

## **Employee's Religious Objections to Mandatory Attendance at Diversity Training and New Age Seminars<sup>1</sup>**

*Although it would be inappropriate for The Rutherford Institute to provide specific legal advice at this time and under these circumstances, we are able to provide you with the following analysis regarding your area of concern.*

### **I. Introduction**

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees in the workplace on the basis of religion.<sup>2</sup> The statute imposes a reasonable accommodation rule upon employers, who are required to reasonably accommodate to an employee's or prospective employee's religious observance or practice unless any reasonable accommodation would constitute an undue hardship on the conduct of the employer's business.<sup>3</sup> While the question of whether Title VII requires an employer in an individual case fully to accommodate an employee's religious objections<sup>4</sup> to attending a diversity training or New Age seminar will ultimately rest upon the particular facts before the court, it is undisputed that the employer must *at least attempt reasonably to accommodate such objections.*<sup>5</sup>

A recent Eighth Circuit case involved Christian employees who were required by their public employer to attend a seminar on gays and lesbians in the workplace.<sup>6</sup> The employees silently read their Bibles in protest and were reprimanded and their promotions affected.<sup>7</sup> The court stated that requiring the employees to attend the seventy-five minute program which they disagreed with on religious grounds was not a substantial burden on the employees' religious exercise because the employer did not tell them what to believe.<sup>8</sup> The Seventh Circuit did not accept an employee's argument that her employer's seminar which taught putting the employer first significantly conflicted with the employee's religion.<sup>9</sup>

### **II. Statutory and Regulatory Definitions**

#### **A. The Nature of Religious Belief Under Title VII.**

To pursue a claim of religious discrimination under Title VII, an employee must show that he or she: (1) holds a sincere religious belief that conflicts with an employment requirement; (2) has informed the employer about the conflict; and (3) was discharged or disciplined for failing to comply with the conflicting employment requirement.<sup>10</sup> As to (1), the Equal Employment Opportunity Commission's Regulations define religious practices as including moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.<sup>11</sup> This definition is derived from the Supreme Court's declaration in United States v. Seeger<sup>12</sup> that a religious belief need only be [a] sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by. . . God [in other religions].<sup>13</sup> A belief is no less religious because others find it incomprehensible or incorrect.<sup>14</sup> A belief or religious practice need not be based upon a traditional religion, nor need it be a tenet held by others of the same religion.<sup>15</sup> Moreover, Title VII preserves the right not to believe in a religious tenet or in religion itself.<sup>16</sup> The only limitations on a belief protected by Title VII are that it must be religious as

opposed to social, political, or economic in nature,<sup>17</sup> and that it must be sincerely held.<sup>18</sup>

It is irrelevant in determining the necessity of an accommodation whether the employer or sponsor of the New Age or diversity training program believes that the program has no religious basis or content.<sup>19</sup> If an employee believes that some aspect of the program conflicts with his or her own beliefs, the employer may only inquire as to what are the employee's beliefs and consider their sincerity.<sup>20</sup> The employer may not base the decision to accommodate on its own assessment of whether the training or techniques used actually conflict with the employee's religious beliefs.<sup>21</sup> An employer may not reject a request for accommodation on the basis that the employee's beliefs about the New Age or diversity training program seem unreasonable.<sup>22</sup>

#### B. Employer's Duty to Accommodate

As to (2), the duty to accommodate is triggered when the employee gives the employer adequate notice of a need for accommodation, i.e., enough information about [her] religious needs to permit the employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirements.<sup>23</sup> When informed by an employee that a certain training program is contrary to the employee's beliefs, the employer may accommodate the employee's belief by substituting an alternative technique or method not offensive to the employee's belief or by excusing the employee from that particular part of the training program.<sup>24</sup> The employer may even have to excuse the employee from the entire program where the employee contends that the program itself is based on a belief contrary to the employee's religious beliefs.<sup>25</sup> As to (3), Title VII requires an employer to maintain a working environment free of coercion or intimidation based upon religion; an employer fails to satisfy the reasonable accommodation standard not only when it outrightly fires or disciplines an employee (or threatens to do so) for failing to attend a religiously objectionable training program, but when it by coercion or intimidation deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation.<sup>26</sup>

The employer's duty to accommodate the religious objections of employees is qualified. Title VII requires employers to provide reasonable accommodation for an employee's or prospective employee's religious needs only if to do so would not impose an undue hardship on the conduct of the employer's business.<sup>27</sup> Because undue hardship is not defined in the language of Title VII, [e]ach case necessarily depends upon its own facts and circumstances, and in a sense every case boils down to a determination as to whether the employer has acted reasonably.<sup>28</sup> The Supreme Court has held that an undue hardship is anything more than a *de minimis* cost.<sup>29</sup> The EEOC will determine what constitutes a *de minimis* cost with due regard to the identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation.<sup>30</sup> An undue hardship is shown where the accommodation sought would disrupt a seniority system and deny the shift preferences of other employees guaranteed by that system.<sup>31</sup>

An important case addressing the issue of employee's religious objections to particular work meetings or training sessions is EEOC v. Townley Engineering and Mfg. Co.<sup>32</sup> Townley dealt with an employee Pelvas' religious objections to attending weekly nondenominational devotional services held by his employer Townley. The services involved scripture reading, prayer, singing, testimony but also contained business discussions. When Pelvas revealed his objections to attending the services, his supervisor told him that attendance was mandatory but that Pelvas could read a newspaper or sleep during the services. Pelvas filed suit with the EEOC and the Court of Appeals held that Townley failed both to offer Pelvas a reasonable accommodation and to demonstrate that any such accommodation would have imposed an undue hardship on Townley's business.<sup>33</sup> The Court rejected Townley's claim that excusing Pelvas would have caused spiritual hardship because Townley failed to link that hardship to disruption of its business.<sup>34</sup> Title VII, the

Court observed, posits a gain-seeking employer exclusively concerned with preserving and promoting its economic efficiency;<sup>35</sup> Townley claimed that excusing Pelvas from the services would chill their purpose of promoting spiritual unity among the employees, but t[o] chill [this] purpose is irrelevant if it has no effect on . . . economic well-being.<sup>36</sup> Even if there was such a thing as spiritual hardship *per se* for purposes of Title VII, the fact that Pelvas was permitted to read or sleep during the services, and that Townley operated for eleven years without requiring its employees to attend services, suggested that accommodating Pelvas would not give rise to *undue* spiritual hardship.<sup>37</sup> Although the services contained business discussions, Townley did not show that separating the religious and business segments of the services to accommodate Pelvas would be an undue hardship.<sup>38</sup>

Townley casts doubt on the prospects for an employer's claim of spiritual hardship not attended with any showing of economic hardship. It also implies that an employer is obligated to try to separate the business and spiritual components of work seminars and meetings to accommodate employees with religious objections. If this separation cannot be done without undue hardship, the employer will have to examine the possibility of excusing the employee altogether from the meetings. Townley, of course, did not deal with *training* programs, but its principles apply to these as well. With respect to cost, it may *less expensive* for the employee to have fewer employees attending a training program. As to seniority rights, it seems that only in limited circumstances would excusing an employee from attending a program interfere with the seniority rights of other employees; obviously a problem would arise if excusal from employment seminars was itself one of the benefits of seniority.

The employer may contend that it has a *bona fide* interest in having all of its employees attend a training sessions in order to improve the productivity or efficiency of its employees. In this case, the employee could be excused from only that part of the employment seminar which she finds religiously objectionable. If the employee finds the entire seminar objectionable, the employer could meet individually with the employee to discuss neutral, non-objectionable methods of improving employment productivity and efficiency. Of course, the employer may have to find a substitute for the employee in order to schedule this alternative meeting, but the EEOC will presume that the infrequent payment of premium wages for a substitute is a permissible hardship.<sup>39</sup> The EEOC also will presume that generally, the payment of administrative costs [e.g. costs involved in rearranging schedules] necessary for providing the accommodation will not constitute more than a *de minimis* cost.<sup>40</sup> Ultimately, however, whether any individual employer is bound under Title VII to honor in any particular way the religious objections of an employee to attending a New Age or diversity training program will depend on the facts of each case.

## Endnotes

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1. The EEOC writes in its Compliance Manual:

Employers are increasingly making use of training programs designed to improve employee motivation, cooperation, or productivity through the use of so-called new age techniques. For example, a large utility company requires its employees to attend seminars based on the teachings of a mystic, George Gurdjieff, which the company claims has helped improve communications among employees. Another corporation provides its employees with workshops in stress management using so called faith healers who read the auras of employee and contact the body's fields of energy to improve the health of the employees. Specialists in employee training say that most of the nation's major corporations and numerous government agencies have hired some consultants and purveyors of similar personal growth training programs in recent years. The programs utilize a wide variety of techniques: meditation, guided visualization, self-hypnosis, therapeutic touch, biofeedback, yoga, walking on fire, and inducing altered states of consciousness. These programs focus on changing individual employees attitudes and self-concepts by promoting increased self-esteem, assertiveness, independence, and creativity in order to improve overall productivity.

Compliance Manual, 628, Appendix B, New Age Training Programs That Conflict With Employees Religious Beliefs, at 1 (1995) (citations omitted).

2. (a) Employer practices

It shall be an unlawful employment practice for an employer--

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion. . .

42 U.S.C. 2000e-2(a)(1) (1994).

3. 42 U.S.C. 2000e(j) (1994).

4. This brief deals only with *religious* objections to New Age and diversity training seminars and does not pertain to racial and all other manner of objections.

5. See Compliance Manual, 628, Appendix B, New Age Training Programs That Conflict With Employees' Religious Beliefs, at 4 (acknowledging that employer has a duty to accommodate religious objections to training seminars).

6. Altman v. Minnesota Department of Corrections, 251 F.3d 1199 (8<sup>th</sup> Cir. 2001).

7. See, Id.

8. Id.

9. Beasley v. Health Care Service Corp., 940 F.2d 1085

10. Ansonia Bd. of Education v. Philbrook, 479 U.S. 60, 65-66 (1986).

11. 29 C.F.R. 1605.1 (1996).
12. 380 U.S. 163 (1965).
13. Compliance Manual, 628, Appendix B, New Age Training Programs That Conflict With Employees' Religious Beliefs, at 2 (citing Seeger, 380 U.S. at 176).
14. Id. at 2 (citing Welsh v. United States, 398 U.S. 333, 344 (1970)).
15. 29 C.F.R. 1605.1 (1996) (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 beliefs will not determine whether the belief is a religious belief of the employee or prospective employee).
16. See Young v. Southwestern Savings and Loan Assn, 509 F. 2d 140 (5th Cir. 1975) (employer required to accommodate atheistic employee's objection to attending work meetings commenced with a nondenominational talk and prayer).
17. Compliance Manual, 628, Appendix B, New Age Training Programs That Conflict With Employees' Religious Beliefs, at 3 (citing Seeger, 380 U.S. at 173).
18. United States v. Rasheed, 663 F.2d 843, 847 (9th Cir. 1981) (although the validity of religious beliefs cannot be questioned, the sincerity of the person claiming to hold such beliefs can be examined).
19. Compliance Manual, 628, Appendix B, New Age Training Programs That Conflict With Employees' Religious Beliefs, at 3.
20. Id.
21. Id. The EEOC provides the following example:

R requires its employees, as part of a training program, to participate in a form of meditation that involves emptying one's mind of all thoughts by repeating a meaningless word. CP objects to participating in this exercise because it conflicts with his religious belief that a person should always keep his mind open to `divine inspiration. R must accommodate CP's religious belief even though R, the sponsor of the training program, and other employees believe that this form of meditation does not conflict with any religious beliefs. Id.
22. Id.
23. Heller v. EBB Auto Co., 8 F.3d 1433, 1439 (9th Cir. 1993).
24. Compliance Manual, 628, Appendix B, New Age Training Programs That Conflict With Employees' Religious Beliefs, at 4.
25. Id. The EEOC provides the following example:

R requires its employees, as part of a training program, to participate in a form of meditation that involves emptying one's mind of all thoughts by repeating a meaningless word. The employees are taught that this meditation will bring them into contact with the ultimate reality of the universe which allows them to reach the supreme authentication of their True Self and to become one with All That That Is. R must accommodate the religious beliefs of its

employers by excusing them from this exercise, not only those employees who object because this conflicts with their religious beliefs, but also employees who object because they have chosen not to have religious beliefs. In addition, R's policy of requiring employees to attend a religiously oriented program discriminates on its face against all employees and potential employees on the basis of religion. Id. at 5.

26. Lopez v. S.B. Thomas, Inc., 831 F.2d 1184, 1188 (2d Cir. 1987); see EEOC Decision No. 91-1, 1991 WL 77565, at 7 (1991) (constructive discharge occurs when supervisor stresses that the training session is not mandatory but nonetheless tells employees that they will not fit into the organization or that he or she will withdraw support from their work if they do not attend). At least one court has held that once told that attendance at an objectionable work meeting is mandatory, the employee need not deliberately precipitate termination or discipline if the employer has failed to offer a reasonable accommodation. See Young, 509 F.2d. at 144. (Surely it would be too nice a distinction to say that Mrs.Young should have borne the considerable emotional discomfort of waiting to be fired instead of immediately terminating her association with [her employer]).

27. 42 U.S.C. 2000e(j) (1994).

28. United States v. City of Albuquerque, 545 F.2d 110, 114 (10th Cir. 1976).

29. TWA v. Hardison, 432 U.S. 63, 84 (1977) (To require [an employer] to bear more than a *de minimis* cost. . . is an undue hardship).

30. 29 C.F.R. 1605.2(e)(1) (1996). Note that the mere assumption that many more people with the same religious belief as the employee may also need accommodation is not sufficient evidence of undue hardship. Any hardship asserted by the employer must be real rather than speculative. Cook v. Chrysler, 981 F.2d 336, 339 (8th Cir. 1992).

31. 1605.2(e)(1) (citing Hardison, 432 U.S. at 81).

32. 859 F.2d 610 (9th Cir. 1988).

33. Id. at 615-17.

34. Id. at 615-16.

35. Id. at 616.

36. Id.

37. Id.

38. Id.

39. 29 C.F.R. 1605.2(e)(1) (1996). Note that the employer could not force an employee to relinquish the benefits of seniority in order to step in for the employee seeking the accommodation.

40. Id.