Advanced Religious Discrimination Issues

ABA National Conference on Equal Employment Opportunity Law
New Orleans, LA
April 1, 2017

Panelists:

Kevin Brodar (moderator)
General Counsel
Transportation Div. - SMART
24950 Country Club Blvd., Ste. 340
North Olmsted, OH 44070
(216) 228-9400
(216) 228-0937 (fax)
kbrodar@smart-union.org

Nicole Hancock Husband
Vice President, Human Resources
Warner Bros. Television
300 Television Plaza
Burbank, CA 91505
(818) 954-3099
(818) 954-7661 (fax)
nicole.husband@warnerbros.com

Mark W. Berry
Davis Wright Tremaine, LLP
777 108th Ave NE
Suite 2300
Bellevue, WA 98004
(425) 646-6142
(425) 646-6199 (fax)
markberry@dwt.com
www.dwt.com

Carolyn L. Wheeler
Of Counsel
Katz, Marshall & Banks, LLP
1718 Connecticut Ave., N.W.
Sixth Floor
Washington, D.C. 20009
(202) 299-1140
(202) 299-1148 (fax)
wheeler@kmblegal.com
www.kmblegal.com

Jeanne Goldberg
Senior Attorney Advisor
Office of Legal Counsel
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC  20507
(202) 663-4693
jeanne.goldberg@eeoc.gov
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panel Scenarios</td>
<td>3</td>
</tr>
<tr>
<td>Resources</td>
<td>7</td>
</tr>
<tr>
<td>Practice Tips</td>
<td>8</td>
</tr>
<tr>
<td>Selected Cases</td>
<td>14</td>
</tr>
<tr>
<td>Definition of Religion</td>
<td>14</td>
</tr>
<tr>
<td>Sincerely Held</td>
<td>18</td>
</tr>
<tr>
<td>Religious Organization Exception</td>
<td>21</td>
</tr>
<tr>
<td>Ministerial Exception</td>
<td>24</td>
</tr>
<tr>
<td>Reasonable Accommodation and Undue Hardship</td>
<td>29</td>
</tr>
<tr>
<td>Generally</td>
<td>29</td>
</tr>
<tr>
<td>Employer Notice of the Conflict Between Religion and Work</td>
<td>29</td>
</tr>
<tr>
<td>Discussion of Request</td>
<td>34</td>
</tr>
<tr>
<td>Seniority Systems and Collectively Bargained Rights</td>
<td>35</td>
</tr>
<tr>
<td>Schedule Changes, Shift Swaps, Voluntary Substitutes, and Leave...</td>
<td>36</td>
</tr>
<tr>
<td>Additional Fact Patterns -- Breaks for Prayer at Work</td>
<td>49</td>
</tr>
<tr>
<td>Modified Duties and Transfer</td>
<td>51</td>
</tr>
<tr>
<td>Exceptions to Dress and Grooming Codes</td>
<td>52</td>
</tr>
<tr>
<td>Exceptions to Mandatory Vaccination Policies</td>
<td>59</td>
</tr>
<tr>
<td>Permitting or Requiring Proselytizing and Other Forms of Religious Expression</td>
<td>60</td>
</tr>
<tr>
<td>Additional Fact Patterns: Conflicts Between Religious Beliefs and Sexual Orientation</td>
<td>72</td>
</tr>
<tr>
<td>Excusing Union Dues</td>
<td>76</td>
</tr>
<tr>
<td>Objections to Social Security Numbers or Other Identification Procedures</td>
<td>78</td>
</tr>
<tr>
<td>Adverse Action Resulting from Denial of Accommodation</td>
<td>78</td>
</tr>
</tbody>
</table>
Panel Scenarios

Christine is a customer service representative with Quick Move Inc. and a member of Local 666. She describes herself as a “deeply religious Christian” and “true believer” who has a religious duty to witness to all potential Christians. At work, she is known for wearing a prominent cross pendant daily and sporting t-shirts with various religious sayings on “Casual Friday.” Recently, Christine began handing out pamphlets about Christianity to coworkers. The pamphlets include statements that all those who do not believe and follow Jesus Christ will not go to Heaven. Christine also participates in prayer meetings at work, and at times she has talked about those of the Muslim faith being terrorists that will go to hell for their doings. Several employees of the Muslim faith have asked the Shop Steward to intervene and file a grievance with the company if Christine persists in her comments. Christine also tells coworkers about the services at her church and has, at least once, proselytized to a client on the phone while handling a customer service request. Various employees have now complained to Human Resources and management about Christine’s proselytizing at work.

What should the HR Director do in response to these complaints?

Assuming Christine admits the conduct, should she be counseled to cease all proselytizing? Or is there a way to accommodate Christine’s expression of her religious beliefs? If so, how?

Let’s assume Christine is counseled to stop making offensive statements that might violate the anti-harassment policy and Christine refuses in the name of her “duty to witness.” Should the Company terminate her employment?

Does Christine’s potential Title VII claim for denial of accommodation (engaging in religious expression) only arise if the company disciplines or terminates her?

If Quick Move Inc. were a government entity instead of a private employer, would Christine have another cause of action?

What if the pamphlets did not include statements about non-believers not going to Heaven and Christine had not called Muslims “terrorists”? Would Christine have a claim of religious discrimination?

*  

Good Stuff Inc., a restaurant chain, has a policy against supervisors fraternizing with subordinate staff outside of work. Matthew, a restaurant manager, holds weekend prayer meetings at his home that some of the subordinates in his office attend voluntarily. Matthew invites all employees to attend those meetings by sending mass emails to his coworkers through the company’s server and by posting on Facebook. He also asks employees to “like” his own and his church’s Facebook pages. Matthew posts daily musings on current events and political happenings on his Facebook page. He usually ends each post with a relevant scripture. Lately,
Matthew has been urging his followers to have tolerance for the new presidential administration and states that the new president is “part of God’s plan” for the U.S.A. Local 1313 Shop Steward Joe has heard about the meetings. He has raised his concerns with management that it is now ignoring its policy that heretofore was strictly enforced, that he understands that Matthew has had anti-union discussions at these off-site meetings, and that some of those who attend the meetings are getting preferential treatment.

Several employees follow Matthew on Facebook and some have even decided to follow his church on Facebook. There are some employees who have asked Matthew not to email them or invite them to his church. Matthew apologized for any offense and refrained from emailing or asking those co-workers after their requests. Matthew consulted with HR about his desire to continue spreading the word about God, his church and Christianity in general. HR advised Matthew, a stellar employee, that he could continue talking to employees about his beliefs and his church as long as the other employees welcomed such expression and there were no offensive comments regarding other religions.

*Was the Company’s response adequate?*

*Should the Company instruct Matthew to stop sending the mass emails?*

*Are Matthew’s political musings/statements political speech entitled to protection?*

Easthampton General Hospital requires all employees to have current vaccinations for whooping cough, measles, mumps and rubella, as well as to receive annual flu vaccines. The Hospital wants to ensure that its employees do not transmit the flu or other viruses to patients, and also wants to reduce the risk that employees would become ill and miss work.

Three employees have refused to participate in the vaccination program. Angela states, “I strongly believe that the introduction of these substances into my body is harmful both to me and any future child I may have. I won’t allow my kids to be vaccinated either.” Bill explains, “I am a strict vegan. I do not consume any animal byproducts. I won’t take or use an egg-based vaccine.” Finally, Cecelia refuses the vaccines and sites her membership in Jehovah’s Witnesses.

*Is the Hospital required to accommodate any of these three individuals? How should the Hospital evaluate these employees’ refusal to be vaccinated?*

*If any of these individuals is a member of a union, are there other considerations to keep in mind?*

*How does one know whether the religion identified by the employee actually speaks to the vaccination issue?*

*How does the analysis change if all three of these individuals work in the same department? What if they are all nurses in the Emergency Room with extensive patient interactions?*
What if this workplace is not a hospital but instead a tech company that implements the requirement to reduce its absenteeism and its overall health insurance costs?

* 

The Power of the Mind (POM) is a full-service mental health counseling service that employs psychiatrists and psychologists, some of whom specialize while the rest maintain general practices. Judy Bloom is a psychologist who was hired to do general counseling. A few weeks after she started to work she advised the practice administrator that she would not continue to see a client whose therapy focused on issues related to his career development, because he had mentioned that he is gay, and she wanted to tell him why she would not treat him. In discussions with Ms. Bloom, her employer learned that due to her evangelical Christian beliefs, she could not treat anyone who is sexually active outside of a traditional heterosexual marriage, regardless of the issue they presented in counseling, because she considered their sinful lifestyle to be a major barrier to mental health. The POM offered to allow Dr. Bloom to reject clients in “non-traditional” sexual relationships if relationship issues would be the subject of therapy. Dr. Bloom said that would not suffice. The POM determined that screening and assigning clients in accordance with Dr. Bloom’s restrictions would not be feasible, and even if it could be done, it would result in an unbalanced division of work among the general practitioners. The POM terminated Dr. Bloom’s employment.

Could the employer have refused to discuss Dr. Bloom’s religious conflict because she did not mention it during her interview?

Did the employer’s offer to allow Dr. Bloom not to work with clients who wanted to discuss “non-traditional” sexual relationship issues constitute a reasonable accommodation?

Will the employer prevail on an undue hardship defense if Dr. Bloom sues for failure to accommodate her religious beliefs?

Would the rejected client have any basis for suit against POM if it did not have a therapist available to work with him?

* 

Assume instead that the Power of the Mind is a full-service mental health counseling service and is not a religious organization or affiliated with a church. However, the owners of the practice are devout Christians who believe Christian values should infuse every aspect of their employees’ daily lives. To encourage the modeling of these values, the owners conduct a staff meeting each week at which an inspirational speaker from their church discusses a lesson from the Bible. The owners also have a prayer meeting each morning before work and insert quotations from the Bible at the end of all email and paper correspondence. The owners require that everyone who answers the phone conclude their conversations by saying “Have a blessed day.” The also require all counselors to encourage their clients to embrace Christian values and precepts.
Barbara Smith is a non-Christian who has grown very uncomfortable with these Christian messages and asks to be excused from the religious portion of the staff meetings and the daily prayer session. She also says she cannot use the “Have a blessed day” expression. She further says she cannot and will not proselytize or encourage her clients to embrace or practice Christianity because she thinks that is inappropriate in therapy. POM says she can wear earphones to the staff and prayer meetings, but must attend, and that the other requirements cannot be modified.

*Has Dr. Smith made an accommodation request or is she being insubordinate?*

*Does the employer have to excuse her from the job requirements it has imposed?*

*Does the earphones suggestion constitute a reasonable accommodation?*
Resources

EEOC Compliance Manual: Religious Discrimination
https://www.eeoc.gov/policy/docs/religion.html

Questions and Answers: Religious Discrimination in the Workplace
https://www.eeoc.gov/policy/docs/qanda_religion.html

Best Practices for Eradicating Religious Discrimination in the Workplace
https://www.eeoc.gov/policy/docs/best_practices_religion.html


Religious Garb and Grooming in the Workplace: Rights and Responsibilities
https://www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm

Fact Sheet on Religious Garb and Grooming In the Workplace
https://www.eeoc.gov/eeoc/publications/fs_religious_garb_grooming.cfm

Questions and Answers for Employers: Responsibilities Concerning the Employment of Individuals Who Are, or Are Perceived to Be, Muslim or Middle Eastern
https://www.eeoc.gov/eeoc/publications/muslim_middle_eastern_employers.cfm

Questions and Answers for Employees: Responsibilities Concerning the Employment of Individuals Who Are, or Are Perceived to Be, Muslim or Middle Eastern
https://www.eeoc.gov/eeoc/publications/muslim_middle_eastern_employees.cfm

What You Should Know About Workplace Religious Accommodation
https://www.eeoc.gov/eeoc/newsroom/wysk/workplace_religious_accommodation.cfm

Selected List of Pending and Resolved Cases Alleging Religious and National Origin Discrimination Involving the Muslim, Sikh, Arab, Middle Eastern and South Asian Communities (Jan. 2016 update)
https://www.eeoc.gov/eeoc/litigation/selected/religion_nationalorigin.cfm

Fact Sheet on Recent EEOC Religious Discrimination Litigation (Feb. 2015 update)
https://www.eeoc.gov/eeoc/litigation/selected/religious_discrimination_facts.cfm

1997 White House Guidelines on Religious Exercise and Religious Expression in the Federal Workplace
Practice Tips

Best Practices Checklist for Employers ~ March 2017
Prepared by:

Nicole Hancock Husband & Mark Berry
Vice President, Human Resources Davis Wright Tremaine, LLP
Warner Bros. Television (425) 646-6142
(818) 954-3099 markberry@dwt.com
nicole.husband@warnerbros.com

• Update and publicize your EEO/non-discrimination policy statements to ensure they include religion, harassment based on religion and reasonable accommodations of religious beliefs and practices.
  o In your harassment policy, make sure you reference both on- and off-duty conduct (e.g., social media).
  o Ensure that any policies about social media refer to prohibited religious harassment conduct.

• Train your workforce
  o Anti-Harassment Training that includes discussion of religious harassment
    ▪ Ensure the training covers specific examples so that employees know what is permitted and what is prohibited.
    ▪ Encourage sensitivity to different religious beliefs and points of view.
  o Specialized training for Management, Human Resources & Recruitment staff that covers religious discrimination and religious harassment, including religious garb, grooming and practices
    ▪ Ensure the training covers recognizing requests for accommodation, the employer's duty to accommodate and potential requests that may arise (e.g., scheduling, grooming, garb, duties, religious expression, prayer in the workplace, etc.).
    ▪ For organizations with extensive customer contact, ensure the training provides managers tools to respond to clients and customers who react to perceived religious issue or who espouse their own religious beliefs in a potentially challenging manner.
    ▪ Encourage supervisors to think about whether their own religious expression might reasonably be perceived by subordinates as coercive, even when not intended, due to the supervisors’ authority.
• Include religious beliefs and practices in your company’s diversity and inclusion strategy and training.

• Ensure that job descriptions accurately reflect the essential job functions to assist in assessing reasonable accommodations and undue hardship.

• If the job has a specified and unalterable work schedule, ensure that all job postings and descriptions reflect the required schedule.

• Clearly define the role of managers and Human Resources to evaluate and implement reasonable accommodations. Managers should not make the accommodation decisions without first involving Human Resources and should never deny an accommodation request. If an accommodation is denied, let Human Resources handle it (usually on the advice of legal counsel).

• Train managers to avoid assigning their own beliefs or understandings of a particular religion to an employee. This includes (a) refraining from suggesting that the employee needs an accommodation when he or she has not requested one; (b) dismissing a requested accommodation because it does not conform to the way one thinks the religion is practiced; and (c) engaging in their own research or assessment about the religion or employee’s stated beliefs.

• When responding to accommodation requests:
  o Provide an easy mechanism for employees to submit accommodation requests, but do not ignore accommodation requests presented in other ways.
  o Put the burden on the employee to provide the necessary information/foundation for such a request.
  o If there is uncertainty about whether the employer is required to consider accommodations at all, error on the side of providing the accommodation rather than arguing whether it is based on a “real” religion or sincerely held belief.
  o Avoid questioning the sincerity of the employee’s stated beliefs.
  o Consider the possibility of an undue hardship defense, but review the request closely to determine whether it truly is an undue hardship for the employer; use the defense sparingly.
  o If the proposed accommodation does not work for either party, convene a meeting of the employee, the manager, and an HR representative to discuss alternative accommodations (similar to the disability context), explain why the proposed accommodation is not feasible and explore alternatives.
• Enforce the rules on use of time off (such as availability of pay or use of unpaid time) consistently so that absences for religious reasons are treated the same as absences for other reasons.

• Do not count religious-based absences against attendance policies.

• If the employer is on notice of an employee’s objection to religious conduct or speech in the workplace, respond in the same manner as any other harassment complaint. Take steps to end the conduct even if the conduct may not appear abusive, severe or pervasive.
  o Apply this rule whether the objectionable conduct is coming from a co-worker or from a non-employee (contractor, vendor, consultant, client, etc.).
  o Where the “offender” claims that he/she has a “right” to religious speech in the workplace, remind him/her that there is no such right (for private employers) and that the goal is to ensure that employees are able to perform their duties without unnecessary distractions.
Practice tips from the perspective of plaintiff’s counsel:

Carolyn L. Wheeler
Katz, Marshall & Banks, LLV
202-299-1140
wheeler@kmblegal.com

How to assess whether your client has a claim:

Of disparate treatment

If someone believes s/he has been denied a job or promotion, or fired because of religion, to decide whether she has a viable claim it is critical to establish:

- that the decision-maker knew of your client’s religion;
- that your client’s religion was the reason for the adverse decision;
- and, absent direct evidence of religious animus, that any asserted reasons to do with performance or qualifications are invalid, untrue, inconsistently applied, etc.

Of failure to accommodate

If someone believes s/he needed an accommodation related to religion, to decide whether she has a viable claim it is critical to establish:

- that your client told her employer what religious practice or belief she has that conflicts with a work requirement;
- that your client’s beliefs are sincerely held and were explained to her employer;
- that your client asked for a reasonable accommodation of a modification of a work rule pertaining to dress or grooming standards, work schedule, break time, display of religious artifacts, etc.;
- that your client’s requested accommodation would not have constituted the creation of a hostile environment for other employees, as is sometimes the case with people whose religion requires witnessing or proselytizing;
- that your client did not seek an accommodation of being excused from a critical job duty that could not be assigned to others;
- that your client’s employer refused to provide the requested accommodation and made no effort to suggest another alternative accommodation;
• and that your client’s employer would not be able to prove the requested accommodation would create an undue hardship because of the size or resources of the employer.

Of harassment on the basis of religion

If someone believes s/he has been harassed on the basis of religion, to determine whether she has a viable claim, it is critical to determine:

• whether the harassment came from coworkers or her supervisor;

• what, specifically, made her believe it was connected to her religion;

• how frequently the harassing conduct occurred, or how severe it was;

• whether she let the harasser know that the comments were offensive to her;

• whether she availed herself of internal complaint procedures, and if not, why she did not;

• and, if she did complain, what actions her employer took, if any, to address her complaint.
Practice tips from the perspective of union counsel:
Kevin Brodar, General Counsel
Transportation Div. – SMART
North Olmsted, OH
(216) 228-9400
kbrodar@smart-union.org

Seniority. Of critical importance to the union, as well as its members, are seniority rights. These are bargained for and generally clearly set out in a collective-bargaining agreement. While they may be varied (department, division, system, company-wide), the union is going to consider them sacrosanct and any attempt to bypass or seek a waiver is generally going to be met with resistance. The union’s position has long been supported by case law, the most well-known being TWA v. Hardison. Where a bona fide seniority system exists, the union does not have to agree to a waiver or to bypass it. To the extent that a union would consider a waiver, it must also consider any duty of fair representation implications that may arise with a waiver. The union is required to represent each member and must do so without discriminating against any.

Shift Swaps. While this issue is somewhat tied to seniority, it does not have to affect seniority directly, i.e., placing one employee above another with more seniority. This arises most often where an employer’s business operates 6 or 7 days a week. One employee may wish to have off Friday evening into Saturday or Sunday. The employee may not have sufficient seniority to allow them to bid a job with weekends off. Rather than seek a waiver, the union may inquire of its members to see if anyone would be willing to swap the occasional shift. Generally, this is easier way to accommodate as it does not affect seniority standing. The employee agreeing may have some incentive due to overtime or extra pay for weekend work.

Misc. With regard to meetings on property, that may raise issues concerning who and what other groups are or are not allowed to meet on property, especially during operating hours. To the extent that managers may be involved or leading discussions, such would raise questions regarding subsequent treatment of those who do not attend.
**Selected Cases**

**Definition of Religion**

**Welsh v. United States**, 398 U.S. 333 (1970). In a case involving the Universal Military Training and Service Act, the Supreme Court held that the definition of “religion” is not dependent on a belief in a “Supreme Being.” A person’s beliefs may be deemed “religious beliefs” if those beliefs occupy in the life of that individual a place parallel to that of God in traditional religions. See also **United States v. Seeger**, 380 U.S. 163 (1965) (in a military induction case, the Court defined “religious belief” as one that is sincere and that occupies in the life of the believer a place parallel to that of God in traditional religions).

**Davis v. Fort Bend Cty.**, 765 F.3d 480 (5th Cir. 2014), cert. denied, 135 S. Ct. 2804 (2015). The plaintiff, a county desktop support supervisor, and all other technical support employees were required to work on a particular Sunday in July 2011 to install computer equipment. She requested that she be excused as a religious accommodation to attend a church event. Although she had arranged for her own replacement and had also offered to come to work after the church event, the county denied her request. Granting summary judgment for the county on the plaintiff’s claim of denial of religious accommodation, the district court had held that the church event had actually involved breaking ground for a new church and feeding the community, and therefore the plaintiff’s attendance was “a personal commitment, not religious conviction.” Reversing, the appellate court ruled that whether a practice is religious turns not on the nature of the activity itself, but rather whether the plaintiff “sincerely believed it to be religious in her own scheme of things.” “Considering the ‘light touch’ and ‘judicial shyness’ that must be exercised, Davis’s testimony about her own sincere belief regarding her religious need to attend a special service at church on Sunday sufficiently evidenced a genuine dispute of material fact whether she held a bona fide religious belief.”

**Moranski v. General Motors Corp.**, 433 F.3d 537 (7th Cir. 2005). A private employer that made company resources available to recognized employee “affinity groups” did not engage in disparate treatment based on religion when it refused to recognize a Christian employee group under the employer’s program. The employer’s policy was to deny recognition to any group promoting or advocating any religious or political position, thus excluding not only groups advocating a particular religious position but also those espousing religious indifference or opposition. The court held that because the employer’s program treated all religions identically, and employees of any religion may join any of the recognized groups, there was no discrimination “because of” religion.

**Cloutier v. Costco Wholesale Corp.**, 390 F.3d 126 (1st Cir. 2004). The court found it unnecessary to decide whether membership in the Church of Body Modification is a religious belief where it held that the exemption that the plaintiff sought from the employer’s dress code would have posed an undue hardship.

**Storey v. Burns Int’l Sec. Servs.**, 390 F.3d 760 (3d Cir. 2004). The court declined to decide whether being a “Confederate Southern-American” is a sincere religious belief. Granting summary judgment to the employer, the court found no evidence of discriminatory animus and
no adverse employment action when an employee was terminated for refusing to remove Confederate flag stickers from his lunch box and pickup truck. See also Chaplin v. Du Pont Advance Fiber Sys., 293 F. Supp. 2d 622 (E.D. Va. 2003) (although the court had no authority to determine whether “Confederate Southern American” is a valid religion, the plaintiffs were not subjected to an adverse employment action when prohibited from displaying the Confederate flag).

Campos v. City of Blue Springs, 289 F.3d 546 (8th Cir. 2002). The evidence was sufficient to demonstrate that an employee who followed the tenets of Native American spirituality was denied compensation for additional work, taken off counseling assignments, denied leave to meet with her dissertation professor, and ultimately forced to quit because her supervisor wanted someone in the job who shared the supervisor’s religious beliefs. See also Backus v. Mena Newspapers, Inc., 224 F. Supp. 2d 1228 (W.D. Ark. 2002) (plaintiff stated a claim for disparate treatment based on religion when he alleged that he was terminated not because of his own religious beliefs, but because he did not hold the same religious beliefs as his supervisors).

Seshadri v. Kasraian, 130 F.3d 798 (7th Cir. 1997). An employee bringing a religious discrimination claim need not belong to an established church. An individual who seeks to obtain a privileged legal status because of his religion cannot preclude, however, inquiry into whether he or she has a religion.

Heller v. EBB Auto Co., 8 F.3d 1433 (9th Cir. 1993). “Title VII protects more than the observance of Sabbath or practices specifically mandated by an employee’s religion.” Title VII’s protections encompassed an employee’s participation in the religious ceremony in which his wife and children were converting to Judaism. The employee “testified that the ceremony, and the role of the father and husband in it, are part of the basic teachings of Judaism . . . [and he demonstrated] that he attached the utmost religious significance to the ceremony.” “[T]o restrict the act to those practices which are mandated or prohibited by a tenet of the religion, would involve the court in determining not only what are the tenets of a particular religion, . . . but would frequently require the courts to decide whether a particular practice is or is not required by the tenets of the religion.”

McDaniel v. Essex Int’l Co., 571 F.2d 338 (6th Cir. 1978). Title VII “applies to all religious observances and is not limited to claims of discrimination based on requirements of Sabbath work.”

EEOC v. United Health Programs of America, Inc., 2016 WL 6477050 (E.D.N.Y. Sept. 30, 2016). In an action brought by employees who alleged harassment or denial of accommodation, the court held that the employer’s use of a conflict resolution program, known as “Onionhead” or “Harnessing Happiness,” was a “religion” within the meaning of Title VII. In reaching this conclusion, the court relied on the fact that the program’s system of beliefs and practices was more than intellectual and involved ultimate concerns signifying religiosity, including chants, prayers, and mentions of God, transcendence, and souls.

Cavanaugh v. Bartelt, 178 F. Supp. 3d 819 (D. Neb. 2016), aff’d, (8th Cir. Sept. 7, 2016). In a civil rights action brought by a state prisoner alleging denial of religious accommodation, the
plaintiff asserted that he is a “Pastafarian,” i.e., a believer in the divine “Flying Spaghetti Monster” who practices the religion of “FSMism.” The Court ruled: FSMism is “not a ‘religion’ within the meaning of the relevant federal statutes and constitutional jurisprudence. It is, rather, a parody, intended to advance an argument about science, the evolution of life, and the place of religion in public education. Those are important issues, and FSMism contains a serious argument – but that does not mean that the trappings of the satire used to make that argument are entitled to protection as a ‘religion.’”

Burrows v. College of Cent. Fla., 2014 WL 7224533 (M.D. Fla. Dec. 17, 2014). The plaintiff, a vice president for instructional affairs at the defendant college, claimed she was demoted and ultimately terminated because her sexual orientation did not conform to management’s religious beliefs. At the time she was hired, the college’s equal employment opportunity policy prohibited discrimination based on sexual orientation, and the plaintiff subsequently married another woman in Iowa. Although she had received above average appraisals for the two years since she had been hired, she was demoted and then terminated after the college revised its policy to remove the prohibition on sexual orientation discrimination. Noting that other courts had consistently held that Title VII does not apply to discrimination based on sexual orientation, the court ruled that the plaintiff’s claim of religious discrimination based solely on the employer’s religious disapproval of her sexual orientation did not state a claim of religious discrimination. Therefore, the court granted the employer’s motion to dismiss her Title VII religious discrimination claim.

Brown-Eagle v. County of Erie, Pa., 2013 WL 5875085 (W.D. Pa. Oct. 30, 2013). The plaintiff, who brought a discrimination claim on several bases, including religion, alleged that he participated in religious services of the Christian, Islamic, and Jewish faiths, and that he refused to categorize himself as belonging to a particular religion. He also alleged that he engaged in the study of “Mound Builders, a group of American Indians who built mounds having religious significance.” The court rejected the employer’s argument that an applicant or employee must assert a single, identifiable religion. However, because the plaintiff failed to explain the specific religious beliefs that he claimed to sincerely hold, the court dismissed his religion claim without prejudice so he could correct the deficiencies, should he so choose.

Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012). The plaintiff, whom the court described as a “Born Again Christian,” was hired as a painter in the hospital’s physical plant department, and regularly wore a lanyard around his neck printed with the phrase “I <<heart>> Jesus.” Attached to the lanyard was a clear plastic badge holder containing a piece of paper with the handwritten words “Jesus Loves You!” and a drawing of a cross. On the reverse side, vertically aligned, was the handwritten message: “F False E Evidence A Appearing R Real.” When management directed him to remove it because it was not part of his uniform, he refused, saying that he would only do so if a Muslim woman was told to take off her headscarf, a Hindu his turban, and a Jewish man his yarmulke. Subsequently, a manager made a complaint accusing the plaintiff of approaching her, her mother, and her aunt talking “about God and preaching about religion.” The hospital subsequently terminated him, citing “several incidents and his unsatisfactory job performance.” Denying the parties’ cross-motions for summary judgment on the plaintiff’s claims of discriminatory termination and denial of accommodation, the court held that there was evidence in the record to support the conclusion
that the lanyard was a “necessary expression” of the plaintiff’s religion, and whether that belief was sincere was a fact question requiring a trial. In reaching this conclusion, the court noted that Title VII protects “[i]mpulses prompted by dictates of conscience as well as those engendered by divine commands . . . so long as the [plaintiff] conceives of the beliefs as religious in nature.”

Gadling-Cole v. West Chester Univ., 868 F. Supp. 2d 390 (E.D. Pa. 2012). The plaintiff, a university professor, alleged that she was subjected to a hostile work environment based on religion and that she was denied an Assistant Professor position, because, on account of her Baptist religious beliefs, she did not support or advocate on behalf of the LGBTQ (lesbian, gay, bisexual, transgender, and queer) community. Denying the university’s motion to dismiss, the court held that the allegations were sufficient for pleading purposes to state a Title VII claim. Considering whether what was at issue was a “religious” belief under Title VII, the court held: “While Plaintiff’s claims for religious discrimination are based on the single religious belief that a man should not lay with another man, this does not make Plaintiff’s claim any less cognizable under Title VII. . . . Plaintiff’s claims are not dependent on her sexual orientation, but instead are wholly based on her religious beliefs.” The university argued that, pursuant to this reasoning, discrimination based on “countless social or political topics, such as abortion, the death penalty, and foreign wars, would become actionable under Title VII so long as it coincided with the employee’s religion’s position on the matter.” The court found this argument unpersuasive, noting that courts have held Title VII religious discrimination claims cognizable as to topics that “overlap both the religious and political spectrum, such as abortion, so long as the claims are based on a plaintiff’s bona fide religious belief.”

Waltzer v. Triumph Apparel Corp., 108 Fair Empl. Prac. Cas. (BNA) 1228, 2010 WL 565428 (S.D.N.Y. Feb. 18, 2010). The plaintiff, a product development manager at the employer’s Manhattan office, requested that she be permitted to leave work at noon on Fridays so she would have sufficient time before sundown to travel to her second home in Pennsylvania, where she preferred to observe the Jewish Sabbath from sundown Friday through sundown Saturday. Following a bench trial, the court ruled in favor of the employer on the plaintiff’s denial of religious accommodation claim, reasoning that the plaintiff only showed a sincerely held religious belief that she could neither work nor travel during the Jewish Sabbath, not a belief that she needed to leave work early enough to observe the Sabbath at her Pennsylvania home rather than at her New Jersey home. Even assuming that observing the Sabbath in Pennsylvania was part of the plaintiff’s sincerely held religious belief (a contention that was undermined by the fact that she sought to leave invariably by 1:00 p.m. even though the time of sunset fluctuates throughout the year), she failed to put the employer on notice of her need for accommodation since she never disclosed that she was living part time in Pennsylvania and trying to commute there before sundown, but rather only told the employer that she needed to go to the kosher butcher and to prepare mentally for the Sabbath.

Toronka v. Continental Airlines, 649 F. Supp. 2d 608 (S.D. Tex. 2009). The plaintiff, an airline material specialist, alleged that he was disciplined more harshly by his employer than other workers who had been in on-the-job accidents because he told his employer at the time of the incident that the accident was inevitable as a result of a dream that his wife had about him earlier that day. Rejecting the employer’s argument that the claim should be dismissed on the grounds that the plaintiff’s beliefs were not “religious,” the court found that a moral and ethical belief in
the power of dreams that is based on religious convictions and traditions of African descent is a
religious belief, citing authorities holding that whether a belief is religious does not turn on its
veracity and that a religious belief is one which is based on a theory of “man’s nature or his place
in the Universe,” however “eccentric.”

appearance policy, which required its drivers with unconventional hairstyles, including
dreadlocks, to wear hats, did not constitute religious discrimination. The court held that in this
case, plaintiff’s “impulse to grow locks was not prompted by a dictate of his religious conscience
or engendered by a divine command . . . [He] candidly admits that ‘[w]earing [his] locks is a
personal choice [he] made in [his] life.’ Nowhere does he claim that his own religious tenets
require or dictate that particular hairstyle, or that locks are an essential part of his faith, … [and]
he conceded that ‘locks are a choice’ and ‘not a mandate.’ … it is not enough that [he] also
considers his locks a ‘testament’ or an ‘outward expression’ of his commitment to Protestantism
and the principles of Nubianism.”

Peterson v. Wilmur Commc’ns, Inc., 205 F. Supp. 2d 1014 (E.D. Wis. 2002). The plaintiff’s
white Supremacist belief system called “Creativity” is a religion within the meaning of Title VII
because it “functions as religion in [his] life.” The plaintiff had been a minister in the World
Church of the Creator for more than three years, worked to put the church’s teachings into
practice by reading the “White Man’s Bible,” and actively proselytized.

Klux Klan (KKK) is distinguishable from a religious belief. The employee had no claim for
hostile environment harassment because the alleged harassment occurred because of his self-
identification as a member of the KKK and not because of his religious beliefs. See also Slater v.
King Soopers, Inc., 809 F. Supp. 809 (D. Colo. 1992) (KKK is “political and social in nature”
and is not a religion for Title VII purposes).

Sincerely Held

United States v. Seeger, 380 U.S. 163 (1965). In First Amendment religious free exercise case,
the Court stated that “[w]hile the ‘truth’ of a belief is not open to question, there remains the
significant question of whether it is ‘truly held.’”

Adeyeye v. Heartland Sweeteners, L.L.C., 721 F.3d 444 (7th Cir. 2013). The plaintiff, who
sought unpaid leave for funeral rites in Nigeria following his father’s death, was able to show
that his religious belief was “sincerely held” even though he described the rites themselves as not
his own custom. The plaintiff asserted that his religious belief compelled him to implement the
religious practices and customs in connection with his father’s death and burial that his father
had established as head of the family for his household. Finding that the plaintiff’s beliefs could
be sincerely held, the court explained: “[The employer] seems to ask the court to reject the
inter-generational dimension of [the plaintiff’s] religion, which would require the court to probe
and perhaps even to disapprove of the content of his own religious beliefs . . . . [T]hat is not a
task appropriate for courts. Moreover, we cannot help but note that [the plaintiff’s] professed
belief that his faith required him to follow his father’s directions about matters of faith and ritual seems to fit very comfortably with the Judeo-Christian divine commandment to honor thy father and thy mother.”

EEOC v. Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico, 279 F.3d 49 (1st Cir. 2002). Evidence tending to show that an employee acted in a manner inconsistent with his professed religious belief is relevant to the factfinder’s evaluation of sincerity. However, “at trial the court must be careful in separating the verity and sincerity of an employee’s beliefs in order to prevent the verdict from turning on ‘the factfinder’s own idea of what a religion should resemble.’” In this case, a genuine issue of material fact existed as to whether the plaintiff’s objection to union membership, which he asserted was based on his Seventh Day Adventist religious beliefs, was sincerely held, given evidence that he often acted in a manner inconsistent with his professed religious beliefs. The employer argued that his insincerity was exemplified by the facts that plaintiff was divorced, took an oath before a notary upon becoming a public employee, worked five days a week (instead of the six days required by his faith), and did not mention his religious objection to union membership when he initially joined the union but subsequently objected to certain membership requirements.

EEOC v. Ilona of Hungary, Inc., 108 F.3d 1569 (7th Cir. 1997). The element of sincerity is fundamental because “if the religious beliefs that apparently prompted a request are not sincerely held, there has been no showing of a religious observance or practice that conflicts with an employment requirement.” The court upheld the lower court’s finding that a hair salon employee’s request for a day off to observe Yom Kippur satisfied the requirement of a sincerely held religious practice even though she readily conceded she was not a particularly religious person and that she did not observe every Jewish holiday.

Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012). The plaintiff alleged discrimination and denial of accommodation relating to his wearing of a lanyard around his neck printed with the phrase “I <<heart>> Jesus.” Attached to the lanyard was a clear plastic badge holder containing a piece of paper with the handwritten words “Jesus Loves You!” and a drawing of a cross. On the reverse side, vertically aligned, was the handwritten message: “F False E Evidence A Appearing R Real.” Denying the parties’ cross-motions for summary judgment on the plaintiff’s claims of discriminatory termination and denial of accommodation, the court held that there was evidence in the record to support the conclusion that the lanyard was a “necessary expression” of the plaintiff’s religion, and “[w]hether that belief is sincere is a question of fact that requires trial.” In reaching this conclusion, the court noted that Title VII protects “[i]mpulses prompted by dictates of conscience as well as those engendered by divine commands . . . so long as the [plaintiff] conceives of the beliefs as religious in nature.”

Adelwhab v. Jackson State Univ., 2010 WL 384416 (S.D. Miss. Jan. 27, 2010). The plaintiff, a practicing Muslim who worked as a university residence hall receptionist, alleged he was denied religious accommodation when he was regularly scheduled to work a midnight shift that conflicted with a professed requirement of his faith to study the Koran and pray at certain times, including from 2:00 a.m. to 4:00 a.m. Granting summary judgment to the employer, the court found that the plaintiff could not show that his asserted religious belief was “sincerely held,”
citing evidence of his inconsistent adherence to the requirement and his differing descriptions of the requirement and of his failure to mention it during his job interview even though he was informed of the midnight shift requirement.

EEOC v. Papin Enters., Inc., 106 Fair Empl. Prac. Cas. (BNA) 1854, 2009 WL 2256023 (M.D. Fla. July 28, 2009). The EEOC brought a denial of accommodation claim challenging employer Subway sandwich shop’s denial of an exemption from its no-facial-jewelry rule for an employee’s asserted Nuwaubian religious practice of wearing a nose ring. Following a jury verdict finding that the employee’s asserted religious practice was not “sincerely held,” the court denied EEOC’s motion for injunctive relief and damages arising from the employer’s former verification practices, which EEOC alleged impermissibly questioned the validity – rather than merely the sincerity – of religious practices for which accommodation was sought by requiring employees to prove that their requested observance or practice was required by their faith. In a prior decision, the court denied the employer’s motion for summary judgment asserting that accommodation would have posed an undue hardship.

EEOC v. Aldi, Inc., 103 Fair Empl. Prac. Cas. (BNA) 79, 2008 WL 859249 (W.D. Pa. Mar. 28, 2008). The employer argued that Bloom, a casual cashier who described herself as a “Christian, Protestant, and a Born Again Christian,” did not establish that she had a sincerely held religious belief that it is a sin to work on Sundays or to “support” another person working on Sundays, given that she did not attend church on Sundays. Denying the employer’s motion for summary judgment, the court held that the sincerity of Bloom’s belief “turns on the fact-finder’s determination of her credibility” and that there was sufficient evidence to create a question for the jury. The court noted that the plaintiff testified in great depth at her deposition about her religious beliefs, including the fact that she had been a Protestant her whole life and that she had been observing Sunday as the Sabbath for at least as long as she had been working for the employer.

Andrews v. Virginia Union Univ., 2008 WL 2096964 (E.D. Va. May 16, 2008). The court denied the employer’s summary judgment motion on an accommodation claim brought by a university professor who sought to continue to be called “Reverend” to denote her status as an ordained Baptist minister even after the university adopted a new academic-titles-only policy. The court reasoned that there was a genuine dispute of material fact as to whether the asserted belief was religious in nature, and moreover the employer had offered no evidence that accommodation would have posed an undue hardship.

Pozo v. J & J Hotel Co., L.L.C., 2007 WL 1376403 (S.D.N.Y. May 10, 2007). A reasonable jury could find that the plaintiff, a hotel housekeeper, had a sincerely held religious need to be accommodated by having off at least one Sunday per month to attend Mass at her Catholic parish. Although the employer argued that her belief was not sincerely held because she could not identify all the elements of a Catholic Mass and because she mentioned that one reason she would like to be off on the weekends was to be home with her husband, there was also evidence that she was baptized in the Catholic Church and had attended Sunday mass at her parish for approximately 25 years.
Bailey v. Associated Press, 2003 WL 22232967 (S.D.N.Y. Sept. 29, 2003). The employer did not violate Title VII when it denied a request for time off on Sundays from an employee who had not requested Sundays off during years of employment, did not inform the employer that his request was for religious reasons, and testified that he did not attend religious services on Sundays and was subject to no religious prohibition against working on Sundays.

EEOC v. Chemsico, Inc., 216 F. Supp. 2d 940 (E.D. Miss. 2002). A question of fact existed as to whether an employee who did not follow all of the teachings of her church and stopped attending church services had a sincere religious belief that precluded her from working on the Sabbath. A jury could conclude that the employee had a sincere religious belief, because she continued to engage in Bible study and had consistently refused to work on the Sabbath.

Hussein v. Waldorf-Astoria, 134 F. Supp. 2d 591 (S.D.N.Y. 2001). Employer had a good-faith basis to doubt the employee’s sincerity as he had never before engaged in the practice of wearing a beard in his 14 years of employment and had never mentioned his religious beliefs to anyone at the hotel.

Bushouse v. Local Union 2209, UAW, 164 F. Supp. 2d 1066 (N.D. Ind. 2001). The union did not violate Title VII when it required the plaintiff to provide a corroborating statement from a third party that he held a sincere religious belief that precluded him from financially contributing to labor unions.

Burns v. Warwick Valley Cent. Sch. Dist., 166 F. Supp. 2d 881 (S.D.N.Y. 2001). While an employer is not permitted to assess the objective accuracy of a religious belief, it is permitted to inquire into the religious basis of a request for accommodation in order to assess whether the belief is sincerely held.

EEOC v. IBP, Inc., 824 F. Supp. 147 (C.D. Ill. 1993). The sincerity of an employee’s religious beliefs or practices must be determined at the time of the alleged discrimination. Although the employee did not continue to hold his religious beliefs after the employer fired him, he observed the Sabbath while employed by the defendant and lost a second job as a result of his religious practices.

**Religious Organization Exception**

Corporation of the Presiding Bishop v. Amos, 483 U.S. 327 (1987). A nonprofit, church-run business does not violate Title VII if it refuses to hire anyone other than members of its own religion, even for enterprises or jobs that are not religious in nature.

Kennedy v. St. Joseph’s Ministries, Inc., 657 F.3d 189 (4th Cir. 2011). The court held that, under the “religious organization” exemption, a religiously based nursing center was exempt from all religious discrimination claims, not just claims of religious discrimination in hiring and firing. The plaintiff, a nursing assistant, was terminated for refusing to stop wearing her religious garb (long dresses/skirts and a cover for her hair), after the Assistant Director of Nursing Services informed her that her attire was inappropriate for a Catholic facility and that it made residents and their family members feel uncomfortable. In holding that the statutory
exemption barred not only the plaintiff’s discriminatory discharge claim but also her religious harassment and retaliation claims, the court relied on the statutory language of the “religious organization” exemption, which states that Title VII’s religious discrimination prohibitions “shall not apply” to religious organizations with respect to the “employment” of individuals “of a particular religion.” The court interpreted the term “employment” to encompass all aspects of the employment relationship. In reaching this conclusion, the court rejected the EEOC’s interpretation, which limits the exception to decisions by religious organizations to prefer members of their own religion in hiring and firing.

Spencer v. World Vision, Inc., 633 F.3d 723 (9th Cir. 2011). Three employees brought a Title VII action against a nonprofit faith-based humanitarian organization, alleging that they were terminated based on their religious beliefs. Affirming summary judgment for the defendant, the court found, in a 2-1 decision, that the defendant was a “religious organization” exempt from Title VII’s prohibition against religious discrimination. Although the two judges in the majority agreed that the applicability of the exemption depends on “whether the ‘general picture’ of an organization is ‘primarily religious,’ taking into account ‘[a]ll significant religious and secular characteristics,’” they disagreed as to the proper test for making this determination. Judge Scanlan would consider whether the organization: (1) is organized for a self-identified religious purpose (as evidenced by Articles of Incorporation or similar foundational documents); (2) is engaged in activity consistent with, and in furtherance of, those religious purposes; and (3) holds itself out to the public as religious. Judge Kleinfeld criticized Judge O’Scanlan’s test as being too broad, contending that it would allow nonprofit institutions with church affiliations to use their affiliations as a “cover for religious discrimination in secular employment.” Judge Kleinfeld would instead apply the exemption to a defendant if it: (1) is organized for a religious purpose; (2) is engaged primarily in carrying out that religious purpose; (3) holds itself out to the public as an entity for carrying out that religious purpose; and (4) does not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts. Because the defendant was exempt even under Judge Kleinfeld’s narrower test, it was entitled to summary judgment.

Clark v. Salvation Army, 2009 WL 179614 (11th Cir. Jan. 29, 2009) (unpublished). Affirming summary judgment for the employer as to the plaintiff’s claim that he was not hired for a vacant social worker position because he was a Roman Catholic and “not a practicing Christian,” the court applied 42 U.S.C. § 2000e(1)(a), which “exempts religious organizations from Title VII’s prohibition against discrimination in employment on the basis of religion.”

LeBoon v. Lancaster Jewish Cmty. Ctr., 503 F.3d 217 (3d Cir. 2007). To determine whether an organization is religious, courts have looked at the following factors: (1) whether the entity operates for a profit; (2) whether it produces a secular product; (3) whether the entity’s articles of incorporation or other pertinent documents state a religious purpose; (4) whether it is owned, affiliated with or financially supported by a formally religious entity such as a church or synagogue; (5) whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees; (6) whether the entity holds itself out to the public as secular or sectarian; (7) whether the entity regularly includes prayer or other forms of worship in its activities; (8) whether it includes religious instruction in its curriculum, to the extent it is an educational institution; and (9) whether its membership is made up of
coreligionists. Not all factors will be relevant in all cases, and the weight given each factor may vary from case to case. Applying those criteria, the employer in this case was held to be a religious organization because while it lacked financial or administrative ties with a particular synagogue and many of its activities were cultural, rather than religious, its structure and purpose were primarily religious; its articles of incorporation stated that its mission was to enhance and promote Jewish life, identity, and continuity; it was nonprofit; synagogue clergy played an advisory role in the employer’s management; and it hosted Jewish events and observed holy Jewish holidays.

Hall v. Baptist Mem’l Health Care Corp., 215 F.3d 618 (6th Cir. 2000). A student-service specialist alleged that a Southern Baptist-affiliated nursing school terminated her on the basis of religion because she was a lay leader in a gay-friendly church. The court ruled that the employer terminated her because of her leadership position in a gay organization whose values conflicted with the Southern Baptist Church, rather than her religious views per se.

Ziv v. Valley Beth Shalom, 156 F.3d 1242, 1998 WL 482832 (9th Cir. Aug. 11, 1998) (table). Even though a religious organization is permitted to prefer co-religionists, it is still otherwise subject to Title VII and can be held liable for retaliation and national origin discrimination.

Killinger v. Samford Univ., 113 F.3d 196 (11th Cir. 1997). A Baptist university was a “religious educational institution” where the largest single source of funding was the state Baptist Convention; all university trustees were Baptists; the university reported financially to the Convention and to the Baptist State Board of Missions; the university was a member of the Association of Baptist Colleges and Schools; the university charter designated its chief purpose as “the promotion of the Christian Religion throughout the world by maintaining and operating institutions dedicated to the development of Christian character in high scholastic standing”; and both the IRS and Department of Education recognized the university as a religious educational institution.

EEOC v. Kamehameha Sch./Bishop Estate, 990 F.2d 458 (9th Cir. 1993). A nonprofit school was not “religious” for Title VII purposes where ownership and affiliation, purpose, faculty, student body, student activities, and curriculum were either essentially secular or neutral with respect to religion.

EEOC v. Townley Eng’g & Mfg. Co., 859 F.2d 610 (9th Cir. 1988). Title VII does not prohibit a private sector employer from expressing its religious views in the workplace, for example by including Biblical verses on company invoices or other literature, enclosing Gospel tracts in outgoing mail, or holding devotional services during work hours, as long as it does not subject employees to religious harassment or deny requested religious accommodation by requiring them to attend the services or otherwise conform to the employer’s religion.

EEOC v. Fremont Christian Sch., 781 F.2d 1362 (9th Cir. 1986). A religious school violated Title VII and the Equal Pay Act when it provided “head of household” health insurance benefits only to single persons and married men. Religious organization exception does not allow sex discrimination.
The plaintiff, a former Catholic elementary school teacher, brought suit alleging sex and disability discrimination in violation of Title VII and the ADA when her contract was not renewed because she became pregnant through in vitro fertilization, in violation of the “morals clause.” The defendant Diocese objected to various discovery requests, invoking Title VII’s “religious organization” exception. Granting the plaintiff’s motion to compel discovery responses, the court ruled that the exception was inapplicable to this case, because religious organizations are not exempt from Title VII’s prohibition on discrimination based on race, national origin, or sex. The court subsequently denied the Diocese’s motion for summary judgment, and the Seventh Circuit dismissed its appeal on procedural grounds, therefore remanding the case for trial. *Herx v. Diocese of Fort Wayne-South Bend, Inc.*, 48 F. Supp. 3d 1168 (N.D. Ind. 2014), appeal dismissed, 772 F.3d 1085 (7th Cir. 2014).

Tran v. New Orleans Baptist Theological Seminary, 2004 WL 253459 (E.D. La. Feb. 10, 2004) (while Title VII allows religious organizations to prefer to employ individuals who share their religion, that exception is limited and does not permit religious organizations to harass those whom it has hired).


*Hopkins v. Women’s Div., Gen’l Bd. of Global Ministries*, 238 F. Supp. 2d 174 (D.D.C. 2002). The plaintiff, a Native American who was not a member of the Methodist Church, brought a Title VII action against her former employer, a church affiliate, raising claims that included religious discrimination and harassment based on alleged compulsory attendance at religious services and on discriminatory assignment of tasks. Rejecting the plaintiff’s contention that the “religious organization” exemption only applies to hiring decisions, the court dismissed the plaintiff’s claims, reasoning that the exemption bars religious discrimination claims “with respect to the entire realm of the employment arena and not just the actual hiring of individuals.”

**Ministerial Exception**

*Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694 (2012). The Court held that there is a First Amendment “ministerial exception” barring EEO claims by clergy. Resolving a split in the circuits about whether the exception is jurisdictional or is an affirmative defense that must be raised by the defendant, the Court held it is an affirmative defense. However, the Court did not adopt a specific test (such as the “primary duties” analysis used by many lower courts) and instead endorsed weighing the totality of the facts on a case-by-case basis to determine whether the exception applies. The Court concluded that the ministerial exception barred the EEOC’s ADA retaliation claim on behalf of a parochial school teacher, because she had been required to pursue a rigorous religious course of study to become a “called” teacher, which included being ordained and receiving the title of “minister,” she led daily prayers and occasional chapel services, and she provided religious instruction.

*Conlon v. InterVarsity Christian Fellowship/USA*, 777 F.3d 829 (6th Cir. 2015). The plaintiff, who was terminated from her position as a spiritual director to staff members of a non-profit
Christian Fellowship organization, brought a sex discrimination claim alleging she was terminated for considering getting a divorce from her husband, even though male employees who had divorced their spouses were retained. Affirming dismissal of the claim, the court held that although the defendant is not a church or other traditional religious organization, its Christian name and mission of Christian ministry make it clear that the defendant is a religious organization within the meaning of Title VII. Since the plaintiff’s position with the religious organization was ministerial, she was barred by the ministerial exception from bringing an EEO claim. In reaching this conclusion, the court ruled that, even though the defendant had adopted an employment policy prohibiting sex discrimination, it had not waived its ability to invoke the ministerial exception, since the exception is a “structural limitation imposed on the government by the Religion Clauses” and cannot be waived.

Cannata v. Catholic Diocese of Austin, 700 F.3d 169 (5th Cir. 2012). Applying Hosanna-Tabor, the court held that the “ministerial exception” barred EEO claims by a church music director, even though he was not ordained and did not conduct Mass, deliver a sermon, or write music or lyrics for service, because, notwithstanding his various secular duties, his piano playing during Mass was done in furtherance of the mission and message of the church.

Alcazar v. Corporation of the Catholic Archbishop of Seattle, 627 F.3d 1288 (9th Cir. 2010) (en banc). The First Amendment’s ministerial exception barred a Catholic seminarian’s overtime compensation claim under a state minimum wage law. Affirming dismissal of the plaintiff’s complaint, the court rejected the plaintiff’s argument that because he performed mostly maintenance work for the church, rather than clergy duties, the ministerial exception did not necessarily apply even though he assisted with Mass. The court stated that analyzing the ministerial exception using this type of “functional” approach would result in government entanglement in church-minister relationships in violation of the First Amendment.

Skrzypczak v. Roman Catholic Diocese of Tulsa, 611 F.3d 1238 (10th Cir. 2010). Affirming summary judgment for the defendant, the court held that the plaintiff, a former director of the Department of Religious Formation, was barred by the ministerial exception from bringing her age and sex discrimination claims, including sexual harassment claims. The plaintiff alleged that, despite having 10 years of good performance reviews, she was removed from her position because of her age and sex. The court held that while the ministerial exception normally is applied to clergy, it is applicable to any staff with a religious function. Rejecting the plaintiff’s argument that her job was merely administrative in nature and therefore not covered by the ministerial exception, the court concluded that her job supervising the diocese’s Pastoral Studies Institute had religious aspects, including teaching multiple religious courses.

Hankins v. New York Annual Conference of the United Methodist Church, 351 F. App’x 489 (2d Cir. 2009). The plaintiff, an ordained United Methodist minister, challenged as age discrimination his church’s rule requiring mandatory retirement at age 70. In its prior decision in the same case, Hankins v. Lyght, 441 F.3d 96 (2d Cir. 2006), the court held that the Religious Freedom Restoration Act (RFRA) applies to suits on federal claims between private individuals, and remanded for further consideration. On remand, the district court ruled that RFRA had displaced the ministerial exception but that the ADEA suit should still be dismissed under RFRA. Affirming the dismissal on other grounds, the court of appeals held that RFRA cannot displace
the constitutionally mandated ministerial exception, which bars employment discrimination claims by clergy members, and that the ministerial exception required dismissal of the plaintiff’s claim. Compare Redhead v. Conference of Seventh Day Adventists, 440 F. Supp. 2d 211 (E.D.N.Y. 2006) (discussed below).

Rweyemamu v. Cote, 520 F.3d 198 (2d Cir. 2008). The ministerial exception barred an ordained priest from bringing a race discrimination claim against the Roman Catholic Diocese. In so ruling, the court stated that it was “affirm[ing] the vitality” of the ministerial exception in the Second Circuit, which is “constitutionally required by various doctrinal underpinnings of the First Amendment.” Noting that circuit courts have “consistently struggled to decide whether or not a particular employee is functionally a ‘minister,’” the court held that “this approach is too rigid because it fails to consider the nature of the dispute,” because even a “lay employee’s relationship to his employer may be ‘so pervasively religious’ that judicial interference in the form of a discrimination inquiry could run afoul of the Constitution.” By contrast, the court also noted that “however high in the church hierarchy he may be, a plaintiff alleging particular wrongs by the church that are wholly non-religious in character is surely not forbidden his day in court.” In this case, because the plaintiff was an ordained priest of the church whose duties were determined by Catholic doctrine, analyzing his discrimination claim would cause the court to be drawn into doctrinal questions, and therefore, his Title VII claim fell easily within the boundaries of the ministerial exception.

Hollins v. Methodist Healthcare, Inc., 474 F.3d 223 (6th Cir. 2007). The court applied the First Amendment-based ministerial exception to bar a claim by a resident in a church-affiliated hospital’s clinical pastoral education program who alleged disability discrimination when she was terminated following a psychiatric evaluation.

Petruska v. Gannon Univ., 462 F.3d 294 (3d Cir. 2006). The plaintiff, a female Catholic chaplain, alleged sex discrimination in violation of Title VII when she was forced out of her position as university chaplain after she advocated on behalf of alleged victims of sexual harassment and spoke out against the school’s president regarding alleged sexual harassment and discrimination against female employees. The court held that the ministerial exception barred the Title VII claim.

Tomic v. Catholic Diocese of Peoria, 442 F.3d 1036 (7th Cir. 2006). The court applied the ministerial exception to bar an age discrimination claim brought by a Catholic Diocese music director.

Elvig v. Calvin Presbyterian Church, 375 F.3d 951 (9th Cir. 2004). While the ministerial exception barred a female Presbyterian associate pastor’s claims that the church discriminatorily fired her and prevented her from sending her resume to any other church, it did not bar her sexual harassment and retaliation claims. Adjudication of the sexual harassment claim was a purely secular inquiry which would not require excessive government entanglement with religion unless the church claimed to have a doctrinal basis for the harassment or its decision not to take corrective measures after the associate pastor complained. Similarly, the retaliation claim could succeed if she proved that she suffered verbal abuse and intimidation because of her complaints to the church and the EEOC.
Preece v. Covenant Presbyterian Church, 2015 WL 1826231 (D. Neb. Apr. 22, 2015). Applying Hosanna Tabor, the court granted summary judgment for the employer church on claims of sexual harassment and retaliation by the plaintiff, who was employed as the church’s Director of Youth Ministry. The plaintiff argued that the “ministerial exception” did not bar his EEO claims because he was not ordained clergy and was engaged in primarily secular activities, contending that many of the religious duties in his job description, such as leading Wednesday evening worship services, were not tasks in which he actually engaged. The court disagreed: The plaintiff’s job duties “reflected a role in him conveying the defendant’s message and carrying out its mission. The defendant trusted the plaintiff to lead the youth through the tenets of the religion with, at least, weekly confirmation and bible school classes, with additional instruction in worship, discipleship, fellowship, mission work, and evangelism activities. While the plaintiff may have conducted secular duties, the precise division of secular and religious labor is immaterial particularly when the mission work led by the plaintiff incorporated and embodied the core teachings of the church.” The court further held that, while some courts recognize that there may be harassment claims that can be adjudicated without implicating First Amendment considerations, the defendant’s treatment of the plaintiff in this case in relation to his sexual harassment allegation clearly implicated an internal church decision and management, and therefore could not be judicially reviewed without excessive government entanglement with religion.

Hough v. Roman Catholic Diocese of Erie, 2014 WL 834473 (W.D. Pa. Mar. 4, 2014). The plaintiffs, three long-time Catholic school teachers, brought age discrimination claims against the Diocese when they were not rehired for other teaching posts after their school closed. Denying the Diocese’s motion to dismiss or, in the alternative, for summary judgment, the court ruled that the argument “that all teachers are considered to be ministers” was not enough, standing alone, to establish application of the ministerial exception. The Hosanna-Tabor analysis must be “based on a well-developed record with evidence of [p]laintiffs’ job duties and functions, as well as the duties currently performed by those who were hired in their stead.”

Penn v. New York Methodist Hosp., 2013 WL 5477600 (S.D.N.Y. Sept. 30, 2013). The plaintiff, a Methodist part-time staff chaplain in a hospital pastoral care department, alleged various acts of discrimination and retaliation in violation of Title VII. The hospital moved to dismiss the complaint, invoking the ministerial exception as barring any EEO claims by employees performing ministerial duties. Denying in part the motion to dismiss, the court ruled that the ministerial exception may only be invoked by a religious organization, meaning that it is an entity operated by a religious organization or that, as stated in Hosanna-Tabor, its “mission is marked by clear or obvious religious characteristics.” Based solely on the allegations in the complaint and the hospital certificate of incorporation, it could not be determined whether the defendant hospital was a religious organization.

Dias v. Archdiocese of Cincinnati, 2012 WL 1068165 (S.D. Ohio Mar. 29, 2012). The plaintiff, who was employed by two private Catholic schools, sued under Title VII for alleged sex discrimination when she was terminated because she was pregnant and unmarried. Applying the Supreme Court’s decision in Hosanna-Tabor, the court concluded that the ministerial exception did not bar the plaintiff’s claim and therefore denied the schools’ motion to dismiss. In allowing
the case to proceed, the court relied on the fact that the plaintiff, who was not Catholic, had no responsibility for religious instruction at the schools. As the technology coordinator, the plaintiff oversaw the computer systems at the schools and instructed students on computer usage. “The Court finds dispositive that as a non-Catholic, Plaintiff was not even permitted to teach Catholic doctrine. Plaintiff had received no religious training or title and had no religious duties. The authorities cited by Plaintiff show that it is not enough to generally call her a ‘role model,’ or find that she is a ‘minister’ by virtue of her affiliation with a religious school.”

Braun v. St. Pius X Parish, 2011 WL 5086362 (N.D. Okla. Oct. 25, 2011), aff’d on other grounds, 509 F. App’x 750 (10th Cir. 2013). The plaintiff, a teacher of secular subjects at a school operated by a Roman Catholic parish, alleged that she was terminated because of her age and religion. The court ruled that the religious discrimination claim was barred by the Title VII exemption for religious organizations, but rejected the school’s argument that the age discrimination claim was barred by the judicially created ministerial exception. Although the plaintiff’s teaching contract required her to “teach and act in accordance with the precepts of the Catholic Church” and to “aid in the Christian formation of students,” the school failed to articulate specific responsibilities or actions that might be considered ministerial. Denying summary judgment to the employer on the plaintiff’s age discrimination claim, the court further noted that the plaintiff was not Catholic and did not teach religion or lead students in prayer.

Redhead v. Conference of Seventh Day Adventists, 440 F. Supp. 2d 211 (E.D.N.Y. 2006). The court expressed “strong reservations” about whether RFRA applied as a defense to a Title VII claim between private parties, but held that even assuming it does, enforcement of Title VII constitutes a “compelling government interest” under RFRA. Moreover, RFRA and the First Amendment-based ministerial exception are not mutually exclusive, and consideration of “the ministerial exception is necessary for a case-specific application of the compelling interest test.” Here, the plaintiff, a teacher at a Seventh Day Adventist school, could proceed with her claim that she was subjected to sex discrimination in violation of Title VII when she was terminated for being pregnant and unmarried. The ministerial exception did not apply because the plaintiff’s duties were primarily secular; she spent only one hour of each day teaching Bible study and attended religious ceremonies with students only one day per year.

Dolquist v. Heartland Presbytery, 342 F. Supp. 2d 996 (D. Kan. 2004). The court held that the plaintiff could proceed with her claim that she was sexually harassed by a music director and church elder and then retaliated against after complaining because adjudication of the claim would not unnecessarily entangle the courts in the religious mission of the church or denomination. Finding that the disputed issues were the nature and severity of the alleged harassment, whether the church knew of the harassment, and whether it adequately responded, the court held that the ministerial exception did not apply because adjudication of those issues would not involve the church’s right to select clergy or decide matters of church government, faith and doctrine.
Reasonable Accommodation and Undue Hardship

Generally

Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986). Title VII does not require an employer to grant, absent undue hardship, the religious accommodation preferred by the employee. An employer meets its Title VII obligation when it offers a “reasonable accommodation” that removes the conflict between a worker’s employment and his or her religious beliefs.

Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977). Neither an employer nor a union is obliged to take steps inconsistent with a valid collective bargaining agreement to accommodate an employee’s religious belief or practice under Title VII. An employer has no obligation to impose an undesirable shift on other employees, or to substitute or replace workers if such an accommodation would require more than a de minimis cost.

Sturgill v. United Parcel Serv., Inc., 512 F.3d 1024 (8th Cir. 2008). A UPS package car driver was terminated for refusing to complete his route after the employer denied his request to be excused from working past sundown on Fridays as a religious accommodation. Following a jury verdict for the plaintiff, the Eighth Circuit held that the district court had erroneously instructed the jury that a reasonable accommodation must “eliminate” any work-religion conflict. The court reasoned that a reasonable accommodation need not, as a matter of law, eliminate a work-religion conflict and that “in close cases, that is a question for the jury because it turns on fact-intensive issues such as work demands, the strength and nature of the employee’s religious conviction, the terms of an applicable CBA, and the contractual rights and workplace attitudes of coworker.” Nonetheless, the court concluded that the erroneous jury instruction was not reversible error. In particular, there was evidence of a specific, one-time failure to accommodate resulting in the severe sanction of termination, which justified the jury’s verdict without regard to whether the employer had a broader Title VII duty to completely and permanently eliminate the religious conflict. See also EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307 (4th Cir. 2008).

Muhammad v. New York City Transit Auth., 52 F. Supp. 3d 468 (E.D.N.Y. 2014). The plaintiff, a bus driver, was transferred to the bus depot because she refused to remove the khimar (headscarf) she wore pursuant to her Muslim religious beliefs. The employer contended the transfer constituted a reasonable accommodation. Denying the employer’s motion for summary judgment, the court ruled that an accommodation is not reasonable “if it cause[s] [an employee] to suffer an inexplicable diminution in his employee status or benefits. . . . In other words, an accommodation might be unreasonable if it imposes a significant work-related burden on the employee without justification . . . .” Here, there was a fact issue for the jury to determine whether the transfer satisfied the employer’s Title VII obligation to accommodate the plaintiff’s religious beliefs.

Employer Notice of the Conflict Between Religion and Work

EEOC v. Abercrombie & Fitch Stores, Inc., 135 S. Ct. 2028 (2015). The EEOC alleged that the defendant’s clothing store violated Title VII when it refused to hire Samantha Elauf because it
knew or suspected the headscarf she wore to her interview was religious, and it sought to avoid having to make any exception to its dress code as a religious accommodation. The Supreme Court ruled that, even where, as here, an applicant does not request accommodation, an employer violates Title VII when a motive for not hiring the applicant is to avoid providing religious accommodation, even if the employer does not actually know whether the employee will need one. If an applicant proves that one of an employer’s motives for not hiring her was that it suspected she might need a religious accommodation, she can prevail on a claim of disparate treatment based on religion, even if she never asked for accommodation during the hiring process. To defeat liability, an employer would remain free to prove that no accommodation could have been provided without imposing an undue hardship on the operation of its business.

White v. Andy Frain Servs., Inc., 629 F. App’x 131 (2d Cir. 2015). The employer did not fail to reasonably accommodate a Jewish employee’s religious beliefs, even though it denied the employee’s request for vacation during Passover. The employee had stated to the employer only that he wanted his vacation to “coincide closely with” Passover and that he “basically would like” that to happen, but never suggested that he was unable to work on Passover, as would demonstrate a conflict with an employment requirement.

Nobach v. Woodland Vill. Nursing Ctr., Inc., 799 F.3d 374 (5th Cir. 2015), cert. denied, 136 S. Ct. 1166 (2016). The plaintiff worked as an activities aide at a nursing home, and her duties included performing a non-denominational devotional reading, reading newspapers to residents, playing games with residents, and generally keeping residents entertained. She alleged that she was terminated based on religion because, as a non-Catholic, she refused to pray the Rosary with a Catholic resident. On remand from the U.S. Supreme Court to reconsider its prior ruling in light of Abercrombie, the appellate court held that the evidence was insufficient to support a finding that the decisionmaker knew or suspected that the plaintiff’s religious beliefs required accommodation so she would not be required to pray the Rosary. Prior to termination, she had only stated her religious objection to an assistant, and did not allege that the assistant had informed or influenced the decisionmaker. “If Nobach had presented any evidence that [the decisionmaker] knew, suspected, or reasonably should have known the cause for her refusing this task was her conflicting religious belief – and . . . was motivated by this knowledge or suspicion – the jury would certainly have been entitled to reject [the decisionmaker’s] explanation for Nobach’s termination. But, no such evidence was ever provided to the jury.”

Xodus v. Wackenhut Corp., 619 F.3d 683 (7th Cir. 2010). The plaintiff appealed the district court’s ruling in favor of the employer following a bench trial. The plaintiff contended that he was denied accommodation when he was not hired after allegedly informing the interviewing official that, due to his Rastafarian beliefs, he could not comply with the employer’s grooming policy by cutting his dreadlocks. The employer contended that the plaintiff only cited his beliefs, not his religious beliefs, so the employer was not on notice of a religious conflict and therefore not required under Title VII to make an exception to the grooming policy as a religious accommodation absent undue hardship. The appeals court was required to affirm the ruling for the employer as long as the lower court’s finding represented a “plausible view of the evidence at trial.” Affirming the ruling in favor of the employer under this standard, the appeals court concluded that the district court’s decision “to credit [the manager’s] testimony that [the plaintiff]
never informed him that religious belief required him to wear dreadlocks [was] both plausible
from the evidence and sufficiently explained in the district court’s opinion.”

affirmed dismissal of the plaintiff’s failure to accommodate claim because the plaintiff, a teacher,
did not allege that she ever informed the school that mandatory attendance at a banquet that
included a “libations ceremony” would violate her religious beliefs. Although she had disclosed
her Christian ministry activities to the school and it was aware of her faith, she did not notify the
school prior to the ceremony that her religious beliefs prevented her from participating. Since
she failed to satisfy her duty to provide “fair warning,” the school had no duty to accommodate
her.

Reed v. Great Lakes Cos., 330 F.3d 931 (7th Cir. 2003). A hotel was not liable for failure to
accommodate an employee, because it was not on notice that he needed an accommodation. An
employee and his manager attended a meeting with a nonprofit Christian group that evangelizes
by distributing free Bibles to hotels. When the group members unexpectedly conducted prayers
and Bible reading, the employee abruptly left the meeting, embarrassing the manager. When the
manager later told the employee not to engage in such conduct in the future and the employee
said that he could not be compelled to participate in a religious event, the two argued about it and
the manager fired the employee for insubordination. Absent undue hardship, an employer would
typically have to accommodate an employee who objected to attendance on grounds of his
religious beliefs or lack thereof, by excusing him from the meeting. However, the court held
that in this case the employee merely asserted the right to disobey orders that he deemed
inconsistent with his religious beliefs, while refusing to explain to his manager the nature of the
conflict with his religious beliefs or lack thereof. His failure to adequately notify his employer
of his religious needs defeated his accommodation claim.

Chalmers v. Tulon Co. of Richmond, 101 F.3d 1012 (4th Cir. 1996). An evangelical Christian
employee who was discharged for sending religiously motivated letters to the home of her
supervisor and a coworker accusing them of immoral conduct and encouraging them to get their
lives “right” failed to establish denial of religious accommodation. While accommodating an
employee’s desire to send personal, disturbing letters to coworkers would pose an undue
hardship, the court held that even without reaching that defense, any potential claim of denial of
accommodation was defeated in this case because the plaintiff never notified her employer that
her religious beliefs required her to send personal letters to her coworkers. The letters themselves
sent by the employee did not provide adequate notice to the employer that her religion compelled
her to write them, and the mere notoriety of the plaintiff’s religious views in the workplace was
insufficient to place the employer on notice that she might engage in any activity for religious
reasons.

Heller v. EBB Auto Co., 8 F.3d 1433 (9th Cir. 1993). “A sensible approach would require only
enough information about an employee’s 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.” In this case, the notice was sufficient where the plaintiff’s superiors knew that he
was Jewish and that his wife was studying for conversion, and when he requested the time off, he
informed his superior that it was to attend his wife and children’s religious conversion ceremony.
“Any greater notice requirement would permit an employer to delve into the religious practices of an employee in order to determine whether religion mandates the employee’s adherence. If courts may not make such an inquiry, then neither should employers.”

Pierce v. General Motors LLC, 2016 WL 4800869 (E.D. Mich. Sept. 14, 2016). “Plaintiff cannot prove the decision makers’ knowledge of his religion or need for a religious accommodation based on his claim that both were ‘common knowledge’” at the workplace.

EEOC v. United Galaxy, Inc., 2013 WL 3223626 (D.N.J. June 25, 2013). Gurpreet Kherha, an observant Sikh who wore a turban and an uncut beard, alleged that he was not hired for an automobile sales position because he would have needed an exception to the employer’s “no-beard” policy as a religious accommodation. Moving for summary judgment, the employer argued that it was not on notice of the need for an accommodation, as Khera never explicitly asked for one. Rejecting this argument, the court ruled that Khera’s unshaven beard and turban were “prominent,” unlike a religious observance that is not visible. Moreover, although the testimony was disputed by the employer, Khera alleged that during the initial screen interview, a third-party recruiter and trainer asked if he was Sikh, to which Khera responded affirmatively. Furthermore, the recruiter notified the defendant company’s owner of the religious conflict, to which the owner responded: “Okay, but you know we have a corporate policy that says we don’t allow facial hair . . . [t]his has nothing to do with religion, it’s just our corporate policy.”

Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012). The plaintiff, a hospital painter, regularly wore a lanyard around his neck printed with the phrase “I <<heart>> Jesus.” Attached to the lanyard was a clear plastic badge holder containing a piece of paper with the handwritten words “Jesus Loves You!” and a drawing of a cross. On the reverse side, vertically aligned, was the handwritten message: “F False E Evidence A Appearing R Real.” When management directed him to remove it because it was not part of his uniform, he refused, saying that he would only do so if Muslim woman was told to take off her headscarf, a Hindu his turban, and a Jewish man his yarmulke. Rejecting the employer’s argument that the plaintiff never specifically requested an accommodation to wear the lanyard, the court ruled that “the test is whether the employee notified his employer of a conflict – not whether he specifically requested accommodation.” Denying summary judgment to the employer, the court found that there was enough evidence in this case to put the employer on notice, because the defendant “knew not only that Plaintiff was a devout Born Again Christian, but that he insisted that the lanyard was a necessary expression of his faith.”

Weathers v. FedEx Corporate Servs., Inc., 2011 WL 5184406 (N.D. Ill. Nov. 1, 2011). The plaintiff, a sales manager who described himself as a conservative evangelical Christian, belonged to an internal Christian employee organization and, in that capacity, had been invited to speak at FedEx sales conferences about his faith. He was issued a “letter of counseling” after one of his subordinates complained that he had quoted biblical passages to her about the master/slave relationship and analogized it to work. The letter instructed the plaintiff that his discussions of religion with coworkers, even if initiated by others, “must cease.” In response, he sent an e-mail asking for “clarity” as to how he was supposed to answer when questioned about his faith, and asking when Title VII would permit him to discuss religion in response to genuine inquiries from coworkers. The e-mail cited a passage of Scripture that the plaintiff believed
obligated him to answer questions about his religion. He never received a reply. Denying summary judgment to the employer on the plaintiff’s religious accommodation claim, the court ruled that the e-mail was a request for accommodation, even absent the word “accommodate,” since it included a “request for assistance” to “resolve the tension” between the letter of counseling and the plaintiff’s religious beliefs.

Waltzer v. Triumph Apparel Corp., 2010 WL 565428 (S.D.N.Y. Feb. 18, 2010). The court held that even assuming that observing the Sabbath in Pennsylvania was part of the plaintiff’s sincerely held religious beliefs, she failed to put the employer on notice of her need for an early departure time every Friday as a religious accommodation so that she could get to her home by sundown. The plaintiff, who worked in New York City, never disclosed that she was living part time in Pennsylvania and trying to make the three-hour commute there before sundown, but rather only told the employer that she needed to go to the kosher butcher and to prepare mentally for the Sabbath.

Xodus v. Wackenhut Corp., 626 F. Supp. 2d 861 (N.D. Ill. 2009). Denying the employer’s motion for summary judgment, the court ruled that many material facts were disputed with respect to the plaintiff’s claim that he was denied accommodation when he was not hired after informing the job interviewer that, due to his religious beliefs, he could not cut his dreadlocks in conformance with the employer’s grooming policy. The employer contended that the plaintiff only cited his beliefs, not his “religious” beliefs. The court noted that both parties agreed that the plaintiff did not specifically identify during the interview what religion was at issue, but the court held that “that type of declaration is not required to prove religious discrimination.” (Following a bench trial, the district court ruled for the employer, and the appeals court affirmed. See above summary.)

Andrews v. Virginia Union Univ., 2008 WL 2096964 (E.D. Va. May 16, 2008). Denying the employer’s motion for summary judgment, the court ruled that while the employer’s knowledge that the plaintiff had strong religious beliefs was insufficient to provide notice of the plaintiff’s religiously based desire to be called “Reverend,” the plaintiff was not required to “officially” inform the employer of her religious belief. Rather, the plaintiff was merely required to provide enough information about her religious belief to make the employer aware of the conflict between the belief and the employer’s policies. Here, the plaintiff informed her supervisor of the conflict between her desire to be called Reverend and the academic title policy, and therefore, a reasonable jury could conclude that the notice requirement was satisfied.

Al-Jabery v. ConAgra Foods, Inc., 101 Fair Empl. Prac. Cas. (BNA) 1633, 2007 WL 3124628 (D. Neb. Oct. 24, 2007). The plaintiff failed to prove that he placed his employer, a ham processing plant, on sufficient notice that he desired the religious accommodation of not being required to touch pork. There was no evidence that he made such a request during his employment, and the fact that his employer knew he was a Muslim was insufficient to place it on notice that he needed accommodation. Moreover, during the employment interview process, he wrote on his application that he would perform any job at the plant, and “[g]iven the fact that he was applying for a job in a ham processing plant, it strains credulity to believe that he also told [the employer] he did not mean what his application clearly stated.”
Sistrunk v. Camden Cty. Workforce Inv. Bd., 100 Fair Empl. Prac. Cas. (BNA) 1330, 2007 WL 1175701 (D.N.J. Apr. 18, 2007). The plaintiff, a youth coordinator, alleged that he was terminated in violation of Title VII for failure to conform to the county’s dress and grooming code due to his Rastafarian dreadlocks. The plaintiff contended that he was told by a supervisor either to cut his hair in conformance with the dress and grooming code or not to return to work, and that in response he informed the supervisor that cutting his hair would conflict with his “way of life.” He subsequently stayed away from work for three days, allegedly because he was awaiting a decision on his requested exemption from the policy, and was terminated based on his absences. Denying summary judgment for the employer on the plaintiff’s Title VII accommodation claim, the court ruled that there were disputed issues of material fact as to whether the plaintiff sufficiently placed the employer on notice that his objection to the grooming requirement was based on his religious beliefs, and if so, whether he could have been accommodated absent undue hardship.

**Discussion of Request**

Adeyeye v. Heartland Sweeteners, L.L.C., 721 F.3d 444 (7th Cir. 2013). The court ruled that the plaintiff’s written requests for unpaid leave to attend his father’s funeral in his home village in Nigeria could be found sufficient to put the employer on notice that it was religious in nature. Even though the plaintiff did not specifically refer to religion as such, he cited a “funeral ceremony,” a “burial ceremony,” a “funeral rite according to our custom and tradition,” his required attendance as the first child and only son, and a required animal sacrifice at which he was required to kill five goats before his mother could leave her home, which was “compulsory for the children so that the death will not come or take away any of the children’s life.” The court stated: “[T]he protections of Title VII are not limited to familiar religions,” and “[i]f the managers who considered the request had questions about whether the request was religious, nothing would have prevented them from asking [the plaintiff] to explain a little more about the nature of his request. . . . The law leaves ample room for dialogue on these matters.”

EEOC v. AutoNation USA Corp., 52 F. App’x 327 (9th Cir. 2002). A devout Christian who sought not to work on Sundays failed to make a good-faith attempt to obtain accommodation when he resigned on the first day of discussions with his employer regarding his religious scheduling needs. The employer satisfied its initial burden by suggesting possible accommodations, but the employee short-circuited the interactive process required by Title VII by resigning without giving the accommodations the opportunity to be implemented or tested.

Heller v. EBB Auto Co., 8 F.3d 1433 (9th Cir. 1993). “Once an employee proves a prima facie case under Title VII, the burden shifts to the employer to show that it undertook ‘some initial step to reasonably accommodate the religious belief of that employee.’ . . . Although neither Congress nor the EEOC has delineated the scope of this obligation, it requires that, ‘at a minimum, the employer . . . negotiate with the employee in an effort reasonably to accommodate the employee’s religious beliefs.’” The employer need not make such an effort if it can show that any accommodation would impose undue hardship.” In this case, the employer failed to show it made a sufficient effort to accommodate an employee after he scheduled his wife’s religious conversion ceremony in reliance on a supervisor’s initial grant of permission, then withdrew permission yet made no effort to negotiate with him or accommodate his conflict. “At
the very least, Title VII requires that, once an employer gives an employee leave of absence to attend a religious ceremony, the employer should provide a good faith reason for rescinding that permission. The employee whose employer gives permission and then takes it away is no better off, and is perhaps worse off, than one whose employer never gave permission at all. Because it never gave [the plaintiff] any reason for [the] countermand order, the employer did not meet its Title VII burden.” A manager’s attempt to call plaintiff at home to try to discuss the situation with him was insufficient because it did not occur until after the plaintiff’s termination, and thus only related to mitigation of damages.

Kenner v. Domtar Indus., Inc., 97 Fair Empl. Prac. Cas. (BNA) 1359, 2006 WL 662466 (W.D. Ark. Mar. 13, 2006). The court held that the existence of a shift swap system in a collective bargaining agreement does not establish a reasonable accommodation as a matter of law. Rather, where a plaintiff has established a prima facie case of denial of accommodation, the employer “has the burden of proving that it offered [p]laintiff a reasonable accommodation. . . . Title VII’s reasonable accommodation provisions contemplate an interactive process, with cooperation between the employer and the employee, but which must be initiated by the employer.” Rejecting the employer’s motion for summary judgment in this case, the court found “there is no evidence before the [c]ourt that [the employer] initiated this process, only that a shift-swap system was in existence.” See also 97 Fair Empl. Prac. Cas. (BNA) 1354, 2006 WL 522468 (W.D. Ark. Mar 3, 2006).

Seniority Systems and Collectively Bargained Rights

Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977). Neither an employer nor a union is obliged to take steps inconsistent with a valid collective bargaining agreement to accommodate an employee’s religious belief or practice under Title VII. An employer has no obligation to impose an undesirable shift on other employees, or to substitute or replace workers if such an accommodation would require more than a de minimis cost.

Stolley v. Lockheed Martin Aeronautics Co., 2007 WL 1010418 (5th Cir. March 28, 2007) (unpublished) (affirming summary judgment in favor of the employer, the court ruled that a newly-hired aircraft assembly line worker was not entitled to have the employer reassign him to a different shift as an accommodation for his Sabbath observance, because the employer’s union contract dictated that shift swapping and transfers would be based on seniority and the union was unwilling to waive the contract in this case)

Creusere v. Board of Educ., 88 F. App’x 813 (6th Cir. 2003). An employer that granted an employee’s request for Saturdays off as a reasonable accommodation of his Sabbath observance was not required to make overtime work available to the employee on Sundays instead of Saturdays. Even if the employee agreed to be paid the rate of time-and-a-half instead of the normal Sunday rate of double time, it would have been an undue hardship to require the employer to violate the collective bargaining agreement provision which required that employees who worked on Sunday be paid double-time.

Virts v. Consolidated Freightways Corp. of Del., 285 F.3d 508 (6th Cir. 2002). An employer was not required to accommodate a truck driver’s religious objection to going on sleeper runs with females. The driver’s proposed accommodations would result in a violation of the seniority
provisions of the collective bargaining agreement, and affect the shift and job preferences and contractual rights of other employees. See also Kalsi v. New York City Transit Auth., 62 F. Supp. 2d 745 (E.D.N.Y. 1998) (ruling an employer has no obligation to violate its seniority system by giving an employee one of a few unique “choice” inspector jobs), aff’d, 189 F.3d 461 (2d Cir. 1999).

Thomas v. National Ass’n of Letter Carriers, 225 F.3d 1149 (10th Cir. 2000). The Postal Service was not required to grant a letter carrier’s requested accommodations because they would have violated the collective bargaining agreement. In addition, the Postal Service already had attempted to accommodate the employee’s religious practices by: (1) approving his use of leave on Saturdays; (2) approving the use of substitutes for him on Saturdays when such substitutes could be found; (3) seeking a waiver from the union of the requirement that all letter carriers work five out of six Saturdays; and (4) recommending that he bid for a position that would not require him to work on Saturday.

Balint v. Carson City, 180 F.3d 1047 (9th Cir. 1999). The mere existence of a seniority system does not relieve an employer of its duty to attempt a reasonable accommodation of its employees’ religious practices, as long as the accommodation can be accomplished without disruption to the seniority system and without more than de minimis cost to the employer.

Lee v. ABF Freight Sys., Inc., 22 F.3d 1019 (10th Cir. 1994) (employer satisfied Title VII obligation when it suggested method by which driver would usually be able to work the number of trips each week required under the union contract prior to the Sabbath, and could use vacation time on other occasions; employer was not required to grant driver’s request to skip assignments, which would then have to be worked by other drivers, or his request to work less than other full-time drivers and reimburse employer for additional costs; or his request to transfer with no loss of seniority, which would violate its CBA, where the employer had sought but could not obtain a waiver from the union).

Schedule Changes, Shift Swaps, Voluntary Substitutes, and Leave

Doughty v. Department of Developmental Servs., 607 F. App’x 97 (2d Cir. 2016). Affirming summary judgment for the employer on a denial of accommodation claim arising from a requested schedule change in a workplace with a union contract governing shift assignments, the court ruled that the employer was not liable because the employee could have exercised his seniority rights to bid for a schedule that eliminated his religious conflict, but refused to do so and thus was assigned a regular schedule in due course. “To provide an accommodation after that assignment, DDS would have had to redo the selection schedule process set forth by the union contract. Title VII, however, does not require an employer to ‘deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others.’” The court further ruled that while the employer could have paid a coworker overtime to perform the plaintiff’s Sunday shift, that additional cost would have constituted an undue hardship.
Handverger v. City of Winooski, 605 F. App’x 68 (2d Cir. 2015). The plaintiff, a city employee who was offered a post-termination hearing, requested two days before the hearing that the hearing date of September 30th be changed to accommodate his observance of the Jewish holiday of Rosh Hashanah. The city agreed to reschedule the hearing date, provided however that the plaintiff agreed that the parties would set the termination date as September 30th to avoid prejudice to the employer’s position that it was acting within the first year of the plaintiff’s employment contract. The court ruled that there was sufficient evidence for the jury to conclude that the City’s offer to reschedule the hearing – even with the added condition – was a “reasonable accommodation.” The court reasoned that “[w]hile an employer must make a reasonable accommodation for an employee’s religious observance, an employee cannot, at the same time, selectively leverage that accommodation to advance himself in a professional negotiation.”

Davis v. Fort Bend Cty., 765 F.3d 480 (5th Cir. 2014), cert. denied, 135 S. Ct. 2804 (2015). The plaintiff, a county desktop support supervisor, and all other technical support employees were required to work on a particular Sunday in July 2011 to install computer equipment. She requested that she be excused as a religious accommodation to attend a church event. Although she had arranged for her own replacement and had also offered to come to work after the church event, the county denied her request. Reversing summary judgment for the employer on the plaintiff’s denial of accommodation claim, the court ruled that there was a genuine issue of material fact as to whether any undue hardship would have been posed. Because a volunteer substitute was available, the employer would not have incurred any cost in requiring an employee to substitute for the plaintiff, nor would the employer have necessarily been left short-handed.

Telfair v. Federal Express Corp., 567 F. App’x 681 (11th Cir. 2014). Affirming summary judgment for the employer on religious accommodation claims under Florida Civil Rights Act provisions that the court stated were patterned on Title VII, the court found that the employer offered a reasonable accommodation to two Jehovah’s Witness part-time couriers who sought to be relieved from being redeployed from a Monday-through-Friday schedule to a Tuesday-to-Saturday schedule, which would have required them to work Saturdays in violation of their religious beliefs. The court noted that the employer rejected the plaintiffs’ offer to work only Tuesday through Friday and instead offered them handler positions with a Monday through Friday schedule and, after the plaintiffs rejected those positions, the employer provided them a 90-day leave of absence with extensions of several weeks to seek open positions. In finding that the employer met its accommodation obligation, the court noted that an employer is not required to give an employee a choice among several accommodations nor need it provide the employee’s preferred position. While the handler position paid 23% less and some of the open positions involved a longer commute or may have resulted in loss of seniority, the plaintiffs cited no binding authority establishing that such facts rendered the employer’s redeployment policy an unreasonable accommodation.

Marmulszteyn v. Napolitano, 523 F. App’x 13 (2d Cir. 2013). The plaintiff, a Hasidic Orthodox Jew who informed his employer that his faith precluded him from working on Saturdays until an hour after sunset, was accommodated in compliance with Title VII by his employer’s offer that, on those occasions when he was assigned to a Saturday morning shift, he could switch to a shift
beginning at 10:00 pm. While this was not the accommodation the employee preferred, it was a reasonable accommodation that eliminated the employee’s religious conflict, and therefore the employer provided a reasonable accommodation as required Title VII.

Antoine v. First Student, Inc., 713 F.3d 824 (5th Cir. 2013). Vacating summary judgment and remanding the case for trial, the court ruled that the plaintiff, a school bus driver, could proceed to trial with his claim that the employer failed to accommodate his Seventh Day Adventist beliefs. The plaintiff sought to obtain a schedule change or shift swap during a period of shorter winter days when his Sabbath observance, which was from sunset on Friday to sunset on Saturday, would begin on Friday before his afternoon bus route was concluded. The court held that unlike other cases in which an employer must permit an employee to arrange a volunteer to swap or substitute but need not itself find the volunteer, here the employer’s collective bargaining agreement (CBA) expressly provided for an employer-facilitated method for voluntary route changes. There was evidence from which a jury could conclude that the employer failed to follow through on an offer it had made to assist the plaintiff in finding a voluntary replacement driver, or to attempt to procure a voluntary route swap for him by pursuing the procedures contained within the CBA. In addition, there was evidence that the employer failed to attempt to negotiate a potentially available memorandum of understanding with the union that would modify the CBA to allow partial swaps as needed for the plaintiff’s religious accommodation, rather than a complete route swap.

Adeyeye v. Heartland Sweeteners, L.L.C., 721 F.3d 444 (7th Cir. 2013). Whether requests for unpaid leave for a religious observance pose an undue hardship depends on “the specific circumstances of the job and the leave schedule the employee believes is needed.” In this case, the plaintiff worked in a factory as a material handler and a packer/palletizer, and requested three weeks of unpaid leave to travel to Nigeria for his father’s burial rites. At the time of the leave request, half of the packer/palletizer shifts and a third of the material handler shifts were staffed by temporary workers; the company kept a ready list of temporary workers for these jobs who usually reported within an hour of the request. In light of the high turnover, frequent use of temporary workers, and a ready supply of substitutes, a reasonable jury could find that the plaintiff’s request would not have posed an undue hardship.

Sanchez-Rodriguez v. AT & T Mobility Puerto Rico, Inc., 673 F.3d 1 (1st Cir. 2012). The plaintiff worked as a retail sales consultant selling cellular phones and accessories at a shopping center kiosk. All sales consultants were required to be available for Saturday and Sunday work. When the plaintiff advised his supervisor that he had become a Seventh Day Adventist and must abstain from work on Saturdays for religious reasons, the employer responded that making an exception to the required rotating Saturday shifts would pose an undue hardship, but offered transfer to two other possible positions (which unlike his job, however, did not pay commissions) and/or voluntary shift swaps with coworkers. Affirming summary judgment for the employer on the plaintiff’s religious accommodation claim, the court ruled that the offer to transfer the plaintiff or allow him to swap shifts, combined with the employer’s decision not to discipline him for Saturday absenteeism for months, satisfied its accommodation obligations.

Tomasino v. St. John’s Univ., 476 F. App’x 923 (2d Cir. 2012). The employer, a private university, complied with Title VII when it offered to allow the plaintiff to take an early lunch
hour to accommodate her desire to act as a lector at a weekday Mass. The accommodation offered was not unreasonable merely because the plaintiff requested or preferred a different one.

**EEOC v. Thompson Contracting, Grading, Paving, & Utils., Inc.,** 499 F. App’x 275 (4th Cir. 2012). The court affirmed summary judgment for the employer on the EEOC’s claims of denial of accommodation and discriminatory termination on behalf of a Hebrew Israelite who was one of four company dump truck drivers who requested Saturdays off to observe the Sabbath. The court concluded that excusing him from Saturday work would have imposed an undue hardship (more than de minimis cost) because any work left undone would necessarily have to be completed by the other drivers or by hired independent contractors, or else would not be completed at all. Moreover, it would have imposed an undue hardship on the company to arrange ahead of time for an alternative dump truck driver from among its workforce, because securing proper substitutes would have required the company to incur the costs of recruiting, training, and qualifying each driver on its insurance policy. Finally, the company was not required to offer the driver a transfer to a general equipment operator position, because it reasonably believed that he would have rejected such an offer in light of evidence that he had previously indicated that he preferred driving a dump truck to performing manual labor.

**Crider v. University of Tenn., Knoxville,** 492 F. App’x 609 (6th Cir. 2012). The plaintiff was hired as one of three Programs Abroad coordinators, whose duties included being available on a rotating basis, including weekends, to monitor and address any emergency phone calls. Four days after she was hired, the plaintiff advised management that as a Seventh Day Adventist she could not perform work-related tasks from sundown Fridays until sundown Saturdays, and asked to be excused from phone monitoring during that time. The other two coordinators objected to handling all the weekend shifts, so the school offered instead to partially accommodate the plaintiff by allowing her to cover the phone only in emergency situations or when the two other coordinators were out of town. The plaintiff rejected this offer, and was subsequently terminated. Reversing summary judgment for the employer, the court held that the university would only be excused from providing full accommodation if it would pose an undue hardship. Even though one of the coordinators threatened to quit if forced to carry the emergency phone every other weekend, the court found that judgment as a matter of law for the employer was premature. To prevail, the employer was required to prove that the accommodation would result in an undue hardship on the operation of its business, in terms of the personnel ramifications, rather than mere coworker “grumbling.” In addition, the court held that, by telling the plaintiff’s coworkers “not to do anything different at work,” the Human Resources Director may have interfered with their willingness to accept the shift exchange, even if his intent was to be able to assess the situation before an accommodation was arranged. Dissenting, one judge wrote that he would have affirmed summary judgment for the employer because the evidence clearly demonstrated this was a core duty of the job and it would have posed a financial and structural undue hardship to grant the requested accommodations.

**Porter v. City of Chicago,** 700 F.3d 944 (7th Cir. 2012). The plaintiff, a Christian employee of the Chicago police department, objected when she was assigned to work 7:30 am to 3:30 pm on Sundays, because it conflicted with her Sunday morning church attendance. In response, the administrator who had the authority to reassign work schedules offered, among other options, that he could assign her to work 3:30 pm to 11:30 pm on Sundays instead, thereby permitting her
to attend church. Affirming summary judgment for the employer on the plaintiff’s denial of accommodation claim, the court ruled that the city reasonably accommodated her religious beliefs by offering her the work shift change, even though if it was not the option she preferred.

Harrell v. Donahue, 638 F.3d 975 (8th Cir. 2011). Affirming summary judgment for the U.S. Postal Service, the court held that it would have posed an undue hardship under Title VII to accommodate the religious request of a Seventh Day Adventist to have every Saturday off by changing his rotating schedule or, alternatively, by allowing him to use annual leave or leave without pay. Because it was impossible to give each carrier every Saturday off, the schedule was determined by a seniority system set forth in a collective bargaining agreement. The court held that either requested accommodation would pose an undue hardship, because granting the plaintiff a fixed rather than rotating schedule would violate the collective bargaining agreement, and, alternatively, allowing the plaintiff to take leave every Saturday would have substantially imposed on coworkers by depriving them of their rights under the seniority system. While voluntary shift swaps or substitutions also would have been a reasonable accommodation, the Postal Service had asked the other full-time carriers at the facility, who all had more seniority than the plaintiff, if any would voluntarily give up any of their Saturdays off, but none agreed. The Postal Service also offered the plaintiff a transfer to another office and the possibility of his arranging to swap scheduled days off with other employees, but he declined those offers.

Burdette v. Federal Express Corp., 367 F. App’x 628 (6th Cir. 2010). Affirming summary judgment for the employer on the plaintiff’s denial of accommodation and discriminatory termination claims, the court ruled that the plaintiff’s request to have every Saturday off for Sabbath observance yet remain in her managerial position would have posed an undue hardship on the employer and that her insistence on this particular accommodation was evidence of her failure to cooperate with her employer’s attempts to accommodate. The employer presented evidence that such an accommodation would have created safety risks because all managers were needed during peak season to assist in loading and launching aircraft on all days of the week due to increased traffic.

Jones v. United Parcel Serv., 307 F. App’x 864 (5th Cir. 2009). The court affirmed summary judgment for the employer on a denial of accommodation claim by a package driver who was terminated for twice failing to complete his route. As a Seventh Day Adventist, the plaintiff did not work from sundown on Friday to sundown on Saturday. The court noted that while there were 10 positions that would have accommodated the plaintiff’s religious practices, he provided evidence that he bid on three and lost those because he had too little seniority. While the plaintiff presented evidence that he did not bid on the other seven positions because he was on leave, he did not present this evidence to the district court, and therefore, the evidence could not be considered on appeal. Given the absence of admissible evidence as to why the plaintiff could not have bid on the other seven positions, the court held that the employer offered the plaintiff reasonable accommodations of which he had failed to avail himself. In reaching this conclusion, the court noted that an employee is not entitled to the form of accommodation he prefers, and has a duty to cooperate in achieving accommodation of his religious beliefs.

Adams v. Retail Ventures, Inc., 325 F. App’x 440 (7th Cir. 2009). Affirming summary judgment for the employer, the court ruled that the employer had established that it would have posed an
undue hardship to accommodate a retail store cashier’s request for a schedule that would permit him to attend three weekly services at his church that took place every Wednesday morning, Sunday morning, and Sunday evening. Uncontroverted evidence showed that the company required all 10 of its cashiers to work on some Sundays (one of the two most popular days off) because of customer demand during busy sales. During those times, allowing the plaintiff the day off would cause the store either to be short a cashier, resulting in lost efficiency, or to need to hire another one, incurring extra cost. The accommodation also would have required the store to alter the schedules of other cashiers and receivers, denying them their shift preferences merely because they were secular rather than religious, “a practice that Title VII does not require of employers.”

EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307 (4th Cir. 2008). The EEOC alleged that the employer unlawfully denied a religious accommodation to David Wise, a member of the Living Church of God, which requires observance of the Sabbath from sundown on Friday to sundown on Saturday and religious observance on certain other days. Affirming summary judgment for the employer, the court held that the employer reasonably accommodated Wise through leave and flexible scheduling policies under the collective bargaining agreement (CBA), as well as through an available shift-swapping arrangement, which Wise failed to utilize. Under these policies, Wise was entitled to 15 eight-hour vacation days and 3 floating holidays, plus up to 60 hours of unpaid leave a year. He was terminated for not reporting to work after he had exceeded the limits under these policies. Rejecting the EEOC’s argument that an employer provides a reasonable accommodation only when it “eliminates” the conflict between a religious practice and work requirement, the court held that “‘reasonably accommodate’ means what it says: reasonably accommodate” and that an accommodation may be reasonable in some circumstances without necessarily totally accommodating an employee’s religious practices. The court noted that “the combination of vacation days, floating holidays, shift swaps, and unpaid leave time could be structured in a way to permit most employees the opportunity to meet all of their religious observances.” The court rejected the EEOC’s contention that the employer should have excused Wise from the 60-hour limit on unpaid leave. Given the “extraordinary number of hours” of leave sought by Wise, the employer’s staffing requirements, the round-the-clock operation of the testing laboratory in which Wise worked, and employees’ perceptions of fairness, “it was sensible for [the employer] to believe that Wise’s proposed accommodation was not a reasonable one.” See also Sturgill v. United Parcel Serv., Inc., 512 F.3d 1024 (8th Cir. 2008).

Stolley v. Lockheed Martin Aeronautics Co., 228 F. App’x 379 (5th Cir. 2007). Affirming summary judgment for the employer, the court ruled that a newly hired aircraft assembly line worker was not entitled to have the employer reassign him to a different shift as an accommodation for his Sabbath observance because the employer’s union contract dictated that shift swapping and transfers would be based on seniority and the union was unwilling to waive the contract in this case.

Tepper v. Potter, 505 F.3d 508 (6th Cir. 2007). A Jewish letter carrier was not unlawfully denied accommodation when, due to decreased staffing and other employees’ objections, the Postal Service stopped its longstanding practice of not scheduling him to work on Saturdays as a religious accommodation, but allowed him to use annual leave and leave without pay to take off
on Saturdays and allowed him to exchange days off with other letter carriers. In response to his argument that his use of unpaid leave reduced his annual pay and future pension, the court held that he “is simply not being paid for time that he has not worked” so there is no materially adverse employment action. “The Supreme Court has stated that ‘the direct effect of unpaid leave is merely a loss of income for the period the employee is not at work; such an exclusion has no direct effect upon either employment opportunities or job status.’”

**Bush v. Regis Corp.,** 257 F. App’x 219 (11th Cir. 2007). A hair salon employee, a Jehovah’s Witness, attended religious services on Thursday evenings and Sundays. Her faith also required performance of field service, which her family preferred to do as a family on Sunday afternoons. After several years of not being scheduled to work evenings or Sundays, the salon began requiring all employees to work some evening shifts and every other Sunday, but granted the plaintiff’s request to be excused as a religious accommodation from working Thursday evenings and offered to start her Sunday shifts after her religious services concluded. In addition, the employer permitted her to take time off to attend religious conferences and to swap shifts to fit her religious activities. Affirming summary judgment for the employer on the denial of accommodation claims, the court observed that “[t]he phrase ‘reasonable accommodation’ is not defined and turns on the facts and circumstances of the case” and that here the employer’s actions did constitute a reasonable accommodation. Rejecting the plaintiff’s argument that doing any Sunday shift prevented her from doing field service with her family, the court held that the evidence showed the field service was not required to be performed on Sundays, but rather, that was the day the plaintiff and her family wished to perform field service. Moreover, the court held that “[a]n employee has a duty to make a good faith attempt to accommodate her religious needs through means offered by the employer” and that the plaintiff did not make such an effort.

**Morrissette-Brown v. Mobile Infirmary Med. Ctr.,** 506 F.3d 1317 (11th Cir. 2007). The employer reasonably accommodated religious beliefs that prevented the plaintiff, a unit secretary who was a member of the Seventh-day Adventist Church, from working on Friday afternoons and evenings. The employer used a neutral rotating schedule, allowed the plaintiff to swap her scheduled Friday shifts with other employees, provided her with the master schedule so she could find someone with whom to swap shifts, and encouraged her to transfer to another position which did not require work on Fridays, even though it had a requirement that an employee work at least twelve months in a position before transferring to another. Moreover, her supervisor asked her to review the open-positions list and to him know in which jobs she was interested. He stated that he would do his “best” to process the requests and to secure interviews for the positions, although when she did apply for several, she was not selected because she was either not qualified or the position was closed and never filled. Because the court noted that the foregoing steps were sufficient to constitute a reasonable accommodation, it stated that it was not reaching the question of whether the employer’s alternative offer of a “flex” position, which would have permitted her to work Sundays instead of Fridays but did not include benefits or health insurance or a guaranteed number of hours, would have been a reasonable accommodation.

**Baker v. Home Depot,** 445 F.3d 541 (2d Cir. 2006). The employer’s offer to schedule an employee to work in the afternoon or evenings on Sundays, rather than the mornings, was not a “reasonable accommodation” under Title VII where the employee’s religious views required not only attending Sunday church services but also refraining from work on Sundays.
EEOC v. Robert Bosch Corp., 169 F. App’x 942 (6th Cir. 2006). Reversing summary judgment, the court remanded for trial a claim against an automobile parts manufacturer for denial of reasonable accommodation when it terminated a machine shop employee for four unexcused absences on Saturdays, his day of worship. The employer contended that the shop was operating 24 hours a day seven days a week with mandatory overtime for all employees, and that the employee and his union had an obligation to find a substitute in order for him to be excused from work. The court held there were disputed issues of material fact as to what the company was willing to do to let the employee and the union find a replacement to work additional overtime. There was evidence that company officials stated that a shift swap would not be permitted, and that the employer’s policy was designed only to identify employees willing to work additional shifts rather than to swap shifts.

Goldmeier v. Allstate Ins. Co., 337 F.3d 629 (6th Cir. 2003). The employer’s policy requiring the office to remain open on Saturdays created a conflict with Orthodox Jewish employees’ Sabbath observance for purposes of establishing a prima facie case of religious discrimination. The employer’s offer to allow the employees to use their own funds or their limited office expense allowance to hire outside staff was not a reasonable accommodation because it would have required the employees to forfeit a benefit available to other employees who do not have a religious conflict. However, the court dismissed the employees’ religious discrimination claim because they quit their jobs and accepted new employment before the policy in question went into effect.

George v. Home Depot, 51 F. App’x 482 (5th Cir. 2002). The plaintiff, a devout Catholic who attended mass daily and frequently participated in prayer vigils and religious services, was employed as the only greeter in the kitchen and bath department of a Home Depot store, which was open 24 hours a day, 7 days a week, and was particularly busy on weekends. In approximately August 1997, she determined that her religious beliefs precluded her from working at all on Sundays, and claimed she was terminated after advising management of her need for an accommodation. Affirming summary judgment for the employer, the court held that accommodating the plaintiff would have required either doing without a department greeter on Sundays or hiring an additional employee to fill that position on Sundays, both of which would have impose an undue hardship, as would the effects on efficiency imposed by the additional burdens on designers from not having a greeter at peak times. To the extent the plaintiff argued that employees in other positions were permitted not to work on Sundays, the court noted evidence that the greeter position was created to ensure customer contact and to take pressure off designers at peak times, including weekends, and that the greeter role was important to the employer’s business. This was sufficient to show that operating without a greeter or having the designers perform the plaintiff’s duties would constitute an undue hardship.

Opuku-Boateng v. California, 95 F.3d 1461 (9th Cir. 1996). Hiring the plaintiff, a Seventh-Day Adventist who needed a religious accommodation in scheduling, would not constitute an undue hardship where there was no evidence that other employees would be harmed by allowing plaintiff not to work on his Sabbath, or evidence that permitting voluntary swapping was not feasible. The employer’s evidence that it required all employees to work an “equal number of
undesirable weekend, holiday, and night shifts” was not sufficient evidence that other employees would be discriminated against if the plaintiff’s religious practice was accommodated.

Smith v. Pyro Mining Co., 827 F.2d 1081 (6th Cir. 1987). An employer’s requirement that employee who sought not to be scheduled for Sunday work due to his Sabbath observance had to seek his own replacement by asking a co-worker to swap shifts would ordinarily be a reasonable accommodation, but was not in this case because the employer was put on notice not only that the employee had a sincerely held religious belief that he must refrain from work on his Sabbath but also that he believed it was a “sin” to try to induce another to work in his place. Therefore, the employer was obligated to try alternative means of accommodating the employee, such as arranging a swap for him, unless doing so would pose an undue hardship.

Wimbish v. Nextel West Corp., 2016 WL 1222920 (D. Colo. Mar. 29, 2016). The plaintiff, who for years had handled customer service and account information calls from employees in the company’s retail sales locations, was provided a religious accommodation of not being scheduled to work on Sundays. She was then transferred to a new position that did not have a shift that corresponded with the same schedule. Granting the employer’s motion for summary judgment, the court ruled that the employer offered reasonable accommodations for the conflict between the employee’s work schedule and church schedule by offering to permit the employee to swap schedules temporarily or permanently with other employees, and later by resolving the employee’s schedule conflicts on both Sundays and Wednesdays with the only apparent drawback of the proposed accommodation being the possibility that the employee might have had to spend two minutes per month completing a form to continue to retain the accommodation.

Turner v. Association of Apartment Owners of Wailea Point Vill., 2016 WL 1298046 (D. Haw. Mar. 31, 2016). The plaintiff alleged that his Lutheran faith required that he attend church on Sundays, but he conceded that services were held at multiple times that did not conflict with his work schedule. Accordingly, the court held he could not prevail on his claim that accommodation of a schedule change was improperly denied to attend at a particular time, because he had not shown a conflict between his religious practice and a work requirement.

Bolden v. Caravan Facilities Mgmt., L.L.C., 112 F. Supp. 3d 785 (N.D. Ind. 2015). The plaintiff, a probationary janitorial employee who observed Sabbath on Sundays, sought but was denied an exception to the employer’s neutral rotating weekend scheduling policy, so that he could have every Sunday off. Granting summary judgment for the employer on the plaintiff’s denial of religious accommodation claim, the court ruled that even if a neutral, rotating schedule along with ability to swap days on/days off was not a reasonable accommodation, the plaintiff’s requested accommodation of having every Sunday off would have placed an undue hardship on the employer. An employer is not required to make exceptions to a neutral, rotating schedule that distributes weekend work as evenly as possible among employees, or to override a seniority system that dictates how janitors bid on positions or shifts. An undue hardship is posed regardless of whether these policies are part of a collective bargaining agreement.

Roy v. Board of Cmty Coll. Trs. of Montgomery Cmty. Coll., 2015 WL 5553716 (D. Md. Sept. 18, 2015). The plaintiff, a college office assistant, requested and was granted a scheduling accommodation to arrive late on Thursdays in order to complete her morning Hindu prayers. In
her lawsuit alleging denial of accommodation and discriminatory termination, the court ruled that the accommodation claim could proceed even though the request had been granted, because she nevertheless received an email from management criticizing her late arrival.

Samuels v. We’ve Only Just Begun Wedding Chapel, Inc., 2015 WL 9200392 (D. Nev. Dec. 15, 2015). The plaintiff, a bookkeeper at a wedding chapel, alleged she requested but was denied time off to celebrate Passover, and then terminated. Denying the employer’s motion for summary judgment, the court rejected the employer’s argument that the plaintiff was granted the days off for Passover and therefore her religious practices were reasonably accommodated. The evidence showed that after the request was granted she was subsequently terminated on the first night of the holiday. The court therefore held that a reasonable jury could find her request for days off for Passover influenced the decision to terminate her and also that the circumstances of her termination created an issue of fact as to whether the defendants made reasonable efforts to accommodate her religious practice.

Atwood v. PCC Structurals, Inc., 2015 WL 3606323 (D. Or. June 4, 2015). The plaintiff, a wax cleaner and assembler at an aircraft parts manufacturing facility, sought but was denied Sundays off as a religious accommodation. Granting summary judgment for the employer on her denial of accommodation claim, the court ruled that the plaintiff produced no evidence that her religious beliefs required her to refrain from work all day Sunday. The court reasoned that even if the plaintiff could show that her religion required her to attend church on Sunday, her claim failed because the employer offered ample scheduling accommodations that would have allowed her to attend church while still reporting to work, including: (1) working after church; (2) working a split shift around church; or (3) working early and attending evening church.

St. Juste v. Metro Plus Health Plan, 8 F. Supp. 3d 287 (E.D.N.Y. 2014). The plaintiff, a Muslim employed as a Medicaid enrollment sales representative, had been informally permitted by his former supervisor to take an extra 30 minutes for lunch on Fridays and in exchange work an additional 30 minutes after hours, in order to travel to and from and to attend the Jumu’ah congregational prayer at a mosque in Brooklyn. A new supervisor terminated this arrangement, and instead required that the plaintiff use either annual leave or unpaid time for the extra 30 minutes needed to attend Friday midday prayer. Granting summary judgment for the employer on the plaintiff’s denial of reasonable accommodation claim, the court ruled that, absent evidence of discriminatory intent, being required to take unpaid leave for Friday services was a reasonable accommodation, even if it was not the plaintiff’s preferred accommodation. In addition, while it would not be a reasonable accommodation if paid leave were provided for all purposes except religious ones, the plaintiff provided no evidence of such circumstances.

Hasan v. Threshold Rehabilitation, Inc., 2014 WL 1225921 (E.D. Pa. Mar. 25, 2014). The plaintiff, a full-time residential program assistant, alleged that she asked her employer in August and September 2011 if she could take three weeks of leave in November 2011 to attend the Hajj, a religious pilgrimage to holy sites in Mecca, Saudi Arabia. The plaintiff notified the employer that the Hajj was a religious obligation, which her beliefs required her to complete once in her lifetime, and that she feared she would not be able to complete it in future years because of advancing age, financial circumstances, and the physical demands of the Hajj. The employer denied the request, stating that the plaintiff had insufficient vacation time to cover the last five
days of the proposed three-week absence, even though the plaintiff had offered to take unpaid leave for those days. After the plaintiff unsuccessfully complained to numerous company officials about the denial of her request for religious accommodation, she attended the Hajj anyway, and was terminated as a result. Denying the employer’s motion to dismiss the plaintiff’s complaint, the court ruled that these allegations were sufficient to state a claim for denial of religious accommodation in violation of Title VII.

EEOC v. Rent-a-Center, Inc., 917 F. Supp. 2d 112 (D.D.C. 2013). The court granted summary judgment for the employer in an action brought on behalf of a Seventh Day Adventist store manager who sought to be excused from working every Saturday for Sabbath observance. Ruling that the proposed accommodation would pose an undue hardship, the court cited these uncontested facts: (1) the business is closed on Sundays, and Saturday is the busiest day of the week both for the business overall and for the store at issue; (2) store manager is the most important position, with a variety of supervisory responsibilities, including some that are exclusive to that position; and (3) the company’s policy requires all managers to work every Saturday, “reflecting its awareness of and focus on the first two facts.”

Chukwueze v. New York Employees’ Ret. Sys., 891 F. Supp. 2d 443 (S.D.N.Y. 2012). The plaintiff, an Evangelical Christian, alleged disparate treatment based on religion and denial of accommodation, with respect to his requests for leave to observe religious holidays. In 2007, the employer granted the plaintiff’s request to take off on December 26th for religious observance of St. Stephen’s Day, but the plaintiff’s manager told him that it was not a religious holiday and made him change the reason on his request form from “religious observance” to “vacation.” When the plaintiff requested leave for Good Friday in 2008, the manager got very upset and said, “You are giving me this form because you think I can’t deny it!” When the plaintiff requested leave for St. Stephen’s Day in 2008, the manager confronted him in a hostile manner, stating “in a loud, audacious voice, ‘that is not a religious holiday and I do not have to give you that day off.’” After meeting with upper management, the plaintiff was permitted to use annual leave to take the day off.Granting in part the employer’s motion to dismiss, the court ruled that the plaintiff was not subjected to an adverse action merely because his requests were met “with hostility and severe opposition” compared to requests by employees of other religions. Similarly, he failed to state a denial of accommodation claim since his request was granted.

Fields v. Rainbow Rehab. Ctr., Inc., 833 F. Supp. 2d 694 (E.D. Mich. 2011). The plaintiff, a rehabilitation assistant who provided patient care, alleged that he was denied accommodation for his religious observance and subjected to retaliatory termination for his use of an internal grievance process to resolve his religious accommodation dispute. Granting summary judgment for the employer, the court ruled that the plaintiff was terminated not, as he had alleged, for failing to attend a staff meeting scheduled for one of his accommodation days but rather for failing to contact his supervisor, as instructed, to arrange alternative one-on-one training. The court rejected the plaintiff’s argument that accommodation would have required not scheduling staff meetings on his accommodation days, holding that the employer reasonably accommodated plaintiff by providing the ability to arrange one-on-one meetings and trainings as an alternative.

Maroko v. Werner Enters., Inc., 778 F. Supp. 2d 993 (D. Minn. 2011). Denying summary judgment for the employer on a truck driver’s Title VII claim that he was denied reasonable
accommodation for his Seventh Day Adventist Sabbath observance (Friday night and Saturday), the court ruled that there were disputed facts about whether the employer communicated an offer of accommodation. The employer also argued that even assuming the plaintiff never received the offer, no violation occurred because he would not have accepted it, i.e., 30 days of unpaid leave to determine whether an alternative route shared by multiple drivers (and thus with more scheduling flexibility) would become available. The court rejected this argument, holding that an employer may not decide against offering an accommodation merely because it assumes or believes the employee would not accept it. “‘Bilateral cooperation’ cannot get off the ground if the employer does not offer some accommodation to the employee in the first instance.”

**Hussein v. UPMC Mercy Hosp.**, 2011 WL 13751 (W.D. Pa. Jan. 4, 2011), aff’d on other grounds, 466 F. App’x 108 (3d Cir. 2012). The plaintiff, a hospital worker, requested but was denied vacation time to make his second pilgrimage to Mecca. Granting summary judgment for the employer on the plaintiff’s denial of accommodation claim, the court held that even though, under the plaintiff’s religious beliefs, the second pilgrimage was not required, it was still an exercise of his religious beliefs. However, the timing was a matter of personal preference, rather than a religious observance. The plaintiff was able to make the pilgrimage the following year, and the timing of the trip reflected the plaintiff’s desire to benefit from a reduced price by traveling with a larger group. The court also rejected the plaintiff’s claim of disparate treatment arising from the denial of vacation time, finding that the fact that Christians were permitted to take off around the Christmas holiday was not evidence of discriminatory motive, since the plaintiff could have done so too but chose not to.

**Waltzer v. Triumph Apparel Corp.**, 2010 WL 565428 (S.D.N.Y. Feb. 18, 2010). Even assuming that the plaintiff had a sincerely held religious belief that she needed to travel to her second home in Pennsylvania by sundown to observe the Sabbath there and that she had notified her employer of such, her proposed accommodation of working only a half day every Friday while maintaining a full-time management position would have posed an undue hardship on the operation of the employer’s business given evidence that the plaintiff was not performing as expected and needed to spend more time in the office to improve her job performance. Moreover, the employer showed that it offered a reasonable accommodation by permitting the plaintiff to leave early enough each Friday (3:00 p.m. rather than 1:00 p.m. as the plaintiff requested) to reach her declared home in New Jersey before sundown or by permitting the plaintiff to work part time if she did not want to work on Fridays.

**EEOC v. Aldi, Inc.**, 103 Fair Empl. Prac. Cas. (BNA) 79, 2008 WL 859249 (W.D. Pa. Mar. 28, 2008). The EEOC alleged that the employer failed to accommodate the religious belief of Bloom, a Christian cashier who believed that it is a sin to work on the Sabbath or to ask another to do so. Denying the employer’s motion for summary judgment, the court ruled that pursuant to EEOC’s “Guidelines on Discrimination Because of Religion,” 29 C.F.R. Part 1605, an employer may not rely solely on the existence of its neutral rotation system and voluntary shift swap policy and must also take some action in furtherance of its offered accommodation. For example, the court cited other cases in which an employer had satisfied this obligation by allowing an employee to announce his need for shift swaps during roll call and to advertise his need for swaps on the employer’s bulletin board or an employer gave an employee the telephone numbers of his coworkers to aid him in obtaining swaps. In this particular case, moreover, the employer
was required to do even more to facilitate a swap given that the plaintiff’s religious beliefs precluded her from personally asking another to work on Sundays. Because the employer did not take such actions to facilitate the plaintiff’s accommodation request, summary judgment was denied.

**EEOC v. Southwestern Bell Tel. L.P., 2007 WL 2891379 (E.D. Ark. Oct. 3, 2007), appeal dismissed, 550 F.3d 704 (8th Cir. 2008).** Two customer service technicians alleged denial of religious accommodation when they were denied leave for one day (and terminated when they failed to report to work) to attend a yearly Jehovah’s Witness convention as part of their religious practice. The employer contended that the technicians disregarded an order to work that day and that it caused an undue hardship because the company was forced to pay other workers premium wages ($882.88 for sixteen hours of overtime) to fill in and because it was unable to meet its customer service needs on that day. EEOC argued that the total cost was only $220.72 per person, that the facility routinely paid technicians overtime, that the employer failed to contact the union about possible accommodation, that the policy providing for only one technician on leave per day was not always observed, and that there was no evidence that customer service needs actually went unmet on the day at issue. Distinguishing Hardison as well as two Eighth Circuit cases, Mann and Cook, on the grounds that those cases all involved employees whose religious beliefs required them to miss work one day each week, the court held that the accommodation of one day per year at issue in this case did not as a matter of law pose an undue hardship, and denied the employer’s motion for summary judgment. (A jury subsequently awarded the two former employees $756,000 in back pay and damages, in a verdict on which judgment was entered on October 23, 2007. The employer ultimately paid $1,307,597 due to interest and front pay.)

**Krop v. Nicholson, 506 F. Supp. 2d 1170 (M.D. Fla. 2007).** Summary judgment for the employer was denied in part on a claim that by requiring the plaintiff to use annual leave rather than leave without pay (LWOP) for religious holidays, the employer offered an accommodation that could be found to have discriminated against the employee “by negatively affecting a benefit of employment enjoyed by other employees who did not share the same religious beliefs as plaintiff, i.e. vacation time.” The court held that given the disputed facts, it was for the jury to decide whether granting plaintiff LWOP for religious observances would have constituted an undue hardship.

**Kenner v. Domtar Indus., Inc., 97 Fair Empl. Prac. Cas. (BNA) 1359, 2006 WL 662466 (W.D. Ark. Mar. 13, 2006).** Denying summary judgment for the employer, the court rejected the argument that the availability of a shift swap system in a collective bargaining agreement establishes as a matter of law that reasonable accommodation was provided. The court also held that it was for a jury to decide whether the scheduling accommodation proposed would have violated the CBA, and if not what the monetary costs of accommodation would have been.

**Rice v. U.S.F. Holland, Inc., 410 F. Supp. 2d 1301 (N.D. Ga. 2005).** The employer’s motion for summary judgment was denied on a claim by a Seventh Day Adventist truck driver who was terminated for refusing to work past sunset on Fridays. The driver did not arrange to swap shifts with other drivers or to use vacation or sick time to avoid the need to work after sunset.
However, because the driver’s supervisor stated that he would “handle” the scheduling conflict, the driver reasonably believed that no further action was needed on his part.

_Durant v. NYNEX_, 101 F. Supp. 2d 227 (S.D.N.Y. 2000). The plaintiff, a Seventh-Day Adventist, alleged that her employer discriminated against her on the basis of religion and refused to accommodate her religious observances. The court held that the employer’s warnings regarding the employee’s tardiness because of Sabbath observance did not amount to an “adverse employment action,” and that the employer reasonably accommodated the employee’s religious beliefs by telling her that she could swap shifts on an ongoing basis and use vacation days to cover for her shifts that conflicted with the Sabbath.

### Additional Fact Patterns -- Breaks for Prayer at Work

_Haji v. Columbus City Sch.,_ 621 F. App’x 309 (6th Cir. 2015). The plaintiff, a Muslim school instructional assistant, alleged his termination constituted religious discrimination in violation of Title VII. Affirming summary judgment for the employer, the court ruled that the plaintiff could not establish a prima facie case, where the undisputed evidence established that the plaintiff was terminated based on his blatant violations of attendance policy by leaving school early to attend a local mosque without signing out from school, even after he had been warned of the need to obtain permission to leave school early. The plaintiff produced no comparator evidence that non-Muslims were treated more favorably, nor other evidence supporting an inference of discrimination. Although another employee had previously been suspended for one day for communicating with Muslim parents about their children’s behavior that he considered to be discordant with Islam, the court ruled this was not evidence of discriminatory animus toward Muslims. Rather, the other employee was suspended for the legitimate, nondiscriminatory reason of failing in his duty as liaison between parents and the school by causing conflicts. Here, the plaintiff presented no evidence that school officials failed to discipline employees who caused similar disruptions for non-religious reasons. See also _EEOC v. JBS USA, LLC_, 2016 WL 4435198 (D. Neb. Aug. 19, 2016) (holding that employer legitimately terminated Muslim employees for demonstration to protest employer’s rescission of prior agreement regarding break time for daily prayers); _EEOC v. Gold’n Plump Poultry, Inc.,_ 0:08-cv-05136-DSD-JG and _EEOC v. The Work Connection, 0:08-cv-05137-DSD-JG_ (D. Minn. consent decree entered March 2009) (employer agreed to add break times for all employees, regardless of faith, with the timing to fluctuate during the year to coordinate with the religious timing for Muslim daily prayers), [https://www.eeoc.gov/eeoc/newsroom/release/archive/3-31-09.html](https://www.eeoc.gov/eeoc/newsroom/release/archive/3-31-09.html).

_EEOC v. JBS USA, L.L.C.,_ 115 F. Supp. 3d 1203 (D. Colo. 2015). Denying the employer’s motion for summary judgment, the court allowed the EEOC’s Title VII pattern or practice claim to proceed against the company on behalf of meatpacking plant workers who alleged the employer’s neutral scheduling policy improperly denied them unscheduled prayer breaks during Ramadan. The court concluded that, in order to establish an unlawful pattern or practice of religious discrimination, the EEOC was required to show that the employer’s policy or practice failed to reasonably accommodate the religious practices of Muslim employees and that a policy or practice of reasonable accommodation was possible, such as showing that its proposed accommodations were reasonable on their face. Here, the EEOC proposed an unscheduled break accommodation, which the court concluded was not ineffective as a matter of law. The court...
further concluded that there was a genuine dispute of material fact as to whether the unscheduled break accommodation would have created an undue hardship on non-Muslim coworkers.

**Adelwahab v. Jackson State Univ.,** 2010 WL 384416 (S.D. Miss. Jan. 27, 2010). The plaintiff, a practicing Muslim who worked as a university residence hall receptionist, alleged he was denied religious accommodation when he was regularly scheduled to work a midnight shift that conflicted with a professed requirement of his faith to study the Koran and pray at certain times, including from 2:00 a.m. to 4:00 a.m. Granting summary judgment to the employer, the court found that even assuming the belief was sincerely held, the accommodation would have posed an undue hardship because of the logistical complications involved in arranging for other employees to cover the plaintiff’s assigned midnight shifts, the possible overtime expenses, and the disproportionate workload that coworkers would have had to assume.

**Haliye v. Celestica Corp.,** 106 Fair Empl. Prac. Cas. (BNA) 849, 2009 WL 1653528 (D. Minn. June 10, 2009). The court denied class certification in an action by 22 Muslim former employees of an electronics manufacturing plant who alleged denial of accommodation arising out of schedule and break changes sought to accommodate the five daily prayers as well as the breaking of the fast at the time of the sunset prayer during Ramadan. The plaintiffs argued that the commonality requirement was met because the ultimate question was whether it would be a reasonable accommodation to permit the proposed class member to pray according to the Muslim prayer schedule. Disagreeing, the court found that there was a lack of commonality because various plaintiffs and sources identified the proposed prayer times differently and because individual circumstances, such as the nature of each plaintiff’s job duties and each plaintiff’s own beliefs about the necessity of praying at a particular time, would make the resolution of each accommodation claim different. See also *EEOC and Electrolux Reach Voluntary Resolution in Class Religious Accommodation Case* (press release available at [http://www.eeoc.gov/press/9-24-03.html](http://www.eeoc.gov/press/9-24-03.html), Sept. 24, 2003) (settlement whereby employer agreed to accommodate the religious request of 165 Somali workers who, pursuant to the tenets of the Islamic faith, must offer at least five daily prayers, two of which must be observed within a restricted time period of between one and two hours); **Farah v. Whirlpool Corp.,** 3:02cv424 (M.D. Tenn. Oct. 16, 2004) (jury verdict entered in favor of employer, which argued that allowing 40 Muslim factory workers to take a break from the line for their sunset prayers at the same time would result in an undue hardship because as a result of their absence, the line would have to be shut down).

**Elmenayer v. ABF Freight Sys.,** 87 Fair Emp. Prac. Cas. (BNA) 253, 2001 WL 1152815 (E.D.N.Y. Sept. 20, 2001), aff’d on other grounds, 318 F.3d 130 (2d Cir. 2003). An employer did not violate Title VII when it refused to permit a Muslim employee to combine his 15-minute coffee break with his lunch hour in order to attend Friday afternoon prayers at a mosque. The employee is not entitled to the accommodation of his choice, and the employer offered a reasonable accommodation that would have eliminated the conflict between the employee’s religious beliefs and the requirements of his employment when it offered to let employee work a different shift.
Modified Duties and Transfer

Walden v. Centers for Disease Control & Prevention, 669 F.3d 1277 (11th Cir. 2012). The plaintiff, who was hired by a contractor as an EAP counselor at a federal agency, described herself as “a devout Christian who believes that it is immoral to engage in same-sex sexual relationships.” Believing that her religion prohibited her from encouraging or supporting same-sex relationships, the plaintiff told a lesbian employee who had sought counseling about her same-sex relationship that she could not provide counseling based on her “personal values.” After the employee filed a complaint stating that she felt “judged and condemned,” the plaintiff’s supervisor recommended that if such a situation arose in the future, the plaintiff should tell the client she is inexperienced with relationship counseling and therefore needs to refer her to another counselor. The plaintiff refused, stating that she would handle future referrals as she had in this instance. She was subsequently removed from the agency contract because of concern that she would convey in an unacceptable manner the reason for future referrals. Affirming summary judgment for the employer on the plaintiff’s Title VII claim for denial of reasonable accommodation, the court held that the employer accommodated the plaintiff by providing her with an opportunity to apply for another position before terminating her.

Noesen v. Medical Staffing Network Inc., 232 F. App’x 581 (7th Cir. 2007). A pharmacist refused on religious grounds to participate in distributing contraceptives or answering any customer inquiries about contraceptives. The employer offered to allow him to signal to a coworker who would take over servicing any customer who telephoned, faxed, or came to the pharmacy regarding contraceptives. He refused to follow the procedure and was disciplined for his non-compliance. The pharmacist claimed denial of accommodation, asserting that he should be excused from even participating in the administrative transfer of a contraceptive prescription to a coworker. The court ruled in favor of the employer, holding that even assuming initial customer contact could be assigned to lower-paid technicians rather than the plaintiff, this proposed accommodation would divert technicians from their assigned data input and insurance verification duties, imposing undue hardship on the pharmacy in terms of uncompleted data work. See also Vandersand v. Wal-Mart Stores, Inc., 101 Fair Empl. Prac. Cas. (BNA) 386, 2007 WL 2385128 (C.D. Ill. July 31, 2007) (denying the employer’s motion to dismiss, the court held that despite a state regulation requiring a pharmacy to dispense valid prescriptions for emergency contraceptives without delay, it was a factual issue to be determined in a given case whether it would pose an undue hardship for a pharmacy to accommodate a pharmacist who refused to dispense emergency contraceptives on religious grounds); Stormans v. Selecky, 2007 WL 3358121 (W.D. Wash. Nov. 8, 2007) (granting a preliminary injunction in a First Amendment Free Exercise clause challenge to state regulations making it sanctionable for a pharmacy to permit a pharmacist-employee to refuse to fill a lawful prescription because of religious or moral objections, the court noted that the accommodation of hiring a second pharmacist to work side-by-side with the objecting pharmacist, at an estimated cost of $80,000/year, would be more than a de minimis expense and therefore would pose an undue hardship on the employer), vacated on other grounds, 586 F.3d 1109 (9th Cir. 2009).

Endres v. Indiana State Police, 349 F.3d 922 (7th Cir. 2003). The police department did not violate Title VII when it terminated an officer who refused, on religious grounds, assignment as a Gaming Commission agent at a casino. It would be unreasonable to require a police or fire
department to relieve personnel of those assignments with which they disagree, whether for religious or secular reasons.

**Bruff v. North Miss. Health Servs., Inc.,** 244 F.3d 495 (5th Cir. 2001). The plaintiff, one of three counselors at a health service, requested that she be exempt from counseling clients who were homosexual, involved in extramarital relationships, or engaged in other conduct contrary to her religious beliefs. Accommodating her desire not to engage in such counseling would constitute an undue hardship because it would require the other counselors to assume a disproportionate workload. The employer reasonably accommodated her when it offered to give her 30 days and the assistance of its in-house employment counselor to find another position at the hospital to which she could transfer in which the likelihood of encountering further conflicts with her religious beliefs would be reduced.

**Shelton v. University of Med. & Dentistry,** 223 F.3d 220 (3d Cir. 2000). A hospital’s offer to transfer a labor and delivery nurse to the newborn intensive care unit was a reasonable accommodation of the nurse’s religious opposition to abortion. Its offer to meet with the nurse to discuss other available positions also was a reasonable accommodation.

**EEOC v. Dresser-Rand Co.,** 2006 WL 1994792 (W.D.N.Y. July 14, 2006). The court denied summary judgment for the employer in a case on behalf of a Jehovah’s Witness who allegedly was denied transfer to different assignment as an accommodation of his religious objection to working on military projects. See also **EEOC v. Razzoo’s,** Civil Action No. 3:06-CV-1781-L (N.D. Tex. consent decree filed June 18, 2007) (settlement of case alleging that restaurant unlawfully failed to accommodate server’s religious beliefs by excusing her from participating in singing “Happy Birthday” to celebrating customers).

**Kalsi v. New York City Transit Auth.,** 62 F. Supp. 2d 745 (E.D.N.Y. 1998), aff’d, 189 F.3d 461 (2d Cir. 1999). It would impose an undue hardship for the transit authority to accommodate a Sikh subway car inspector who refused to wear a hard hat by allowing him to take non-compensatory breaks when his job would have otherwise required him to perform tasks that necessitated wearing a hard hat or by allowing him to perform only duties that did not require wearing a hard hat. The court held that the plaintiff’s proposed arrangement would be “unworkable” because “a car inspector’s workday cannot be forecast with precision, and the great majority of the routine tasks require a hard hat.” Moreover, the plaintiff’s proposal would impose an undue hardship because it would require that a full-time substitute be immediately available anytime the plaintiff’s job required him to wear a hard hat, such as when he went under a hoist or in a pit.

**Exceptions to Dress and Grooming Codes**

**Tagore v. United States,** 735 F.3d 324 (5th Cir. 2013). Pursuant to her Sikh religious beliefs, an IRS employee was baptized and began wearing the five Sikh articles of faith, including a kirpan (a Sikh ceremonial sword). She was terminated when accommodation of the kirpan was deemed an undue hardship due to a federal statute prohibiting “dangerous weapons” in any federal building. Although the law had an exception for a pocket knife with a blade of less than 2 ½ inches, the plaintiff believed in wearing a kirpan with a blade of at least three inches. Affirming
summary judgment for the IRS on the employee’s Title VII religious accommodation claim, the court found that the IRS had no authority to determine or override the security requirements for federal buildings, there was no federal building to which the plaintiff could be transferred to which the requirements did not apply, and a permanent flexiplace arrangement was inconsistent with the plaintiff’s job duties. The court held that an employer need not violate another law in order to accommodate employee religious beliefs, and that the plaintiff’s additional proposed accommodation of wearing a dulled kirpan blade posed an undue hardship because the inquiry required by security officers would be “time-consuming, impractical, and detrimental to the broad vigilance required at the entrance to public offices.” The court remanded for consideration of plaintiff’s RFRA challenge to the 2 ½ inch kirpan limitation as applied to him. On remand, the district court denied the government’s motion to dismiss the plaintiff’s RFRA claim challenging the restrictions.  


See also EEOC v. Heartland Employment Services, LLC d/b/a ManorCare Health Services-Citrus Heights, Case No. 2:08-cv-00460-FCD-DAD (E.D. Cal.) (consent decree entered May 2010) (settlement of claim alleging improper denial by nursing home of Sikh employee’s request to wear kirpan); EEOC v. Healthcare and Retirement Corp. of America d/b/a Heartland Health Care Center - Canton, Case No. 07-13670, 2009 WL 2488110 (E.D. Mich. Aug. 11, 2009) (denying employer’s motion for summary judgment on kirpan accommodation claim) (consent decree providing for policy changes and other relief subsequently entered Dec. 2009); see also U.S. v. New York Metro. Transp. Auth., 2006 WL708672 (E.D.N.Y. Jan. 12, 2006) (denying motion to compel certain discovery in a Title VII accommodation case brought by the U.S. Department of Justice, the court ruled that any government policies restricting kirpans worn by airline passengers were irrelevant to whether an employer would be required under Title VII to accommodate wearing of a kirpan).

EEOC v. GEO Group, Inc., 616 F.3d 265 (3d Cir. 2010). Affirming summary judgment for the employer, the court rejected EEOC’s claim that prison officials should have accommodated female Muslim employees by granting an exception to the dress code that would permit them to wear their khimars. In ruling that the accommodation would have posed an undue hardship, the court agreed with the employer that the religious head coverings could be used to smuggle contraband into and around the prison or to conceal the identity of the wearer and that they could be used against prison employees in an attack. In addition, the court was not “entirely convinced” by the employer’s assertion that adopting the proposed accommodations of allowing female Muslim employees to wear khimars but requiring them to be removed at each checkpoint would require locking down the prisoners in each such location. However, such a procedure would “necessarily require some additional time and resources of prison officials.” But see United States v. Essex Cty., 2010 WL 551393 (D.N.J. Feb. 16, 2010) (denying motion to dismiss, court allowed U.S. Department of Justice to proceed with denial of accommodation claim on behalf of Muslim employee of Essex County Department of Corrections who was denied accommodation of wearing her religious headscarf and terminated); see also United States v. New York State Dep’t of Corr. Servs., Civil Action No. 07-2243 (S.D.N.Y. settlement approved Jan. 18, 2008) (providing for individualized review of correctional officers’ accommodation requests with respect to uniform and grooming requirements, and allowing employees to wear religious skullcaps such as kufis or yarmulkes if close fitting and solid dark blue or black in color, provided no undue hardship was posed).
EEOC v. Kelly Servs., Inc., 598 F.3d 1022 (8th Cir. 2010). The court affirmed summary judgment for the defendant, a temporary employment agency, on a claim brought on behalf of a female Muslim temporary worker. The EEOC alleged that she was subjected to disparate treatment or denial of religious accommodation when the agency failed to refer her to a commercial printing company for employment because she refused to remove her khimar (a kind of religious headwear) for work. The printing company had a dress policy prohibiting headwear and loose-fitting clothing, which it said posed a safety hazard around printing machinery. The EEOC argued that the agency had a duty to investigate whether the printing company’s generalized rules could have been safely modified to accommodate the worker, such as by assigning her to a job away from moving machinery or allowing her to work by the machinery if she tied back her khimar. The court ruled that it was unnecessary to determine whether the failure to refer constituted an adverse employment action as there was no evidence of an available position that met these requirements, and the printing company’s facially neutral, safety-driven dress policy – as well as its facially neutral requirement that temporary workers should be able to perform all jobs – constituted a legitimate, nondiscriminatory reason for the agency’s failure to refer her.

EEOC v. United Parcel Serv., 587 F.3d 136 (2d Cir. 2009). The appeals court reversed a lower court decision against the EEOC in a subpoena enforcement action in a Title VII case involving Muslim employees who wore beards for religious reasons, holding that the EEOC was entitled to national information regarding UPS’s policy for religious exemptions to its personal appearance guidelines. Rejecting the employer’s argument that two charges could not justify nationwide discovery, the court found that national information was relevant because the employer’s appearance guidelines applied nationally. Moreover, the court noted that when UPS changed its policy in 1999, which had barred employees who could not meet the guidelines for religious reasons from working in public-contact positions, it issued a memo establishing a new process to ensure that requests for exemptions would be evaluated in a consistent manner, yet both of EEOC’s charging parties were subsequently denied accommodation and information about the exemption request process. In addition, at least one of the charges alleged a pattern or practice of failure to accommodate.

Webb v. City of Philadelphia, 562 F.3d 256 (3d Cir. 2009). Affirming summary judgment to the city, the court ruled that it would pose an undue hardship to accommodate the wearing of a traditional religious headpiece called a khimar by a Muslim police officer while in uniform, in contravention of the police department’s dress code directive. The khimar covers the hair, forehead, sides of the head, neck, shoulders, and chest and sometimes extends down to the waist. The plaintiff intended to wear the lower portion of the khimar tucked inside of her police shirt and to wear her police hat. In finding that the accommodation would have posed an undue hardship, the court cited the Police Commissioner’s uncontradicted deposition testimony that “it is critically important to promote the image of a disciplined, identifiable and impartial police force by maintaining the Philadelphia Police Department uniform as a symbol of neutral government authority, free from expressions of personal religion, bent or bias.” The court noted that “[a]s a para-military entity, the Philadelphia Police Department requires ‘a disciplined rank and file for efficient conduct of its affairs.’” The Commissioner’s “thorough and uncontradicted reasons for refusing accommodations are sufficient to meet the more than de minimis cost of an
undue burden.” The court distinguished Fraternal Order of Police v. City of Newark, 170 F.3d 359 (3d Cir. 1999), in which the court held that a no-beard policy that made exceptions for certain medical conditions but not for religious reasons violated the First Amendment. Here, in contrast, the policy at issue bars the wearing of religious dress or symbols under all circumstances when a police officer is in uniform, with no medical or secular exceptions.

Cloutier v. Costco Wholesale Corp., 390 F.3d 126 (1st Cir. 2004). It would constitute an undue hardship to require Costco to modify its no-facial-jewelry policy as an accommodation for an employee who claimed that as part of her religious belief and practice as a member of the Church of Body Modification she had to display her facial piercings. Although Costco had not received any complaints about the employee’s appearance, the court found that it would pose “an undue hardship to require Costco to grant an exemption because it would adversely affect the employer’s public image,” given Costco’s determination that facial piercings detract from the “neat, clean and professional image” that it aimed to cultivate. Compare EEOC v. Red Robin Gourmet Burgers, 2005 WL 2090677 (W.D. Wash. Aug. 29, 2005) (in case involving employee’s religious belief and practice of not covering Kemetic tattoos on his wrists, the court denied employer’s summary judgment motion, finding that it had failed to establish as a matter of law that accommodating the uncovered tattoos would pose an undue hardship; specifically, the court noted: there was no evidence any customers complained about his tattoos, or any other employee’s tattoos, during this time; the small size of the tattoos (less than a quarter-inch) and the little-known language in which they are written (Coptic) suggested that few customers would have noticed or understood the tattoos, “in contrast to the employee in Cloutier whose facial piercings were imminently visible”; the employer’s “company profile and customer study suggesting that Red Robin seeks to present a family-oriented and kid-friendly image” did not constitute evidence “that visible tattoos are inconsistent with these goals generally, or that its customers specifically share this perception”).

Ali v. Alamo Rent-A-Car, Inc., 8 F. App’x 156 (4th Cir. 2001). The court dismissed a claim by a Muslim employee who claimed her employer violated Title VII when it transferred her to a position with limited customer contact when she refused to stop wearing her religiously mandated head scarf. The plaintiff argued that religious accommodation claims do not require a plaintiff to allege an adverse employment action because Title VII requires an employer to reasonably accommodate all aspects of religious observance and practice absent undue hardship. The court held, however, that the accommodation provision does not eliminate the basic statutory requirement of an adverse employment action. The court did not consider whether the transfer constituted an adverse employment action because the plaintiff conceded that it did not under circuit precedent.

Daniels v. City of Arlington, 246 F.3d 500 (5th Cir. 2001). A police department that had a policy prohibiting all pins on uniforms did not violate Title VII when it terminated an employee who wore a gold cross pin on his uniform in violation of the policy. It offered to accommodate the officer by allowing him to (1) wear a cross ring or bracelet; (2) wear the pin under his uniform shirt or collar; or (3) transfer to a non-uniformed position, where he could continue to wear the pin on his shirt, but the officer rejected those proposed accommodations. The employer was also able to show that allowing the officer to wear the pin would pose an undue hardship because it would give the public the appearance that it endorsed the officer’s religious views.

EEOC v. Jetstream Ground Servs., Inc., 2015 WL 5697315 (D. Colo. Sept. 29, 2015). The EEOC filed suit on behalf of Muslim aircraft cabin cleaners who were denied a religious accommodation to wear hijabs and long skirts. Granting the EEOC’s motion for summary judgment as to the hijab accommodation but denying it as to the skirt accommodation, the court ruled that management had admitted, by virtue of modifying its policy in response to the lawsuit, that headscarves did not pose safety risks as long as they were not loose or flowing, but rather were tucked into employees’ shirts and secured to their heads, whereas the evidence was disputed as to whether allowing long skirts would cause increased financial burden from employee injury and increased safety risks if stepping on a skirt resulted in a fall.

Muhammad v. New York City Transit Auth., 52 F. Supp. 3d 468 (E.D.N.Y. 2014). The plaintiff, a bus driver, was transferred to the bus depot because she refused to remove the khimar (headscarf) she wore pursuant to her Muslim religious beliefs, when the transit authority adopted a new policy requiring that no headgear be worn over, or in place of, its official baseball cap. The employer contended the transfer constituted a reasonable accommodation. Denying the employer’s motion for summary judgment, the court ruled that there were disputed material facts as to whether the transfer was a reasonable accommodation, since the plaintiff adduced proof that it involved a significant diminution in status and benefits. The court further held that the transfer might constitute disparate treatment based on religion because a jury could infer discriminatory animus from the transfer of the plaintiff, who was otherwise qualified to work in passenger service, to the bus depot, where she was allegedly forced to work in deplorable conditions and hidden from public view. The court also held that the transit authority’s headwear policy may have had a disparate impact based on religion, since 100% of those with religious objections were transferred and 0% of employees with secular objections were transferred. The court said this could be enough to show statistical significance even though only 4 Muslim employees out of 10,000 employees objected. On the merits of the disparate impact claim, the court held that the employer could not justify the transfers based on its desire to maintain customer comfort and boost employee morale. The availability of a less restrictive alternative could be proven from the authority’s own practice prior to the policy change of permitting drivers to wear khimars as long as they matched their uniforms.

Finnie v. Lee Cty., Miss., 2012 WL 124587 (N.D. Miss. Jan. 17, 2012). The plaintiff, a Pentecostal female juvenile detention officer, alleged that the county violated Title VII by refusing to accommodate her religious objections to the pants-only uniform policy. Granting summary judgment to the county on this claim, the court ruled that there was deposition testimony, an expert report, and evidence of past incidents demonstrating detailed legitimate safety concerns about detention officers wearing skirts, including the ability of an officer to perform various defense-tactic maneuvers. For example, an assailant could pin the material of the skirt to the floor with his knees, thereby preventing the officer from moving her body as
needed to perform a maneuver. “[T]o carry a burden of showing undue hardship, Defendants do not even need to prove that a skirt has – for example, in the past – actually caused such safety and security problems. Instead, [they] must show safety and security risks.” Moreover, relying on Webb v. City of Philadelphia, 562 F.3d 256 (3d Cir. 2009), and other law enforcement cases, the court held that it would be an undue hardship to make an exception to the pants-only policy, because the standardized uniform requirement enhanced efficiency by subordinating individuality to the overall group mission.

United States v. New York City Transit Auth., 110 Fair Empl. Prac. Cas. (BNA) 856, 2010 WL 3855191 (E.D.N.Y. Sept. 28, 2010). The U.S. Department of Justice could proceed with a pattern-or-practice claim on behalf of Muslim and Sikh bus drivers, train operators, and subway station agents alleging selective enforcement of the city’s headwear policies and failure to accommodate Muslims and Sikhs who could not comply with the headwear polices for religious reasons. Rejecting the defendant’s contention that pattern-or-practice claims are limited to disparate treatment, the court concluded that the plaintiff could bring a pattern-or-practice claim alleging denial of accommodation. In addition, the fact that the plaintiff had so far only identified 10 potential discrimination victims did not preclude a pattern-or-practice claim. “[I]f there is evidence of systemic discrimination, the fact that plaintiff cannot establish a large number of victims . . . is of no moment.” This also was not “the extraordinary case in which the reasonableness of the defendants’ proposed accommodations [could] be determined as a matter of law.” Although workers transferred to “shifter” positions, which did not involve public contact, would receive $.50 more per hour, the new positions offered fewer overtime opportunities and other job benefits and exposed them to a less desirable work environment, such that the transfers would not necessarily be a reasonable accommodation. Finally, the evidence did not conclusively show that the defendant would incur an undue hardship by providing an accommodation. The employees did not seek an outright exemption from the headwear polices, but rather only to be allowed to affix the defendant’s logo to a shirt or jacket pocket or collar rather than to their turbans or headscarves (khimars). There was no proof that this subtle change in the placement of the logo would adversely affect the Transit Authority in any way. Therefore, the defendant was not entitled to summary judgment.

EEOC v. Papin Enters., Inc., 105 Fair Empl. Prac. Cas. (BNA) 1804, 2009 WL 961108 (M.D. Fla. Apr. 7, 2009). The court denied summary judgment to the employer in an accommodation claim against a Subway sandwich shop brought by the EEOC on behalf of an employee who sought a dress code exception in order to wear a nose ring pursuant to Nuwaubian religious beliefs. The court rejected the argument that “as a company operating restaurant outlets,” the employer had to “impose strict, uniform food-safety requirements as part of its business model.” This contention was undermined by the employer’s alternative contention that it provided accommodation by offering to allow her to wear the nose ring while working but to be absent on those dates that the corporate compliance auditor visited. The employer also allowed other employees to wear watches and wedding bands, even though these, like nose rings, were contrary to the “no jewelry” food safety guidelines on which the employer relied for its safety-based undue hardship defense.

defendant retail store in defending a Title VII denial of accommodation claim brought by the EEOC on behalf of a sales person at a Hollister clothing store who sought an exception to the company’s “look policy” because her Apostolic faith forbade her from wearing pants or skirts that fell above the knee. The court ruled that it would permit, as relevant to the undue hardship defense, proposed testimony by the defendants’ experts that adherence to the look policy was “critically important” to performance of the position and constituted an “essential function” of the position. Such testimony was relevant to the alleged harm that would be caused to the Hollister brand by permitting an employee in the plaintiff’s position to deviate from the look policy.

Jenkins v. New York City Transit Auth., 646 F. Supp. 2d 464 (S.D.N.Y. 2009). The court denied the employer’s motion to dismiss a Pentecostal American bus driver’s disparate impact claim arising out of the denial of her request to wear a skirt as part of her uniform and her subsequent termination when she refused to wear pants. The court held that a disparate impact claim based on religion is permissible under Title VII, which requires an employer to demonstrate that a policy having a disparate impact is job related for the position in question and consistent with business necessity.

Potter v. District of Columbia, 101 Fair Empl. Prac. Cas. (BNA) 1302, 2007 WL 2892685 (D.D.C. Sept. 28, 2007), aff’d, 558 F.3d 542 (D.C. Cir. 2009). A new D.C. fire department safety policy forbidding workers who use “tight-fitting face pieces” from having facial hair that comes between the sealing surface of the face piece and the face violated the Religious Freedom Restoration Act (RFRA) where religious objectors were neither exempt nor allowed to take a “face fit test” to determine whether they could obtain an adequate seal between their faces and their masks while wearing their beards. The department conceded that most firefighting work was performed using a self-contained breathing apparatus (SCBA), which bearded firefighters can use safely, and that, for other circumstances, there were less restrictive measures than the no-facial hair policy to ensure the government’s safety interest. Thus, the fire department could show neither that there was a compelling governmental interest in applying the policy against religious objectors nor that the policy was the least restrictive means to serve the cited safety interest.

EEOC v. Alamo Rent-A-Car, L.L.C., 432 F. Supp. 2d 1006 (D. Ariz. 2006). Granting the EEOC’s motion for partial summary judgment, the court determined that the employer violated Title VII when it terminated a Somali-born Muslim customer sales representative for refusing to remove her head scarf during Ramadan. The employer began to prohibit the wearing of a head scarf only after the terrorist attacks on September 11, 2001. The employer proposed to allow the woman to wear her head scarf during Ramadan in the back office while still requiring her to serve clients without the religious garment. The court held that the employer’s proposal was not a reasonable accommodation because it would still require the employee to remove her head covering at work. The court also rejected the employer’s contention that accommodating the plaintiff would result in undue hardship by opening “the floodgates to others violating the uniform policy,” since contrary to the employer’s contention, the employer could have allowed the plaintiff to wear her religious headdress while still enforcing its uniform policy with respect to other employees. (By jury verdict entered June 1, 2007, the employer was ordered to pay $250,000 in punitive damages, $21,640 in compensatory damages, and $16,000 in back pay.)
Brown v. F.L. Roberts & Co., 419 F. Supp. 2d 7 (D. Mass. 2006). The plaintiff, a lube technician at a vehicle oil change facility who serviced vehicles and dealt with customers, did not shave or cut his hair due to his Rastafarian religious beliefs. The employer implemented a new personal appearance policy requiring employees with customer contact to be clean shaven. When the plaintiff informed the employer he would not shave due to his religious beliefs, his work was restricted to the lower bay, an area of the shop that was cold, had no customer contact, and where he was often assigned to work alone so it was difficult to take breaks. The court held that while this was sufficient to establish a prima facie case of religious discrimination, summary judgment for the employer was appropriate because the sole accommodation plaintiff was seeking, a blanket exemption from the employer’s neutral appearance policy, constituted an undue hardship on the employer.

**Exceptions to Mandatory Vaccination Policies**

See EEOC Office of Legal Counsel Informal Discussions letters on mandatory vaccination policies and EEO compliance:

[https://www.eeoc.gov/eeoc/foia/letters/2012/religious_accommodation.html](https://www.eeoc.gov/eeoc/foia/letters/2012/religious_accommodation.html)


Robinson v. Children’s Hosp. Boston, 2016 WL 1337255 (D. Mass. Apr. 5, 2016), appeal docketed (1st Cir. May 5, 2016). The plaintiff, whose job duties entailed intake and registration of patients in the emergency department of a hospital, sought as a religious accommodation to be excused from a requirement that hospital employees receive the flu vaccine, because her Muslim beliefs precluded ingesting pork or pork byproducts. The hospital did not excuse the vaccination based on religious objections but offered those who objected on religious grounds a pork-free (gelatin-free) version of the vaccine. The plaintiff’s request to be excused altogether from the vaccine was denied, and when she refused to take it or avail herself of a transfer to another position that did not involve direct patient contact, she was terminated. Granting the employer’s motion for summary judgment on her Title VII denial of religious accommodation claim, the court concluded that “the combination of the Hospital’s efforts – allowing [the plaintiff] to seek a medical exemption, providing her reemployment resources, granting [her] time to secure new employment and preserving her ability to return to the Hospital by classifying her termination as a voluntary resignation – amounted to a reasonable accommodation under Title VII.” The court further concluded that it would have posed an undue hardship to grant the plaintiff’s request, given the record evidence on the medical support for mandatory healthcare worker flu vaccination and the fact that the plaintiff worked directly with patients.

Fallon v. Mercy Catholic Medical Center of Southeastern Pennsylvania, 200 F. Supp. 3d 553 (E.D. Pa. Aug. 9, 2016), appeal docketed (3d Cir. Sept. 9, 2016). Fallon, a hospital Psychiatric Crisis Intake Worker, was discharged after refusing to comply with the hospital’s mandatory flu vaccination policy and denied a requested exemption he had been granted twice before. The hospital’s new policy required a supporting letter from clergy on official letterhead, which
plaintiff explained he could not submit because he was not a member of an organized religion. He did submit a 22-page essay with 7 subsections titled: The Lack of Evidence Based Medicine; 36,000 Average Annual Flu Deaths – Fact or Fiction?; Risks Involved in Influenza Vaccination; Criminality and the Pharmaceutical Industry; The Mandatory Influenza Vaccination Controversy; Why is there an Influenza Vaccination Controversy?; and Mandatory Consent. In the subsection titled “Mandatory Consent,” Fallon quoted Siddhartha Gautama, the founder of Buddhism. Without addressing whether the employer was permitted under Title VII to require a supporting letter from clergy, the court granted the hospital’s motion to dismiss Fallon’s denial of accommodation claim on the ground that his belief against the flu vaccine was not religious because it did not address ultimate questions and was a single-faceted belief rather than a comprehensive ideology. If deemed religious, “it would be difficult to explain why other single-faceted ideologies—such as economic determinism, Social Darwinism, or even vegetarianism—would not qualify as religions.” The court reasoned: “Fallon's argument—that he need ‘only ... demonstrate that he holds a moral or ethical belief which is sincerely held with the strength of traditional religious views’— misinterprets the EEOC's guideline. . . . the EEOC derived the definition in Section 1605.1 from Seeger and Welsh, cases which both exclude from ‘religious beliefs’ those that are based “merely on a personal moral code.” . . . Moreover, the EEOC’s Compliance Manual states: ‘beliefs are not protected merely because they are strongly held. Rather, religion typically concerns ‘ultimate ideas’ about ‘life, purpose, and death.’ Social, political, or economic philosophies, as well as mere personal preferences, are not ‘religious’ beliefs protected by Title VII.’ . . . Fallon’s stated opposition to vaccinations is entirely personal, political, sociological and economic—the very definition of secular philosophy as opposed to religious orientation.”

Chenzira v. Cincinnati Children’s Hosp. Med. Ctr., 117 Fair Empl. Prac. Cas. (BNA) 91, 2012 WL 6721098 (S.D. Ohio Dec. 27, 2012). The plaintiff, a hospital customer service representative, was terminated for refusing to be vaccinated for the flu pursuant to the hospital’s mandatory policy. The plaintiff alleged that her discharge constituted religious discrimination and denial of accommodation for her religious and philosophical convictions, because she is a vegan, a person who does not ingest any animal or animal by-products. The hospital moved to dismiss, arguing that veganism is a mere dietary preference or social philosophy. Denying the motion, the court found it “plausible that Plaintiff could subscribe to veganism with a sincerity equating that of traditional religious views.” The court further noted that its conclusion was bolstered by the plaintiff’s citation to essays about veganism and to Biblical excerpts. Although EEOC regulations make it “clear that it is not necessary that a religious group espouse a belief before it can qualify as religious, . . . the fact here that Plaintiff is not alone in articulating her view lends credence to her position.”


**Permitting or Requiring Prayer, Proselytizing, and Other Forms of Religious Expression**

Marrero-Mendez v. Calixto-Rodriguez, 2016 WL 3902635 (1st Cir. July 19, 2016). In § 1983 action, the court held that police officer’s first amendment rights were violated when he was
ordered against his will to stand nearby while his colleagues engaged in prayer, and then humiliated and punished for his nonconformance. See also Scott v. Montgomery County School Bd., 963 F. Supp. 2d 544 (W.D. Va. Aug. 5, 2013) (in Title VII case, the court held a reasonable jury could find the supervisor knew his supervisor’s invitations to plaintiff, a subordinate, to join his Bible study group and to attend a religious retreat, were unwelcome but he persisted, and plaintiff’s continued rejection led him to evaluate her work more harshly; plaintiff had told him she was not comfortable joining in his daily prayer or devotional before work).

Ervington v. LTD Commodities, L.L.C., 555 F. App’x 615 (7th Cir. 2014). The plaintiff was discharged for violating the company’s anti-harassment policy by distributing Christian religious tracts at a company Halloween party, including tracts that negatively depicted Muslims and Catholics and stated that they would go to hell. She claimed that because proselytizing was part of her religious practice, the company was obligated to allow her communications to coworkers, which included rebuffing a Muslim employee’s attempt to return the pamphlets and telling him that her religion was right. Affirming summary judgment for the employer, the court held that the company was not required to accommodate religious expression that was offensive to other employees. To the extent the plaintiff also claimed she was subjected to disparate treatment because the Muslim coworker only received a written warning for an earlier incident in which he had violated the anti-harassment policy, the court found he was not similarly situated to the plaintiff because she had previously been counseled by management for imposing her religious beliefs on other employees. The plaintiff also maintained that her discharge violated Title VII because she was not engaged in unlawful harassment of other employees, but the court held that Title VII does not prohibit employers from enforcing an anti-harassment policy that defines harassment more broadly than does Title VII.

Matthews v. Wal-Mart Stores, Inc., 417 F. App’x 552 (7th Cir. 2011). The plaintiff was terminated for making comments to a lesbian coworker that lesbians and gay men are sinners and will “go to hell.” Affirming summary judgment for the employer, the court held that the termination was not religious discrimination, because the comments at issue could reasonably have been interpreted as harassment based on sexual orientation in violation of the company’s anti-discrimination policy. In rejecting the plaintiff’s argument that the employer should have accommodated her comments by excusing any violation of the harassment policy as based on religious beliefs, the court ruled that “such an accommodation could place Wal-Mart on the ‘razor’s edge’ of liability by exposing it to claims of permitting workplace harassment.” The court also concluded that coworkers who participated in the conversation but were not terminated were not similarly situated as none of them commented on someone’s “individual status, homosexuality or race,” and there was no evidence of other employees who had violated the harassment policy and not been fired.

Risk v. Burgettstown Borough, Pa., 364 F. App’x 725 (3d Cir. 2010). Denying the employer’s motion for a new trial on the plaintiff police officer’s discriminatory termination claim, the court ruled that even if the police department was constitutionally permitted to have directed the plaintiff to remove a cross-pin from the lapel of his uniform, that decision – along with other statements – were properly admitted as evidence of religious animus that motivated his termination pursuant to a reduction in force.
Dixon v. Hallmark Cos., 627 F.3d 849 (11th Cir. 2010). An apartment complex property manager was terminated for violating the employer’s religious displays policy by refusing to remove religious artwork – a 26” by 50” poster of flowers with the words “Remember the Lilies...Matthew 6:28” – that she had hung in the on-site management office. The employer also terminated the manager’s husband, who was the property maintenance technician, telling him, “You’re fired too. You’re too religious.” The court reversed summary judgment for the employer and remedied the case for trial on the disparate treatment for denial of accommodation claims.

Schwartzberg v. Mellon Bank, N.A., 307 F. App’x 676 (3d Cir. 2009). The plaintiff, an Orthodox Jew with a religious belief that homosexuality is immoral, sent correspondence to coworkers expressing this belief in strident terms. After the first instance, management issued him a warning and advised him that the conduct violated its harassment policy and would not be tolerated. After the second instance, he was given a “final written warning,” informing him that subsequent violations could result in termination. He was subsequently terminated for four instances of sleeping on the job. He brought suit under Title VII, alleging that the termination constituted discrimination based on his religious beliefs. Granting summary judgment to the employer, the district court held that because the plaintiff conceded that there was no conflict between his religious beliefs and the employer’s prohibition against denigrating coworkers based on sexual orientation, the employer therefore had no duty to accommodate. The district court also noted that the employer had not required the plaintiff to change his religious beliefs or to participate in any affinity group events to which he objected on religious grounds. On appeal, the Third Circuit found “no basis for disturbing the District Court’s rulings” and therefore affirmed the judgment “for substantially the same reasons.”

Lizalek v. Invivo Corp., 314 F. App’x 881 (7th Cir. 2009). The employer demonstrated that it would have been an undue hardship to have accommodated a corporate employee’s need to alternate among different identities pursuant to his alleged religious belief that he was three separate beings. The evidence showed that the plaintiff’s practice of alternating between identities in e-mail correspondence endangered the company’s customer relationships and made it difficult for him to communicate with coworkers and that his religious belief that he was exempt from tax liability risked a conflict with the IRS.

Grossman v. South Shore Pub. Sch. Dist., 507 F.3d 1097 (7th Cir. 2007). Affirming summary judgment for the school district on a terminated guidance counselor’s First Amendment free exercise and Title VII claims, the court ruled that the school district was permitted to terminate the counselor for her conduct, even if her actions were motivated by her religious beliefs. On several occasions when students approached her for guidance, she asked them to join her in prayer. She also replaced school materials regarding condoms with pamphlets advocating sexual abstinence. There was insufficient evidence that her termination was based on her religious views alone, as opposed to these actions, which the school district was entitled to prohibit. See also Amekudzi v. Board of City of Richmond Pub. Sch., 2007 WL 4468683 (E.D. Va. Dec. 17, 2007).

Powell v. Yellow Book USA, Inc., 445 F.3d 1074 (8th Cir. 2006). The employer was not liable for religious harassment of plaintiff because upon learning of her complaints about a coworker’s
proselytizing, the employer had satisfied its Title VII obligation to take effective remedial action when it promptly held a meeting and told the coworker to stop discussing religion matters with plaintiff, and there was evidence that the company continued to monitor the situation to ensure that the coworker did not resume her proselytizing.

Berry v. Department of Soc. Servs., 447 F.3d 642 (9th Cir. 2006). The employer did not subject a county social worker who was an evangelical Christian to disparate treatment or denial of accommodation in violation of Title VII when it prohibited him from discussing his religion with clients, displaying religious messages in his work cubicle, and using the department’s conference room for prayer meetings. Permitting the plaintiff to discuss his religion with clients would have posed an undue hardship by putting the department at risk of violating the Establishment Clause. Similarly, allowing the plaintiff to display religious messages in his cubicle would require the department to accept or to rebut the inherent suggestion of state sponsorship of his religion, and therefore posed an undue hardship. The court also rejected the plaintiff’s claim that the department’s refusal to allow him to use the conference room for prayer meetings amounted to disparate treatment based on religion absent any evidence that the department’s stated nondiscriminatory reason – to preserve the room as a nonpublic forum – was a pretext. The plaintiff’s evidence that the conference room had been used for office-related social functions such as baby showers or birthday parties did not prove it was disparate treatment to deny him use of it for religious meetings. “The Department did not prohibit its employees from holding prayer meetings in the common break room or outside, but declined to open the Red Bluff Room to employee social or religious meetings as such use might convert the conference room into a public forum. We conclude that these restrictions were reasonable and the Department’s reasons for imposing them outweigh any resulting curtailment of Mr. Berry’s rights under the First Amendment of the United States Constitution or Title VII of the Civil Rights Act of 1964.” See also Johnson v. Poway Unified School Dist., 658 F.3d 954 (9th Cir. 2011) (rejecting claim by school teacher that he must be allowed to display religious banners in his classroom).

Curay-Cramer v. Ursuline Acad. of Wilmington, 450 F.3d 130 (3d Cir. 2006). The court affirmed summary judgment for the employer on a Title VII sex discrimination claim by a teacher at a Catholic girls’ school who was fired after her name appeared in an advertisement supporting abortion rights. The court held that since the teacher was fired for acting contrary to the religious tenets of the Catholic Church, adjudication of the case would require the court to become entangled in church doctrine in violation of the First Amendment. Therefore, the claim was not cognizable. In order to determine whether application of a federal statute to a religious entity presents a significant risk that First Amendment religion clauses will be infringed, the court: (1) determines whether applying the statute raises serious constitutional questions; (2) discerns whether there is a clear expression of affirmative intent by Congress to have the act apply in the situation presented; and (3) if so, determines whether the statute violates the Constitution as applied to facts presented. The court noted: “We caution religious employers against over-reading the impact of our holding. It is by no means the case that all claims of gender discrimination against religious employers are impermissible. Indeed, as we have discussed above, many such claims may not raise serious constitutional questions. If a religious employer does not offer a religious justification for an adverse employment action against a non-ministerial employee, it is unlikely that serious constitutional questions will be raised by applying Title VII.”
Piggee v. Carl Sandburg Coll., 464 F.3d 667 (7th Cir. 2006). The plaintiff, a cosmetology instructor at a community college, brought an action under 42 U.S.C. § 1983 alleging violation of her First Amendment rights when she was instructed to refrain from engaging in speech related to her religious beliefs and her employment contract was not renewed. The plaintiff had given a gay student two religious pamphlets condemning homosexuality, telling him to read the materials later and inviting him to discuss them with her. She also gave various religious pamphlets to other students as part of her religiously motivated effort to “witness.” Upon receipt of a student complaint, the college notified the plaintiff that her conduct was deemed inappropriate and in violation of the school’s anti-harassment policy. Applying Garcetti v. Ceballos, 547 U.S. 410 (2006), the court affirmed summary judgment for the employer, concluding that the plaintiff’s First Amendment rights were trumped by the defendant’s interest in promoting a non-disruptive classroom setting, noting that even though only one student had filed a formal complaint, numerous others had noted her proselytizing on their class evaluations.

Jones v. United Space Alliance, 170 F. App’x 52 (11th Cir. 2006). A member of the Apostolic/Pentecostal faith alleged that he was subjected to a hostile work environment based on religion. The plaintiff alleged the following harassing conduct: his manager made derogatory remarks to him based on his religion; a coworker removed from the community bulletin board a flyer describing events at the plaintiff’s church; the plaintiff’s manager told him to remove the lanyard for his identification badge because it had “Jesus” on it; his manager told him not to leave his Bible on his desk; he was asked to turn down the religious music that he played at work; and he was accused of having a conflict of interest with the space program because he was a pastor. In finding there was insufficient evidence of a hostile work environment and affirming summary judgment for the employer, the court ruled that the alleged incidents were not objectively severe or pervasive because none occurred on a repeated basis; none were physically threatening or humiliating; and none interfered with the plaintiff’s job performance.

Morales v. McKesson Health Solutions, L.L.C., 136 F. App’x 115 (10th Cir. 2005). In ruling that the plaintiff’s evidence was insufficient to prove that the proffered reasons for her discharge from her position as a telephone triage nurse were a pretext for religious discrimination, the court noted that she testified that neither her boss nor any of the other supervisors was anti-Catholic, but rather that there was a generalized institutional secularism in the workplace. Moreover, the employer’s assertion that the plaintiff was terminated for harassment and misconduct in violation of workplace rules was supported by the evidence, including that the plaintiff would sometimes offend callers by injecting Roman Catholic prayer or dogma into triage calls and that she had harassed coworkers, telling one that she was under attack by the “powers of darkness” and implying that another was Satan (or possessed by Satan). Noting that the plaintiff had not raised a religious accommodation claim, the court did not address whether it would have posed an undue hardship on the employer to accommodate plaintiff’s religious expression in the workplace.

Warnock v. Archer, 380 F.3d 1076 (8th Cir. 2004). A teacher filed an action under 42 U.S.C. § 1983 alleging religious harassment and a violation of the Establishment Clause based on the school superintendent’s prayers at mandatory teachers’ meetings and a requirement that the teacher attend in-service training that included prayer. The court found that the personal
religious displays of the school superintendent, including a framed scriptural quotation and a displayed Bible in his office, did not constitute harassment, and further that the teacher’s claim that he was harassed when a student nailed a wooden cross outside his classroom and parents ordered their children to leave his classroom failed because the school district promptly disciplined the student and had no authority to require students to remain in his class over the objections of their parents. In analyzing the Establishment Clause claim, the court noted that “[w]hen a government employee’s speech and acts can reasonably be attributed to the government itself, the restrictions of the Establishment Clause apply; however, when such activity is clearly personal and does not convey the impression that the government is endorsing it, the mere fact that it occurs in a government setting does not render it unconstitutional.” Applying that standard to this case, the court held that the personal religious effects of the school superintendent, including a framed scriptural quotation and a displayed Bible in his office, were not unconstitutional under the Establishment Clause because “the activity was clearly personal and did not convey the message that the state was endorsing it.” By contrast, prayers in mandatory teachers’ meetings by the official conducting the meetings, in circumstances that would lead an objective observer to conclude that the government was explicitly endorsing the religious content of the prayers offered, as well as the requirement that the teacher attend in-service training at a religious college where prayers were offered as part of the training, did violate the Constitution.

Frick v. Wells Fargo & Co., 68 F. App’x 173 (10th Cir. 2003). The employer did not violate Title VII when it discharged an employee for distributing religious pamphlets. The employer had a legitimate, nondiscriminatory business reason for discharging the employee because the company’s policy prohibited distribution of all pamphlets, and the employee’s co-workers complained that he was rude and unprofessional.

Knight v. Connecticut Dep’t of Pub. Health, 275 F.3d 156 (2d Cir. 2001). Two state employees, one a sign language interpreter and the other a nurse consultant, wanted to use religious speech in their interaction with the employer’s clients. The court held that the employees failed to establish a prima facie case of religious discrimination because they were not able to show that the employer was on notice of their religious need to evangelize to clients, but that even if the employer had been on notice, the accommodation that they sought was not reasonable. Permitting employees to evangelize while providing services to clients would jeopardize the state’s ability to provide services in a religiously neutral manner.

Anderson v. U.S.F. Logistics (IMC), Inc., 274 F.3d 470 (7th Cir. 2001). A religious practice that arguably could impair an employer’s legitimate business interests can be restricted as long as the belief is reasonably accommodated. The employer reasonably accommodated the plaintiff’s religious practice of sporadically using the phrase “have a blessed day” when it permitted her to use the phrase with coworkers and supervisors who did not object, but prohibited her from using the phrase with customers.

Wilson v. U.S. W. Commc’ns, 58 F.3d 1337 (8th Cir. 1995). An employer could discharge an individual who, for religious reasons, insisted on wearing an anti-abortion button depicting a fetus. Title VII does not allow an employee “to impose [her] religious views on others.” The photo on the button was offensive to many, and to allow her to wear the pin would result in an
undue hardship to the employer because the button so distracted other employees that it had
caused a 40% reduction in productivity and some employees threatened to walk off their jobs.
The employer reasonably accommodated her by asking her when she was outside her cubicle to
cover up the button.

bench trial, court found employer violated Title VII based on a series of incidents supporting a
claim of religious discrimination which began after he declined requests to join in prayer
meetings with Christian employees. His supervisor told him he should have joined “because it
would make the other officers feel comfortable, as though [he] was a part of the team” and that
he “missed an opportunity to show that [he] liked white people[.]” After he declined, he
experienced “the isolation of feeling as though I was not part of the team,” and a series of
discriminatory or harassing incidents. The court awarded $100,000 in compensatory damages.

The plaintiff, an installation mechanic, alleged that he was terminated in violation of Title VII
based on his atheism and that the employer denied his requested accommodation to refrain from
wearing an employee ID badge with a Christian message. The employer argued that
accommodating the plaintiff by removing the religious message would suppress free speech and
free exercise of religion by the employer, whose owner’s religious beliefs dictated that he
“spread the word of God and encourage others to convert to Christianity,” and thus would pose
an undue hardship. Rejecting this argument and denying the employer’s motion for summary
judgment, the court noted that on his last day of work, the plaintiff proposed a compromise
accommodation that would have allowed him to keep a piece of tape concealing the mission
statement on the back of his badge, while he continued displaying the front part of the badge
with his name and picture. Although the employer asserted that the purpose of the mission
statement is to communicate “what we believe and how we want to be perceived by the public”
and by customers, it failed to show how the public perception or reputation of Christian HVAC
would be harmed if only the plaintiff’s badge did not display the mission statement on the
reverse side.

Muslim, drove a snow plow during the winter season. The employer terminated him after ten
years of employment, citing the plaintiff’s threat of violence. The plaintiff alleged that he was
terminated because of his religion and that he had been denied the reasonable accommodation of
a quiet place to pray while on duty. Denying the employer’s motion for summary judgment on
various grounds, the court concluded that the plaintiff’s accommodation claim did not require
that he establish an adverse action separate from the failure to accommodate itself. In addition, it
was disputed as to whether the plaintiff’s termination was motivated in part by his request for a
religious accommodation. The court also held that there were disputed facts on the employer’s
undue hardship defense. The employer made conclusory assertions that it would have been
operationally prohibitive to have allowed the plaintiff, while he was Acting Lead Worker, to
leave his work location on the road to return to the yard at least twice a day, because it would
have put a scheduling strain on the department and resulted in extra costs and disruptions to the
entire work crew. **These facts were disputed by the plaintiff and a coworker, who testified that
the work site is always within a few miles of the yard and that the department had never required**
a lead worker to stay on the road with his crew at all times. The court further noted that a jury might conclude that the undue hardship defense was not invoked in good faith, as the employer never engaged in any dialogue with the plaintiff to discuss the accommodation request.

Schwingel v. Elite Prot. & Sec., Ltd., 2015 WL 7753064 (N.D. Ill. Dec. 2, 2015). The plaintiff, a Messianic Jew who worked as a security officer, was terminated for violating the employer’s internal policy prohibiting discrimination and requiring professionalism. The violation occurred when the plaintiff created a makeshift chair on which he placed a sign that stated “Men Only” and had additional language from the Bible concerning women’s menstrual cycles. When a female coworker attempted to use the chair, he told her that “women are defiled by God under the Mosaic Law” and that “all women are unnaturally clean because of menstruation and that [women] can never be trusted to honestly disclose whether or not [they] are menstruating.” Granting summary judgment for the employer on the plaintiff’s claim that the employer was required under Title VII to accommodate his religious expression, the court ruled: “Elite was not required to accommodate Schwingel’s religion by permitting him to use a special chair and sign offensive to other employees.”

Mindrup v. Goodman Networks, Inc., 2015 WL 5996362 (E.D. Tex. Oct. 14, 2015). Part of the plaintiff’s duties as Director of Marketing Communications was to write and send a daily email message, known as the Morning Coffee, to all of the defendant’s employees. When the plaintiff was directed to begin including Bible verses in the Morning Coffee, he objected on the ground that it conflicted with his Buddhist religious beliefs, and then received an email reply stating “I respect your beliefs,” and was terminated 32 hours later. Recommending denial of the employer’s motion for summary judgment on the plaintiff’s denial of religious accommodation and retaliatory termination claims, the magistrate judge ruled that there were genuine issues of material fact as to whether inclusion of the verses was an employment requirement that conflicted with the plaintiff’s religious beliefs, whether he was accommodated, and whether he could be accommodated without undue hardship.

Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012). The plaintiff, a hospital painter, regularly wore a lanyard around his neck printed with the phrase “I <<heart>> Jesus.” Attached to the lanyard was a clear plastic badge holder containing a piece of paper with the handwritten words “Jesus Loves You!” and a drawing of a cross. On the reverse side, vertically aligned, was the handwritten message: “F False E Evidence A Appearing R Real.” Discussing whether the hospital might be able to show that it would pose an undue hardship to accommodate the plaintiff’s request to continue wearing the badge after being told it violated the uniform policy, the court noted that, to the extent the hospital argued it was “inappropriate because it could upset or confuse patients and guests already in a stressful situation and/or interfere with promoting the efficiency of the public service it performs through its employees,” this was a mere assumption that, absent any evidence that it had occurred, would not support a finding of undue hardship.

Weathers v. FedEx Corporate Servs., Inc., 2011 WL 5184406 (N.D. Ill. Nov. 1, 2011). The plaintiff, a sales manager who described himself as a conservative evangelical Christian, belonged to an internal Christian employee organization and, in that capacity, had been invited to speak at FedEx sales conferences about his faith. The plaintiff was issued a “letter of
“counseling” after one of his subordinates complained that he had quoted biblical passages to her about the master/slave relationship and analogized it to work. The letter instructed the plaintiff that his discussions of religion with coworkers, even if initiated by others, “must cease.” In response, he sent an e-mail asking for “clarity” as to how he was supposed to answer when questioned about his faith, and asking when Title VII would permit him to discuss religion in response to genuine inquiries from coworkers. He never received a reply. Denying summary judgment to the employer on the plaintiff’s accommodation claim, the court ruled that the plaintiff’s e-mail seeking “clarity” was a request for accommodation, and it memorialized his sincerely held religious belief that he was required to answer questions about his faith. Although the letter of counseling itself was not an adverse action, the ongoing broad instruction not to discuss religion was an adverse action, because it subjected the plaintiff “to [a] humiliating, degrading, . . . or otherwise significant alteration in [his] workplace environment,” and as a result of the letter, he was “unable to exercise his religious belief and unable to discuss a subject of broad scope and of great importance to him.”

Shatkin v. University of Tex. at Arlington, 109 Fair Empl. Prac. Cas. (BNA) 1559, 2010 WL 2730585 (N.D. Tex. July 9, 2010). The plaintiffs, two administrative assistants employed in the defendant’s development office, were terminated for “conduct unbecoming” a staff member, harassment of a coworker, and “blatant disregard for the property of the university.” The plaintiffs had entered a coworker’s cubicle after work, rubbed olive oil on the doorway of the cubicle, and prayed for the coworker in an allegedly loud or disruptive manner while chanting, “I command you demons to leave Knight [the coworker], you vicious evil dogs get the hell out of here in the name of Jesus, get the hell out of Knight.” The plaintiffs alleged denial of religious accommodation to pray in a non-disruptive manner during a non-work period, as well as retaliation. Acknowledging that an employer is not required to grant an accommodation that would infringe on the rights of fellow employees and that promoting workplace harmony is a laudable goal, the court nevertheless denied the defendant’s motion for summary judgment, noting that the coworker who was the target of the alleged harassment was not present when it occurred and only learned of it months later. Moreover, the fact that the discipline was predicated solely on the prayer incident and not the prior inharmonious relationship with Knight undermined the defendant’s rationale for the termination, as the plaintiffs’ conduct did not rise to the level of the conduct displayed by employees in cases cited by the defendant in support of its action. Finally, the head of the plaintiffs’ department stated that the defendant’s duty to accommodate depended “on the type of prayer” and whether it was “offensive.” The court stated that this approach impermissibly focused on the belief itself rather than on whether the accommodation would result in an undue hardship.

Mitchell v. University Med. Ctr. Inc., 110 Fair Emp. Prac. Cas. (BNA) 436, 2010 WL 3155842 (W.D. Ky. Aug. 9, 2010). Granting summary judgment to the employer, the court held that the employer was not required to accommodate the plaintiff’s request to have religious conversations at work. The plaintiff’s supervisor instructed her to stop discussing religion at work because coworkers had complained about the plaintiff’s discussing her Christian faith and describing her calculations and revelations regarding the date for “the end of the world or the “Antichrist.” The court ruled that any accommodation of the plaintiff’s request to have religious conversations at work would infringe on the rights of her coworkers and thus pose an undue hardship for the employer.
Latif v. Locke, 2009 WL 3261562 (W.D. Ariz. Oct. 8, 2009). The plaintiff, who was responsible for recruiting interest in working for the Census Bureau, claimed that the Bureau violated Title VII by requiring him to attend Mass as part of his duties. Granting summary judgment to the employer on the plaintiff’s claims of discrimination, harassment, and denial of accommodation, the court found that while recruitment was encouraged at a variety of locations, including houses of worship, there was no requirement to attend Mass, and in fact recruiters could elect not to recruit at any faith-based organizations.

EEOC v. Serranos Mexican Rests., 2007 WL 505342 (D. Ariz. Feb. 14, 2007), aff’d, 306 F. App’x 406 (9th Cir. 2009). The employer adopted a code of conduct prohibiting managers from socializing with staff outside of the workplace, which was intended to prevent sexual harassment and avoid unfair treatment of employees. A general manager who led a Bible study group outside of work, which three of her subordinates attended, was discharged for violating the code’s restrictions. The jury found that the employer had offered her an accommodation – transferring to another restaurant – that would have eliminated the conflict but that she declined to accept the offer. The court denied EEOC’s motion for a new trial.

Andrews v. Virginia Union Univ., 102 Fair Empl. Prac. Cas. (BNA) 580, 2007 WL 4143080 (E.D. Va. Nov. 19, 2007). Denying a private university’s motion to dismiss for failure to state a claim, the court allowed a Title VII claim of religious accommodation to proceed. The plaintiff, an Assistant Professor of Social Work and the Chairperson of the Department of Social Work, alleged that after several years during which she was addressed as “Reverend” by students, faculty, and the administration, the university violated Title VII by requiring that only academic titles be used. The court ruled that if a minister working as a university professor had a sincerely held religious belief, as opposed to a personal preference, that she be called “Reverend,” the university had a Title VII obligation to accommodate that belief unless to do so would pose an undue hardship.

Ennis v. Sonitrol Mgmt. Corp., 97 Fair Empl. Prac. Cas. (BNA) 964, 2006 WL 177173 (S.D.N.Y. Jan. 25, 2006). In granting summary judgment for the employer, the court ruled that a Jewish employee was not subjected to a hostile work environment by his evangelical supervisor’s “fervent religious proclivities and his ‘in-your-face’ religious behavior.” The plaintiff alleged that the supervisor diverted business to several employees who were members of the supervisor’s church, and that these employees sang religious songs and left religious writings and a Bible on the plaintiff’s desk. The court noted that “[w]here a hostile work environment claim is grounded in religious hostility, courts have been particularly cautious in adhering to the principle that the hostile or offensive conduct must involve some coercive or abusive behavior,” and ruled that in this case the alleged conduct was “simply not the sort of abusive behavior prohibited by Title VII,” and was not motivated by the plaintiff’s religion. In reaching this conclusion, the court found that the supervisor never tried to proselytize the plaintiff and never disparaged his religion.

Nichols v. Snow, 2006 WL 167708 (M.D. Tenn. Jan. 23, 2006). The plaintiff alleged that he was subjected to a hostile work environment because he did not belong to the same church as his on-the-job instructor and because the instructor did not approve of his lifestyle. Denying the employer’s motion for summary judgment, the court noted that there was evidence that the
instructor chastised the plaintiff for not going to church and for not having his priorities in order such that religion would be at the forefront of his life as it was in the instructor’s life. The court also noted that there was evidence that the instructor failed to properly train the plaintiff and that the instructor would make inappropriate comments to or about the plaintiff in the presence of other employees.

Nichols v. Caroline Cty. Bd. of Educ., 2004 WL 350337 (D. Md. Feb. 23, 2004), aff’d, 114 F. App’x 576 (4th Cir. 2004). A school board had legitimate, nondiscriminatory business reasons for terminating a school teacher who was a Jehovah’s Witness. The teacher frequently subjected the students to his personal religious views and gave them an assignment to use biblical references to write a paper on Jesus’ crucifixion and resurrection. While other teachers made references to religious topics in the classroom, those religious references occurred in the context of historical lessons and did not impose the teachers’ personal religious views on the students.

Rivera v. Choice Courier Sys., Inc., 2004 WL 1444852 (S.D.N.Y. June 25, 2004). The plaintiff, a courier, asserted that based on his evangelical Christian beliefs he adhered to a religious practice of always wearing clothing with a religious message. The employer terminated him for refusal to comply with its dress code, citing a concern that some of its customers or their employees were likely to be offended by plaintiff’s conspicuous evangelistic message. Denying summary judgment for the employer on the plaintiff’s claim of denial of reasonable accommodation, the court found there were disputed issues of material fact with respect to whether plaintiff failed to cooperate in the accommodation process, and if not, whether he could have been accommodated absent undue hardship, including for example by transfer to an open “street courier” position that had a less stringent dress code. See also Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012).

Buonanno v. AT&T Broadband, L.L.C., 313 F. Supp. 2d 1069 (D. Colo. 2004). The court concluded that the employer wrongfully terminated the plaintiff after he refused to sign a diversity policy requiring him to “respect and value the differences in all of us,” even though he explained that he refused to sign it because he could not value homosexuality as it was contrary to his Christian religious beliefs. The court found that by terminating the plaintiff for his refusal to sign the diversity policy, the employer failed to accommodate his religious beliefs. The court noted that the plaintiff had agreed to treat all of his coworkers respectfully and not discriminate against them, but had refused to sign the statement as worded by the employer because he reasonably believed that it required him to condone homosexuality in contravention of his religious beliefs.

Grant v. Fairview Hosp. & Healthcare Servs., 2004 WL 326694 (D. Minn. Feb. 17, 2004). A hospital did not violate Title VII when it terminated an ultrasound technician whose religious views required him to attempt to dissuade women from having abortions. The hospital offered the technician a reasonable accommodation when it agreed to excuse him from performing ultrasounds on women who were considering abortion, and to excuse him from remaining in the examination room with such patients. However, the hospital was not required as an accommodation to permit the technician to attempt to dissuade women from having abortions.
Chaplin v. Du Pont Advance Fiber Sys., 293 F. Supp. 2d 622 (E.D. Va. 2003). The court dismissed the plaintiffs’ claim that their employer discriminated against them on the basis of their religion, national origin, and race as “Confederate Southern Americans” when the employer banned the display of confederate flags. The employees failed to state a claim because they had not suffered an adverse employment action in that none of them had been disciplined for displaying a confederate flag and none had requested that the employer accommodate a sincerely held religious belief or practice of displaying confederate flags.

EEOC v. Preferred Mgmt. Corp., 216 F. Supp. 2d 763 (S.D. Ind. 2002) The EEOC did not violate the Religious Freedom Restoration Act when it conducted a two-year investigation and subsequently sued an employer that acknowledged making employment decisions based on religious beliefs. The EEOC did not substantially burden the employer’s religious beliefs and practices because its investigation and lawsuit were the least restrictive means available to further the compelling government interest of forcing the employer to comply with Title VII. Although the employer was devoutly religious, the company was not a religious organization.

Johnson v. Washington Times Corp., 208 F.R.D. 16 (D.D.C. 2002). The court permitted limited disclosure of the names of members of the Unification Church in a Title VII action where an employee of a newspaper owned by the Unification Church claimed that the newspaper discriminated in favor of employees who were also members of the church. The court ordered that the church submit the membership information to a neutral party employed by its counsel who would conduct a comparative analysis of the pay records and provide the information to the church with the names redacted.

Hyman v. City of Louisville, 132 F. Supp. 2d 528 (W.D. Ky. 2001). County and city ordinances prohibiting employment discrimination based on gender identity or sexual orientation and prohibiting publication of employment advertisements expressing gender identity or sexual orientation preference did not violate the First Amendment or equal protection rights of a physician operating a medical practice. The ordinances also did not violate due process through vagueness and did not improperly extend the scope of a Kentucky civil rights statute.

Swartzentruber v. Gunite Corp., 99 F. Supp. 2d 976 (N.D. Ind. 2000). An employee challenged as denial of religious accommodation his employer’s demand that he cover up a KKK tattoo, which depicted a hooded figure standing in front of a burning cross. The employer asserted that displaying the tattoo violated employer’s racial harassment policy and offended other employees, and therefore tolerating it uncovered would pose an undue hardship. The court held that the employer did not violate Title VII because where many would view the employee’s tattoo depiction of his asserted religious belief as a racist and violent symbol, the employer did reasonably accommodate him by allowing him to work with the tattoo covered.

Banks v. Service Am. Corp., 952 F. Supp. 703 (D. Kan. 1996). The employer terminated the employment of two food service employees who refused to stop greeting customers with religious greetings. The employer failed to show that allowing the employees to greet customers with statements such as “God bless you” and “Praise the Lord” posed an undue hardship.
Additional Fact Patterns: Conflicts Between Religious Beliefs and Sexual Orientation

Walker v. McCarthy, 582 F. App’x 6 (D.C. Cir. 2014). The plaintiff, an environmental scientist employed by the Environmental Protection Agency, asserted that, given his religious objections to same-sex marriage, he was denied religious accommodation and subjected to a hostile work environment harassment based on religion, when he received an office-wide e-mail invitation to an event celebrating a colleague’s same-sex wedding and also received subsequent e-mails about the event. With respect to whether the alleged harassment was “severe or pervasive,” the court ruled that “neither the initial invitation nor the e-mails Walker received after announcing his objection to it rose anywhere close to that level.” With respect to the denial of accommodation claim, the court ruled he could not show he was disciplined or suffered an adverse employment action for failing to comply with an employment requirement that conflicted with his religious beliefs.

Walden v. Centers for Disease Control & Prevention, 669 F.3d 1277 (11th Cir. 2012). The plaintiff, who was hired by a contractor as an EAP counselor at a federal agency, described herself as “a devout Christian who believes that it is immoral to engage in same-sex sexual relationships.” Believing that her religion prohibited her from encouraging or supporting same-sex relationships, the plaintiff told a lesbian employee who had sought counseling about her same-sex relationship that she could not provide counseling based on her “personal values.” After the employee filed a complaint stating that she felt “judged and condemned,” the plaintiff’s supervisor recommended that if such a situation arose in the future, the plaintiff should tell the client she is inexperienced with relationship counseling and therefore needs to refer her to another counselor. The plaintiff refused, stating that she would handle future referrals as she had in this instance. She was subsequently removed from the agency contract because of concern that she would convey in an unacceptable manner the reason for future referrals. Affirming summary judgment for the employer on the plaintiff’s Title VII claim for denial of reasonable accommodation, the court held that the employer accommodated the plaintiff by providing her with an opportunity to apply for another position before terminating her.

Matthews v. Wal-Mart Stores, Inc., 417 F. App’x 552 (7th Cir. 2011). The plaintiff was terminated for making comments to a lesbian coworker that lesbians and gay men are sinners and will “go to hell.” Affirming summary judgment for the employer, the court held that the termination was not religious discrimination, because the comments at issue could reasonably have been interpreted as harassment based on sexual orientation in violation of the company’s anti-discrimination policy. In rejecting the plaintiff’s argument that the employer should have accommodated her comments by excusing any violation of the harassment policy as based on religious beliefs, the court ruled that “such an accommodation could place Wal-Mart on the ‘razor’s edge’ of liability by exposing it to claims of permitting workplace harassment.” The court also concluded that coworkers who participated in the conversation but were not terminated were not similarly situated as none of them commented on someone’s “individual status, homosexuality or race,” and there was no evidence of other employees who had violated the harassment policy and not been fired.
Prowel v. Wise Bus. Forms, Inc., 579 F.3d 285 (3d Cir. 2009). The plaintiff, a machine operator, alleged that he was harassed based on sex (gender stereotyping) and religion, and terminated in retaliation for his harassment complaints. Affirming summary judgment for the employer on the plaintiff’s claim of religious harassment, the court ruled that while Title VII prohibits not only harassment against an employee because of his own religious beliefs but also harassment of an employee for failure to conform to the employer’s religious beliefs, the plaintiff’s identification of the religious beliefs at issue as “that a man should not lay with a man” and that his coworkers viewed his status as a gay male as “contrary to being a good Christian” leads “ineluctably” to the conclusion that he was fired not because of religion but because of his sexual orientation.

Patterson v. Indiana Newspapers, 589 F.3d 357 (7th Cir. 2009). The plaintiffs, two former newspaper editorial writers, alleged that they were subjected to adverse actions – one was transferred and the other was discharged – motivated by animus toward their Christian religious belief that homosexual conduct is sinful. The court noted that a plaintiff may proceed on a claim that “her supervisors, though also Christian, did not like her brand of Christianity,” because “[t]he issue is whether plaintiff’s specific religious beliefs were a ground for” an adverse employment action. Therefore, the plaintiffs had established the first element of a prima facie case, i.e., membership in a protected class. However, the court affirmed summary judgment for the employer because the plaintiffs failed to introduce evidence permitting an inference that their religious belief against homosexual conduct, as opposed to the violation of company rules, motivated the employment actions at issue.

Pedreira v. Kentucky Baptist Homes for Children, Inc., 579 F.3d 722 (6th Cir. 2009). The plaintiffs, a terminated lesbian employee and a lesbian prospective applicant, challenged the employer’s policy of terminating gay and lesbian employees as religious discrimination under Title VII. The terminated plaintiff was discharged from her position as a family specialist at a facility for abused and neglected children after management discovered a photograph of the plaintiff and her partner at an AIDS fundraiser, and the termination notice indicated she was fired “because her admitted homosexual lifestyle is contrary to [the employer’s] values.” After she was terminated, the employer announced as its official policy that “[i]t is important that we stay true to our Christian values. Homosexuality is a lifestyle that would prohibit employment.” The prospective applicant’s claim was dismissed for lack of standing since she never applied and any harm was speculative. Affirming the dismissal of the terminated plaintiff’s religious discrimination claims, the court held that she had failed to allege any particulars about her religion or her religious differences with the employer that would permit an inference of religious discrimination. The plaintiff was required to “show that it was the religious aspect of her conduct that motivated her employer’s actions.” “While there may be factual situations in which an employer equates an employee’s sexuality with her religious beliefs or lack thereof,” the complaint in this case was properly dismissed for failure to state a claim.

Terveer v. Billington, 34 F. Supp. 3d 100 (D.D.C. 2014). The plaintiff, an employee of the Library of Congress, alleged discrimination based on religion, on the theory that his sexual orientation did not conform with his supervisor’s religious views, resulting in disparate treatment and harassment. Denying the employer’s motion to dismiss for failure to state a claim, the court distinguished a contrary ruling in Prowel v. Wise Business Forms, 579 F.3d 285 (3d Cir. 2009), on the grounds that Prowel, in addition to being from another circuit, involved alleged
proselytizing solely on the basis of the plaintiff’s sexual orientation, whereas Terveer alleged his supervisor subjected him to unwelcome proselytizing even before learning of Terveer’s sexual orientation. In addition, the court reasoned: “Courts in other circuits have found that plaintiffs state a claim of religious discrimination in situations where employers have fired or otherwise punished an employee because the employee’s personal activities or status – for example, divorcing or having an extramarital affair – failed to conform to the employer’s religious beliefs.” The court declined to “create an exception to these cases for employees who are targeted for religious harassment due to their status as a homosexual individual.” But see Burrows v. College of Cent. Fla., 2014 WL 7224533 (M.D. Fla. Dec. 17, 2014) (rejecting as not cognizable an employee’s claim that she was subjected to religious discrimination because her sexual orientation did not conform to management’s religious beliefs).

Gadling-Cole v. West Chester Univ., 868 F. Supp. 2d 390 (E.D. Pa. 2012). The plaintiff, a university professor, alleged that she was subjected to a hostile work environment based on religion and that she was denied an Assistant Professor position, because, on account of her Baptist religious beliefs, she did not support or advocate on behalf of the LGBTQ (lesbian, gay, bisexual, transgender, and queer) community. Denying the university’s motion to dismiss, the court held that the allegations were sufficient for pleading purposes to state a Title VII claim. “At this early procedural posture, the Court does not have the benefit of discovery to determine whether the Plaintiff was discriminated against because of her Baptist religion or rather was disliked by the Social Work department because of her personal animosity towards the LGBTQ community. Once a record is developed, the court will have the ability to examine relevant factors in determining whether the Plaintiff was discriminated against because of her Baptist faith including for example: whether the Faculty Defendants were aware the Plaintiff was a Baptist, whether discussions about Plaintiff’s religion occurred, whether derogatory comments about the Plaintiff’s Baptist faith were made, whether the Plaintiff was forced to conform to another’s religious precepts and whether the Plaintiff was the only member of the Social Work Department required to advocate on behalf of the LGBTQ community or alternatively whether Plaintiff was treated the same as non-Baptist employees . . . . In addition, on a motion for summary judgment, the parties will be able to address whether Plaintiff’s refusal to support the LGBTQ community created an undue hardship on West Chester’s Social Work Department and whether Plaintiff’s animus prevented the effective teaching and counseling of students.”

Schwartzberg v. Mellon Bank, N.A., 307 F. App’x 676 (3d Cir. 2009). The plaintiff, an Orthodox Jew with a religious belief that homosexuality is immoral, sent correspondence to coworkers expressing this belief in strident terms. After the first instance, management issued him a warning and advised him that the conduct violated its harassment policy and would not be tolerated. After the second instance, he was given a “final written warning,” informing him that subsequent violations could result in termination. He was subsequently terminated for four instances of sleeping on the job. He brought suit under Title VII, alleging that the termination constituted discrimination based on his religious beliefs. Granting summary judgment to the employer, the district court held that because the plaintiff conceded that there was no conflict between his religious beliefs and the employer’s prohibition against denigrating coworkers based on sexual orientation, the employer therefore had no duty to accommodate. The district court also noted that the employer had not required the plaintiff to change his religious beliefs or to participate in any affinity group events to which he objected on religious grounds. On appeal,
the Third Circuit found “no basis for disturbing the District Court’s rulings” and therefore affirmed the judgment “for substantially the same reasons.”

**Piggee v. Carl Sandburg Coll.,** 464 F.3d 667 (7th Cir. 2006). The plaintiff, a cosmetology instructor at a community college, brought an action under 42 U.S.C. § 1983 alleging violation of her First Amendment rights when she was instructed to refrain from engaging in speech related to her religious beliefs and her employment contract was not renewed. The plaintiff had given a gay student two religious pamphlets condemning homosexuality, telling him to read the materials later and inviting him to discuss them with her. She also gave various religious pamphlets to other students as part of her religiously motivated effort to “witness.” Upon receipt of a student complaint, the college notified the plaintiff that her conduct was deemed inappropriate and in violation of the school’s anti-harassment policy. Applying **Garcetti v. Ceballos,** 547 U.S. 410 (2006), the court affirmed summary judgment for the employer, concluding that the plaintiff’s First Amendment rights were trumped by the defendant’s interest in promoting a non-disruptive classroom setting, noting that even though only one student had filed a formal complaint, numerous others had noted her proselytizing on their class evaluations.

**Peterson v. Hewlett-Packard Co.,** 358 F.3d 599 (9th Cir. 2004). The employer did not violate Title VII when it terminated a Christian employee for insubordination after he responded to the employer’s diversity initiative by posting biblical scriptures condemning homosexuality and refusing to remove them when asked to do so. The employee’s statement that he posted the scripture in an area visible to coworkers and customers because he intended for the scriptures to hurt and condemn homosexuals and lead them to repent revealed that the posting was a violation of the employer’s harassment policy, and therefore would have posed an undue hardship for employer to accommodate a posting that demeaned coworkers; it also would have posed an undue hardship for employer to eliminate a portion of its diversity program to which plaintiff had religious objections. The court also held there was no evidence that the employee was terminated because of his religious views, noting in particular that the company did not object when the local newspaper printed a letter from the employee which condemned the company’s diversity policy, nor did the company punish the employee for a bumper sticker on his car which stated “Sodomy is not A Family Value.”

**Bruff v. North Miss. Health Servs., Inc.,** 244 F.3d 495 (5th Cir. 2001). The plaintiff, one of three counselors at a health service, requested that she be exempt from counseling clients who were homosexual, involved in extramarital relationships, or engaged in other conduct contrary to her religious beliefs. Accommodating her desire not to engage in such counseling would constitute an undue hardship because it would require the other counselors to assume a disproportionate workload. The employer reasonably accommodated her when it offered to give her 30 days and the assistance of its in-house employment counselor to find another position at the hospital to which she could transfer in which the likelihood of encountering further conflicts with her religious beliefs would be reduced.

**Slater v. Douglas Cty.,** 743 F. Supp. 2d 1188 (D. Or. 2010). The court denied the parties’ cross motions for summary judgment where the plaintiff, a county clerk’s office employee, alleged denial of accommodation and discriminatory termination when the county denied her request to be excused from processing paperwork related to domestic partnership registrations because of her religious belief that homosexuality is a sin.
Buonanno v. AT&T Broadband, L.L.C., 313 F. Supp. 2d 1069 (D. Colo. 2004). The court concluded that the employer wrongfully terminated the plaintiff after he refused to sign a diversity policy requiring him to “respect and value the differences in all of us,” even though he explained that he refused to sign it because he could not value homosexuality as it was contrary to his Christian religious beliefs. The court found that by terminating the plaintiff for his refusal to sign the diversity policy, the employer failed to accommodate his religious beliefs. The court noted that the plaintiff had agreed to treat all of his coworkers respectfully and not discriminate against them, but had refused to sign the statement as worded by the employer because he reasonably believed that it required him to condone homosexuality in contravention of his religious beliefs.

**Excusing Union Dues**

United States v. Ohio, No. 2:05-CV-799 (S.D. Ohio consent decree filed Sept. 1, 2006). The consent decree settling this action brought by the U.S. Department of Justice broadened reach of religious objector clause in union contracts covering Ohio state employees to provide, consistent with Title VII, that the charity-substitute accommodation with respect to union dues is available for all sincerely held religious objections, whether or not the employee is a member and or adherent of a particular religion.

EEOC v. University of Detroit, 904 F.2d 331 (6th Cir. 1990). An employee’s religious objection was to the union itself, so reasonable accommodation required allowing him to make a charitable donation equivalent to the amount of union dues instead of paying dues.

International Assoc. of Machinists v. Boeing, 833 F.2d 165 (9th Cir. 1987). An employee with sincerely held religious objections to joining a labor union is entitled under Title VII to withhold union dues. An employee’s offer to make a charitable contribution in lieu of union dues was a “reasonable accommodation” under Title VII, and a 1980 amendment to the Taft-Hartley Act does not supersede the protection afforded to the employee under Title VII. “Title VII defines religion as ‘all aspects of religious observance and practice, as well as belief.’ An employee whose sincerely held religious beliefs opposing unions could be relieved from paying dues under Title VII, even if he or she was not a member of an organized religious group that opposes unions.”

McDaniel v. Essex Int’l, Inc., 696 F.2d 34 (6th Cir. 1982). The court held that employee’s proposal to donate an amount equivalent to dues to a “mutually agreeable” charity was a reasonable accommodation that would not have posed an undue hardship.

Tooley v. Martin Marietta Corp., 648 F.2d 1239 (9th Cir. 1981). A union could not force an employer, under a contractual union security clause, to terminate three Seventh Day Adventists who offered to pay an amount equivalent to dues to a nonreligious charity because the union failed to show that such an accommodation would deprive it of funds needed for its maintenance and operation.
Nottelson v. Smith Steel Workers D.A.L.U. 19806, AFL CIO, 643 F.2d 445 (7th Cir. 1981). A charity-substitute religious accommodation for union dues did not pose an undue hardship to a union where loss of the plaintiff’s dues represented only .02% of the union’s annual budget, and the union presented no evidence that the loss of receipts from the plaintiff would necessitate an increase in the dues of his coworkers.

Yott v. North Am. Rockwell Corp., 602 F.2d 904 (9th Cir. 1979). A charity-substitute accommodation was reasonable notwithstanding the employee’s preference for transfer to non-bargaining unit position instead.

Burns v. South Pac. Transp. Co., 589 F.2d 403 (9th Cir. 1978). The court held that excusing Burns from paying his monthly $19 union dues due to a religious objection did not pose an undue hardship notwithstanding administrative cost to union and “grumblings” by other employees. One union officer testified that the loss “wouldn’t affect us at all”; the loss was also de minimis because “even if so necessary to its fiscal well-being that its equivalent would be collected from the Local’s 300 members at a rate of 2 cents each per month; an accommodation that would only result in an increase of other union members’ dues in amount of 24 cents per year was de minimis; unions asserted fear that many more religious objectors would request similar accommodation, resulting in greater cost, was based on mere speculation.

Reed v. UAW, 523 F. Supp. 2d 592 (E.D. Mich. 2007), aff’d, 569 F.3d 576 (6th Cir. 2009). Granting summary judgment to the union, the court held that while the plaintiff did not establish a prima facie case, even if he had, the union met its accommodation obligation. The plaintiff objected to paying union dues for religious reasons, and the union accommodated him by requiring him to pay to a charity of his choice an amount equal to full union dues. Noting that the accommodation was effective and that the plaintiff was not entitled to his preferred accommodation, the court rejected the plaintiff’s argument that he should have had to pay a sum equal to only 78% of union dues – the union security payment required of employees who objected to the use of dues for political purposes. The court noted that this was not a situation where the employer’s offered accommodation forced the employee to lose a benefit enjoyed by all other employees without a religious conflict, since under the accommodation provided he would have paid the very same amount as the overwhelming majority of his coworkers who did not have either secular or religious objections to the union. Moreover, as a religious objector, the plaintiff paid nothing to the union, although he received the benefits of representation, and was able to donate to a charity of his choice and possibly receive a tax deduction, whereas a political objector paid a lower total amount but still paid the union his or her share for representation costs. Under the circumstances, the court ruled that “[i]t is not discriminatory to provide different accommodations to employees who assert different objections.” In affirming the district court, the Sixth Circuit held that the plaintiff did not establish a prima facie case and did not reach the reasonable accommodation issue.

2003) (not a reasonable accommodation to require religious objection to pay full union dues where state statute permitted non-union members to pay a lower amount in form of agency fee).

EEOC v. American Fed’n of State, Cty. & Mun. Employees, 937 F. Supp. 166 (N.D.N.Y. 1996). Donation to a “mutually agreeable” charity is a reasonable accommodation in cases where an employee has a sincerely held religious belief against supporting the causes which a union’s dues are used to support.

**Objections to Social Security Numbers or Other Identification Procedures**

Yeager v. FirstEnergy Generation Corp., 777 F.3d 362 (6th Cir.), cert. denied, 136 S. Ct. 40 (2015). Affirming dismissal of the plaintiff’s complaint, the court held that it would pose an undue hardship to accommodate an applicant’s or employee’s religious objection to providing his social security number. The Internal Revenue Code requires employers to collect employee social security numbers, and Title VII does not require an employer to violate another federal law in order to provide a religious accommodation.

Sutton v. Providence St. Joseph Med. Ctr., 192 F.3d 826 (9th Cir. 1999). An applicant alleged that the hospital violated Title VII by refusing to hire him after he declined to provide his social security number for religious reasons. The hospital was not liable for religious discrimination under Title VII because federal tax laws required the hospital to obtain all employees’ social security numbers, and accommodation of the applicant’s religious beliefs would cause “undue hardship.”

EEOC v. CONSOL Energy, Inc., 2016 WL 538478 (N.D. W. Va. Feb. 9, 2016), appeal docketed (4th Cir. Mar. 4, 2016). The jury returned a verdict in favor of the EEOC on its claims of denial of religious accommodation and constructive discharge against the defendant employer for denying a coal mine employee, as religious accommodation, an alternative means to clock in and out when the company adopted a “biometric hand scanner” system that he believed “would be used by the Christian Antichrist, as described in the New Testament Book of Revelation, to identify his followers with the ‘mark of the beast.’” Denying the employer’s post-trial motions, the court ruled the verdict was supported by evidence showing that the employee requested an accommodation to the hand scanner policy, that the defendants had developed a way to bypass the hand scanner for miners that were physically incapable of scanning their hands, and that the defendants did not offer that bypass method as an accommodation for the employee. Further, he met with human resources personnel several times regarding his request for an accommodation, but was repeatedly denied an exception to the hand scanner policy. This was sufficient evidence for the jury to find that the defendants were aware of a reasonable accommodation (the bypass method) but did not offer it in response to the requests for an accommodation.

**Adverse Action Resulting from Denial of Accommodation**

EEOC v. Kelly Servs., Inc., 598 F.3d 1022 (8th Cir. 2010). The EEOC brought a religious discrimination suit against a temporary employment agency for refusing to send a Muslim woman wearing a khimar to a job site that disallowed headgear for safety reasons. The court found that in defending the Title VII claim, the employment agency was not required to show
that an employer to which it would refer a temporary worker would suffer an undue hardship if it had to accommodate that worker. The employment agency was only required to provide a legitimate, nondiscriminatory reason for declining to refer the worker. The court held that because the EEOC failed to show that the agency’s asserted reason for not making the referral, i.e., the client’s safety-based dress code prohibiting loose-fitting clothing, the temporary agency was properly granted summary judgment.

Reed v. UAW, 569 F.3d 576 (6th Cir. 2009). Affirming summary judgment for the defendant union on the plaintiff’s Title VII denial of accommodation claim arising out of his religious objection to paying union dues, the panel majority ruled that the plaintiff did not establish a prima facie case because he did not show that he was subjected to an adverse employment action, specifically discharge or discipline. The court held that the plaintiff could not avoid the adverse action requirement “by insisting that the only controversy here concern[ed] the reasonableness – not the necessity – of his accommodation. Unless a plaintiff has suffered some independent harm caused by a conflict between his employment obligation and his religion, a defendant has no duty to make any kind of accommodation.” While an employer or union may not dole out accommodations in a discriminatory fashion, the plaintiff had explicitly disavowed any disparate treatment claim. It was unnecessary for the court to determine the precise contours of a prima facie case against a union since other than the reasonableness of the accommodation, the plaintiff did not identify any action by the union that affected his employment. Concurring, one judge stated that although the plaintiff did not establish a prima facie case, even if he had done so, he agreed with the district court that the union satisfied its accommodation obligation. Dissenting, the third judge criticized the majority for requiring a showing of discharge or discipline as the adverse employment action on which a denial of religious accommodation claim is based, and stated that in any event such a requirement should not apply if the defendant is a union. The dissent also concluded that the union’s accommodation was not reasonable since it required the plaintiff to pay a greater amount than workers who had nonreligious objections to the union’s activities.

Goldmeier v. Allstate Ins. Co., 337 F.3d 629 (6th Cir. 2003). Employees alleged that the employer’s new scheduling policy would conflict with their religious beliefs, but the court dismissed their claim because they quit their jobs and accepted new employment before the policy went into effect; resignation prior to effective date of employer’s policy that would have posed conflict with religious beliefs did not constitute constructive discharge.

Lawson v. Washington, 296 F.3d 799 (9th Cir. 2002). Employee, who was a Jehovah’s Witness, quit state patrol rather than salute the flag or take an oath in violation of his religious beliefs. The court ruled he was not constructively discharged and thus was not subject to an adverse employment action where, rather than request accommodation, he informed employer that he was resigning due to his religious conflict.

Shelton v. Univ. of Med. & Dentistry of N.J., 223 F.3d 220, 227 (3d Cir. 2000). Employee who refused to meet with employer’s human resources department to pursue alternative accommodations could not argue that accommodation employer offered was not reasonable.
Ali v. Alamo Rent-A-Car, Inc., 8 F. App’x 156 (4th Cir. 2001). The transfer of a Muslim employee to non-customer service position because she refused to stop wearing religiously mandated headscarf was not an “adverse employment action” under Title VII.

EEOC v. Townley Eng’g & Mfg. Co., 859 F.2d 610 (9th Cir. 1988) (citing Am. Postal Workers Union v. Postmaster, 781 F.2d 772, 774-75 (9th Cir. 1986)). “The threat of discharge (or of other adverse employment practices) is a sufficient penalty” to render the employer’s alleged denial of religious accommodation actionable; “[a]n employee does not cease to be discriminated against because he temporarily gives up his religious practice and submits to the employment policy.”

Draper v. U.S. Pipe & Foundry Co., 527 F.2d 515 (6th Cir. 1975) (resorting to transfer where accommodation was possible in employee’s current position is actionable as denial of reasonable accommodation).

Nichols v. Illinois Dep’t of Transp., 2016 WL 212917 (N.D. Ill. Jan. 19, 2016). The plaintiff, a Muslim, drove a snow plow during the winter season. The employer terminated him after ten years of employment, citing the plaintiff’s threat of violence. The plaintiff alleged that he was terminated because of his religion and that he had been denied the reasonable accommodation of a quiet place to pray while on duty. Denying the employer’s motion for summary judgment on various grounds, the court concluded that the plaintiff’s accommodation claim did not require that he establish an adverse action separate from the failure to accommodate itself. In addition, it was disputed as to whether the plaintiff’s termination was motivated in part by his request for a religious accommodation. The court also held that there were disputed facts on the employer’s undue hardship defense. The employer made conclusory assertions that it would have been operationally prohibitive to have allowed the plaintiff, while he was Acting Lead Worker, to leave his work location on the road to return to the yard at least twice a day, because it would have put a scheduling strain on the department and resulted in extra costs and disruptions to the entire work crew. These facts were disputed by the plaintiff and a coworker, who testified that the work site is always within a few miles of the yard and that the department had never required a lead worker to stay on the road with his crew at all times. The court further noted that a jury might conclude that the undue hardship defense was not invoked in good faith, as the employer never engaged in any dialogue with the plaintiff to discuss the accommodation request.

EEOC v. CONSOL Energy, Inc., 2015 WL 106166 (N.D. W. Va. Jan. 7, 2015), appeal docketed (4th Cir. Mar. 4, 2016). Applying Fourth Circuit precedent that denial of religious accommodation can only be shown where the employee was disciplined for failing to comply with the conflicting employment requirement, the court nevertheless denied the employer’s motion for summary judgment. The court held that because the supervisors handling the accommodation request were aware other employees had been granted an exception, a jury could conclude that the instant denial of religious accommodation was intentionally aimed at causing the employee to resign and thus was a constructive discharge under Fourth Circuit precedent requiring such intent (which the district court stated it was bound to follow notwithstanding the EEOC’s contention that it is contrary to Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)).
Edwards v. Elmhurst Hospital Center, 2013 WL 839535 (E.D.N.Y. Feb. 15, 2013). Ruling that required adverse employment action not shown where, within 8 days and prior to any discipline or action taken by employee contrary to his religious beliefs, a court enjoined the employer’s mandatory flu vaccination policy because it failed to allow for religious exemptions.

Weathers v. FedEx Corporate Servs., Inc., 2011 WL 5184406 (N.D. Ill. Nov. 1, 2011). The plaintiff, a sales manager who described himself as a conservative evangelical Christian, belonged to an internal Christian employee organization and, in that capacity, had been invited to speak at FedEx sales conferences about his faith. The plaintiff was issued a “letter of counseling” after one of his subordinates complained that he had quoted biblical passages to her about the master/slave relationship and analogized it to work. The letter instructed the plaintiff that his discussions of religion with coworkers, even if initiated by others, “must cease.” In response, he sent an e-mail asking for “clarity” as to how he was supposed to answer when questioned about his faith, and asking when Title VII would permit him to discuss religion in response to genuine inquiries from coworkers. He never received a reply. Denying summary judgment to the employer on the plaintiff’s accommodation claim, the court ruled that the plaintiff’s e-mail seeking “clarity” was a request for accommodation, and it memorialized his sincerely held religious belief that he was required to answer questions about his faith. Although the letter of counseling itself was not an adverse action, the ongoing broad instruction not to discuss religion was an adverse action, because it subjected the plaintiff “to [a] humiliating, degrading, . . . or otherwise significant alteration in [his] workplace environment,” and as a result of the letter, he was “unable to exercise his religious belief and unable to discuss a subject of broad scope and of great importance to him.”

Sraieb v. American Airlines, Inc., 735 F. Supp. 2d 837 (N.D. Ill. 2010). Granting the employer’s motion for summary judgment on a Muslim Shia flight attendant’s claims of denial of religious accommodation (a ground assignment during Ramadan) and discriminatory termination, the court found that the plaintiff was offered a month off without pay as an accommodation for Ramadan but instead resigned, and thus could not establish the “adverse employment action” required for a prima facie case of denial of accommodation, nor could he show constructive discharge.

Stone v. West, 133 F. Supp. 2d 972 (E.D. Mich. 2001). The employee, a Seventh Day Adventist, alleged she was harassed and denied a reasonable accommodation when she requested to be off on Friday evenings and Saturdays to observe the Sabbath. Because the employee had continued to work on those days, however, she “avoided suffering any adverse employment consequences as a result of her religious beliefs; rather, her personal religious observance suffered on account of her adherence to her work schedule.”

Rodriguez v. City of Chicago, 1996 WL 22964, at *3 (N.D. Ill. Jan. 12, 1996). Rejecting employer’s argument that a threat of adverse action is not enough to state a claim; the court held: “it is nonsensical to suggest that an employee who, when forced by his employer to choose between his job and his faith, elects to avoid potential financial and/or professional damage by acceding to his employer’s religiously objectionable demands has not been the victim of religious discrimination.”