companies have instituted and the system of reporting they have developed over the last three decades to diminish sexual and racial harassment flows from a very different philosophy than that required to curb religious harassment in the workplace. When an HR generalist coaches managers to stop making vulgar comments about employees or using racial epithets, what is being asked of those managers is to refrain from cruel or rude behavior. Almost all of the curbed speech or actions clearly do not belong in polite society, and HR is merely reminding managers of things they already know.

However, when an employee who sincerely believes in the precepts of his religion is asked to decline to follow them in the workplace, a different level of communication intelligence and a distinctive formulation of training and resolution is needed.

How does HR instruct a devout Muslim that he must not attempt to proselytize his co-workers when his imam has directed him to do just that? What logic should management employ to rein in a first-level supervisor (who happens to be a lay preacher) from dispensing spiritual advice to her team as they deal with business ethics? How does an employer enforce a dress code which is contrary to an employee's religious beliefs?

Rather than stopping employees from breaking obvious rules of decorum and decency—as is the case in eradicating racist or sexist speech—curbing religious harassment often involves asking employees to stop doing precisely the things their core faith tells them are most holy and needed in society.

The key difference is that Title VII requires employers to accommodate religious beliefs and practices *and*, at the same time, make a workplace free of religious harassment. Thus, it is not as simple as telling Bob the Manager: “Bob, you cannot talk to your assistant about her short skirts. In fact, there is no reason for you EVER to discuss anyone's hemline at work.” When addressing religious speech in the office, the HR professional might be walking a more nuanced

line: “Bob, you are free to invite your assistant to church on Sunday, but it is best if you don’t start your sales meetings with a prayer.”

With racial and sexual harassment, in-house counsel and HR draw prohibitions, investigate incidents, and fashion prompt, effective remedial measures. In religious harassment situations, a balancing act has to play out: protecting all beliefs but moderating their impact. Very little is outlawed.

The balancing act is made all the more difficult because deeply held religious beliefs are among the most difficult thoughts to “contain” or moderate.

A different training and resolution infrastructure is needed for corporate America to address religious harassment. At a minimum, that matrix should:

1. Revise all anti-harassment policies to include religion. Although religious harassment can take many forms, it frequently takes the form of coercion of employee participation or non-participation in religious activities; and verbally abusive conduct;
2. Title VII protects employees from a religiously hostile work environment, whether created by a supervisor or co-workers - if an employee objects to a colleague’s religious expression, be prompt with an investigation. As is true in cases of sexual or racial harassment, whether a particular employee's work environment is "hostile" for purposes of religious discrimination depends on the totality of the circumstances, including the frequency and severity of the harassing conduct, whether the conduct is physically threatening or humiliating, and whether the conduct unreasonably interferes with the employee's work performance;

3. If the religious expression is abusive (even if the targeted employee does not complain), act immediately to curb, contain and correct. A single incident, if sufficiently severe, could constitute harassment;
4. Train on this subject specifically to understand how religious expression must never become a condition of employment or coercive. A supervisor or manager may not, explicitly or implicitly, insist that an employee participate in religious activities or hold particular religious views as a condition of continued employment, promotion, preferred job assignments, or any other benefit or privilege of employment.

Faith “management” will take more delicacy than merely installing speech codes. A genuine “give-and-take” with an employee about accommodation must become part of every company’s internal policies and adhered to within the organization from top to bottom.

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