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RISING COMPLAINTS OF RELIGIOUS BIAS

Eddie Kilgore, a computer operator at Sparks Regional Medical Center, in Fort Smith, Ark., was suddenly ordered in 1992 to be on call on Saturdays. He asked to be excused from that requirement because of his religious beliefs.

As a Seventh-day Adventist, he strictly, obeys the tenets of his church, which forbids any form of labor from sundown Friday to sundown Saturday. Kilgore's beliefs were well-known at the private hospital, where he had worked for 18 years.

The hospital turned down Kilgore's request to be excused from Saturday duty. He refused to be available, and he was fired.

Accusing Sparks Regional Medical Center of failing to reasonably accommodate his religious beliefs, Kilgore sued for reinstatement, back pay plus interest, emotional pain and suffering, inconvenience, and loss of enjoyment of life.

In 1994, a jury found the hospital to be in violation of Title VII of the Civil Rights Act of 1964. The act prohibits discrimination on the basis of race, color, religion, national origin, or sex. Kilgore was awarded nearly $100,000 and got his job back.

Complaints similar to Kilgore's are on the rise. The number of religious-discrimination charges filed with state and federal agencies jumped to 2,900 in 1994 from 2,200 in 1990, according to the latest figures compiled by the Equal Employment Opportunity Commission (EEOC).

Yet there is little guidance to help employers deal with this issue. The EEOC has issued general guidelines requiring employers to respond to their workers' religious practices with "reasonable accommodation" as long as it doesn't pose an "undue hardship" on the company.

Whether the employer considers the practice religious or not isn't the issue; granting accommodation is.

Beyond the broad EEOC guidelines, managers are on their own. So how are they to know if they have made an adequate good-faith effort at accommodation, or if their case is one of genuine hardship?

Legal experts concede those are tough questions. Steve Gerber, a labor and employment litigation specialist in Wayne, N.J., says: "Reasonable accommodation is still in a state of flux. There are no clear-cut laws on this issue."

Because of the variety of religious customs, accommodation is generally handled on a case-by-case basis. Overall, legal experts suggest that business owners and managers develop a mind-set that will help lessen the threat of litigation.

The first step, says Thomas Borak, an EEOC attorney in St. Louis, is to think before you automatically refuse a request. "When someone asks for time off to observe the Saturday or Sunday Sabbath, for example, managers often assume the individual is asking for special treatment. Instinctively, supervisors shy away from this because they think it's discriminatory."

In fact, Borak notes, just the opposite may be true. "Because the employee doesn't want to be perceived as not carrying their weight, they're usually willing to work extra hours, another day, or during a holiday they don't observe."

Sometimes it's as simple as posting a request to switch shifts on the company bulletin board, says Lee Boothby, a Washington, D.C., attorney specializing in church-and-state issues and in religious-discrimination cases. Such a basic action explicitly demonstrates the employer's good-faith effort at accommodation--and can help prove compliance with the law.

But managers must go one step further. Much as with the Americans with Disabilities Act, supervisors can't make employment contingent on factors outside the specific requirements of the job--in Kilgore's case, his ability to work on certain days. Don't even ask the question, advises Boothby. "It's improper to ask the applicant if he or she can work on Saturday. If, in the interview process, you meet with six or seven others and then the first applicant is denied employment, it could lead to legal problems later."

Often, a manager assumes that other employees will be resentful of the special treatment, notes Borak. "One way to test that assumption is to ask around," he says. "Just inquire how others would feel about having the employee take Saturday off. I've run across instances where an employer has taken adverse action against a request, only to find out afterward that people on the staff were willing to make accommodation out of respect for the employee and because they thought it was fair."

The best legal defense, says Caryl Stern-LaRosa, director of the Anti-Defamation League of B'nai B'rith's diversity-training program, called "A World Of Difference," is to take action that proves a good-faith effort at accommodation.

Hiring a firm specializing in diversity training is one very visible demonstration of that effort. But make sure the consulting firm has sufficient experience in the area of religious diversity, notes Stern-LaRosa. Nonprofit organizations are often a good choice, she adds.

"Because of the time and cost factor, we recommend that businesses join together and offer training through a business association or professional organization," adds Stern-LaRosa. "In order for the program to be successful, everyone at the company needs to go through it. The entire company needs to buy in."

The second aspect of the EEOC guidelines--undue hardship--is also ambiguous. Myriad factors determine what constitutes hardship for a company, including the size of the work force, the type of work performed, and the skill levels of employees.

"One thing we've learned from the [disabilities law] is that other employees' perception is not the basis of [what determines] undue hardship," says Matthew Staver, president and general counsel of the Liberty Counsel, a religious civil-liberties defense group in Orlando, Fla.

Staver offers an example of undue hardship: A delivery person who is asked to take items to an abortion clinic says he would find it religiously objectionable, so the employer would be obliged to assign another delivery person to the task. "But if the employer had only one delivery person, then that constitutes undue hardship," says Staver. "If they had another worker delivering in the same geographical area, they should redistribute the work. However, if they had to bring someone in from across town, that would be undue hardship."

On the other hand, Staver says, "employees do not have any more right not to do their work because of religious [preaching] than do others because of gossiping. If it creates a disturbance, then it's harassment, and, in this case, employee reaction may be the basis for not accommodating."

In practical terms, however, employers can provide accommodation by offering space elsewhere in the company for employees to discuss religion or conduct a Bible study during their break time.

Religious dress shouldn't be the basis for determining undue hardship, either, EEOC attorney Borak points out. If employees are required to wear uniforms but a worker's religion dictates wearing robes, for example, accommodation could be made by designing a robe in the fabric of the uniform.

"Wearing a robe in the same colors as the uniform would make it immediately obvious to the public that the employee was one of the staff," says Borak. "The accommodation would not interfere with the performance of [the employee's] duties."

It seems likely that the issue of religious accommodation will grow in significance as workers become more vocal in their requests. Clearly, a new legal minefield is developing in the workplace, and employers should be prepared.

PHOTO (COLOR): Accommodating an employee's religious beliefs can sometimes be as easy as posting a bulletin-board request to switch shifts.

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By Janine S. Pouliot

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could help employers stay out of trouble.