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Employer Proselytizing and Title VII

1) Does an employer need to take negative action against an employee to violate the statute? What constitutes unlawful employer proselytizing?

Title VII states in part that “it shall be an unlawful employment practice for an employer...to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s religion.”¹ In order for plaintiffs to establish a prima facie case of religious discrimination they must show 1) a bona fide religious belief of the employee conflicted with an employment policy; 2) the employee informed the employer of the conflict (* note that in religious harassment cases this requirement does not always appear. Some courts have not required it. See for example *Venters*² where the court found the speech so offensive that it was presumed to be unwelcome); 3) the employee was penalized or harmed in some way because of the conflict.³ In order to show, on the other hand, that a hostile environment was created, the employer conduct must be unwelcome religious harassment and have “the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive workplace environment.”⁴

The adverse action need not be limited to discharge. In *EEOC v. Townley*⁵, the employee, an atheist, was required to attend prayer meetings. He was told he could sleep or listen to music during such but that failing to attend the meetings equated to missing work. The court found constructive discharge had occurred. They further noted that the threat of discharge or of other adverse employment practices was enough to meet the requirements of Title VII. When an employer, by coercion or intimidation, makes an employee’s working conditions so intolerable that the employee involuntarily resigns, constructive discharge may be found. In *Lopez v. S. B. Thomas*⁶ the court found constructive discharge occurred where the supervisor stressed that the training session was not mandatory but that nevertheless they would not fit into the organization if they did not attend and would lose the supervisor’s support. The threat of adverse

¹ 42 U.S.C. 2000e-2(a).

² Supra

³ *Anderson v. General Dynamics Convair Aerospace Div.*, 589 F.2d 397, 401 (9th Cir. 1978), cert. Denied, 442 U.S. 921 (1979).

⁴ *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)

⁵ *EEOC v. Townley Eng’g*, 859 F.2d 610 (9th Cir. 1988).

⁶ 831 F.2d 1184 (2d Cir. 1987).

employment consequences need not be explicit. In Brown Transport Corp. v. Pennsylvania Human Relations Commission⁷, an employee sought relief for a claim for religious harassment where the employer included Bible verses on his paychecks and religious articles in the company newsletter. The court found the employee's questioning of his job security (that one needed to be Christian to be promoted) was supported by the testimony. Nevertheless some harm must be present. In Tillery⁸ the employer repeatedly lectured to the plaintiff about the life changes she would need to make to save her soul. The court found that even though a jury might find that the employer's behavior constituted workplace harassment, the evidence (including the employees own testimony) demonstrated she did not feel harmed by the proselytizing.

In determining what constitutes a hostile work environment, the Supreme Court has found a number of factors to be at play. They include the frequency of the discriminatory conduct, its severity; whether its physically threatening or humiliating and whether it reasonably interferes with the employee's work performance.⁹

Hostile work environment has been found in such cases where there was a daily broadcast of prayers for a one year period over the employer's public address system.¹⁰ Or where an employee was subjected to repeated religious lectures about her salvation.¹¹ In contrast, the courts found no harassment where a manager "allowed prayers in his office during several department meetings and affirmed his Christianity and referred to Bible passages based on slothfulness and 'work ethics' during one department meeting.¹² One court also failed to find harassment where managers were required to attend week long seminars on conflict resolution that included references to Biblical texts and scripture. The court found that the seminar was not devotional in nature or involved religious activity and that the plaintiff, a Catholic, could not show that the seminar conflicted with her religious beliefs.¹³ Certainly passive religious expression such as wearing jewelry, displaying religious symbols in private workspace or occasionally stating one's religious beliefs would not be actionable.¹⁴ In addition, the absence of a religious harassment policy is evidence of failure to exercise reasonable care to prevent harassment.¹⁵

⁷ 578 A.2d 555 (Pa. 1990)

⁸ Tillery v. ATSI, 242 F. Supp. 2d 1052 (N.D. Ala 2003a).

⁹ Harris v. Forklift Sys., 510 U.S. 17 (1993).

¹⁰ Hilsman v. Runyon 1995 WL 217486 (E.E.O.C.) Mar. 31, 1995).

¹¹ Venters v. City of Delphi, 123 F.3d at 964.

¹² Brown v. Polk County, 61 F.3d 650 (8th Cir. 1995).

¹³ Kolodziej v. Smith, 588 N.E. 2d 634 (Mass. 1992), cert. Denied, 522 U.S. 1029 (1997).

¹⁴ See "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace." Issued by President Clinton, 1997.

¹⁵ EEOC v. Preferred Management Corp., 216 F. Supp. 2d 763 (S.D. Ind. 2002)