

THE COURTS AND RELIGIOUS DISCRIMINATION: SETTING THE BOUNDARIES

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ABSTRACT

Religious practices are increasingly carried into the workplace. Occasionally employers have seen such behaviors as incompatible with or detrimental to business purposes. This has led to employee demotion and discharge. Title VII of the 1964 Civil Rights Act prohibits religious discrimination, harassment, and retaliation directed at those employees bringing charges of discrimination or harassment under Title VII.

Employee claimants bringing charges of religious discrimination or harassment before the federal courts must make a *prima facie* case—must show that they are sincere in their religious practice and that business operations or procedures adversely affect behaviors or practices required by their religious faith. Additionally, a claimant must show that there has been an economic loss resulting from religious discrimination or harassment.

If a *prima facie* case is brought before the Court by an employee-claimant than an employer must show that a reasonable accommodation has been offered the employee or show that a reasonable accommodation can not be provided without adversely affecting business operations or profitability or that any accommodation which may be made would adversely affect a union management agreement or the employee seniority system.

While an older theistic definition of religion characterized jurisprudence up to the mid-sixties, this definition was replaced by a definition of religion growing out of cases dealing with conscientious objection to military service. This newer definition of religion said that a belief system was religious if the beliefs were sincerely held and structured an individual's life as would a more traditional religion.

In claims of religious discrimination, the Court has applied "sincerity" as a test to determine whether a belief system was in fact religious and religious discrimination consisted with Title VII has occurred; has required that a request for accommodation for an employee's religious needs be made in a timely manner; has required that a plaintiff claimant of religious discrimination show that an economic loss has occurred; and show that an accommodation of religious needs is not contrary to a union management agreement or the requirements of a seniority system. Finally, both the employee and the employer must be willing to accept a reasonable accommodation of the employee's religious needs and business needs and policies.

Finally, a new more narrowed definition of religion emerging first as a concurrent opinion in *Malnak v Yogi* but now being applied by Courts in the third, eighth, ninth and tenth federal circuits requires in addition to sincerity of belief, and the fact that the belief system structures an individual's life as more traditional religions affect adherents, that the belief system address the ultimate truths of life, consider in a comprehensive way the basic and persistent problems of life, and have associated with the belief system external symbols like a bible, a church, vestments etc., as does a more traditional religion.