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INDUSTRIAL RELATIONS SECTION

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RELIGIOUS ACCOMMODATION IN THE U. S. WORKPLACE**

Bahls, Jane Easter. "Make room for diverse beliefs." *HRMagazine*. Vol. 42, no. 8. August, 1997. pp.89-95.

This article reports on the results of a survey of 743 firms conducted by the Society for Human Resource Management about the adaptations companies are making to meet their employees' religious needs. (*Religion in the Workplace Survey*. SHRM, P.O.Box 930132, Atlanta, GA 31193. 1997. 32pp. \$40 (\$30 members). Among the findings: 1) One-third of the companies polled do not offer flexible scheduling for employees' religious observances. 2) Thirteen percent allow for exceptions in dress or personal appearance codes for religious beliefs. 3) Twenty-four percent allow the display of religious materials in the work area. 4) Fifteen percent provide space and time for observance, study, or discussion during work breaks. Title VII of the Civil Rights Law of 1964 requires employers to accommodate a wide assortment of employees' religious beliefs, as long as the change does not cause undue hardship such as incurring significant costs or violating their seniority systems. The law may also support a worker's sincerely held convictions even if they are not supported by an established religion.

Corrada, Roberto L. "Religious accommodation and the National Labor Relations Act." *Berkeley Journal of Employment and Labor Law*. Vol.17, no.2, 1996. pp.185-281.

Corrada maintains that the National Labor Relations Act (NLRA) should be amended to require employers and unions to accommodate a broader scope of religious beliefs. He buttresses his position that current laws and Constitution provisions do not adequately protect religious freedom by summarizing four cases that illustrate the clash between religious values and the union/management relations scheme set out in the NLRA. He also believes that recent Supreme Court decisions involving legislative accommodations for religion have created a judicial climate increasingly favorable to legislative exemptions for religion without violating the Establishment Clause.

Cromwell, Jeff B. "Cultural discrimination: the reasonable accommodation of religion in the workplace." *Employee Responsibilities and Rights Journal*. Vol 10, no. 2. June, 1997. pp.155-172.

Recent Supreme Court decisions have allowed employers to exclude employees from the decision-making process to determine what constitutes reasonable

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accommodation of religious belief. The author argues that religious discrimination is seen as something different from other discriminatory practices (just as minority faiths are viewed apart from the mainstream Protestant religious culture) and is allowed to continue by the current judicial climate. To support this conjecture, Cromwell takes the following positions: 1) Minority faiths are discriminated against because of the mainstream culture. 2) The principle of reasonable accommodation is based in a religious vacuum. 3) Religion is an ambiguous category that does not belong in Title VII. 4) Conservative judicial interpretation of the First Amendment has to err on the side of anti-religious sentiment. 5) The cost criterion is employer-biased and does not reflect opportunity cost on the part of the individual.

Gregory, David L. "The role of religion in the secular workplace." *Notre Dame Journal of Law, Ethics and Public*. Vol. 4, no. 3 & 4. 1990. pp.749-763.

Citing recent Supreme Court decisions, Gregory, a labor and employment academic lawyer, declares that the Court has rendered Title VII provisions largely meaningless as protection for the religiously observant employee of a secular employer and has strengthened the discretion of institutional nonprofit religious employers to require employee membership in the religion. On the other hand, plaintiffs who have used the religion clauses of the first amendment in their cases, to obtain minimum wages or not to work on their Sabbath, have been more successful. Gregory believes that the anomalies between Title VII and the first amendment religion clauses jurisprudence cannot be explained nor reconciled. He warns that using the first amendment for these cases might require an extension of the Constitution into the private sphere. Looking at the issue of prayer and other religious practices in the secular workplace, the author notes that the original emphasis of Title VII was to protect religious minorities in the larger secular culture. Currently, it may be the atheist, agnostic or nonaffiliated employee who must be protected against the religious practices senior management feels moved to impose. For example, a private sector secular employer can hold a prayer meeting in the workplace but cannot deny employment opportunities to employees who do not attend.

Lansing, Paul and Maureen Feldman. "The ethics of accommodating employees' religious needs in the workplace." *Labor Law Journal*. Vol. 48, no. 6. June, 1997. pp.371-380.

Lansing and Feldman outline current legal responsibilities regarding reasonable accommodation for religious beliefs and practices. They note that since 1990 there has been a 30 percent increase in the number of cases (3000 in 1989) filed with the Equal Employment Opportunities Commission (EEOC) based on religion, with incremental increases each year. The 1991 Civil Rights Act exposed management to higher liabilities and put the burden of proof on employers. The proposed 1993 EEOC guidelines covered many forms of harassment, stating that "the plaintiff need only show that the harassment would not have occurred but for the plaintiff's religion." In 1993, the Religious Freedom Restoration Act was passed to prevent every possible burden on religious freedom resulting from federal statutes. The authors see a company's compliance with these laws as an ethical choice reflecting the culture of the company as a whole. Accommodation supports today's diverse workplace and the principle of religious freedom. Some companies perceive that accommodation increases their costs. As a solution to the problem of vacation and holidays, Lansing and Feldman propose that companies offer a limited block of paid

personal days to all employees that they can take at their own discretion in addition to declared national holidays.

Mitchell, Charles E. "New age training programs: in violation of religious discrimination laws?" *Labor Law Journal*. Vol. 41, no. 7. July, 1990. pp.410-416.

"New age" training programs, designed to improve the motivation, creativity and efficiency of employees, have been the subject of lawsuits which claim that they are brainwashing techniques that seek to repudiate an employee's religious beliefs. As necessary terms and conditions of employment, these programs violate Title VII of the Civil Rights Act. Mind control techniques, including hypnosis, have been used to alter individuals' behavior and to promote values that conflict with employees' beliefs. Mitchell reviews guidelines relating to religious discrimination disseminated by the EEOC and critiques cases involving new age training programs. When an employee objects to such programs for religious reasons, the employer is obliged to accommodate the employee's beliefs by substituting an alternative technique or method of training, or by excusing the employee from that aspect of the program.

Schaner, Dean J. and Melissa M. Erlemeier. "When faith and work collide: defining standards for religious harassment in the workplace." *Employee Relations Law Journal*. Vol. 21, no. 1. Summer, 1995. pp.7-28.

In 1993, the Equal Employment Opportunities Commission (EEOC) proposed guidelines consolidating workplace harassment based on race, color, religion, gender, national origin, age, and disability. Conservative religious groups attacked the guidelines as an illegitimate attempt to create a religion-free zone in the workplace. At the other end of the political spectrum, liberal groups were more favorable toward the guidelines, but maintained that the terminology should be clarified. The EEOC ultimately withdrew the guidelines without plans to reissue them. In light of this decision, this article 1) discusses the potential conflicts between an employee's free restricting religious harassment, 2) reviews several cases interpreting religious discrimination and harassment, 3) analyzes the EEOC's proposed guidelines, 4) contends that the Commission should revise the guidelines, mirroring existing sexual harassment standards, and 5) offers employers guidance in addressing religious harassment issues. The authors recommend that employers treat religious harassment the same as harassment based on sex, race, national origin, age, or disability.

U.S. Congress. Senate. Committee on Labor and Human Resources. *Workplace Religious Freedom Act; hearing*. Pittsburgh, PA 15250-7954. Superintendent of Documents, U.S. Government Printing Office. P.O.Box 371954. 1998. 70pp. \$3.50. (S/N 552-070-21862-6-2)

The intention of the Workplace Religious Freedom Act of 1997 is, in the sponsors' view, to restore the original intent of Title VII's protections for religious observances and practices to accommodate religious liberty within the bounds of reason and order. The first panel of witnesses was comprised of persons who had to choose between the practice of their religion and employment, persons who were forced to work on a religious holiday or were not allowed to wear religious garb. The second panel testifying consisted of three experts who discussed the legal implication of Title VII's religious accommodation requirements under current law and under the proposed law and its impact on the workplace, particularly employers.

Wolkinson, Benjamin and Victor Nichol. "Religious discrimination: arbitrating the grievances." *Dispute Resolution Journal*. Vol. 48, no. 4. December, 1993. pp.54-63.

This article analyzes religious discrimination grievances adjudicated since 1977 when the Supreme Court in *TransWorld Airlines vs. Hardison* reaffirmed an employer's obligation to accommodate the religious beliefs of employees. In that case, the Court upheld the Congressional amendment (section 701(j)) to Title VII, the definition of religious beliefs and practices, and articulated the employer's duty to accommodate them unless doing so forced the business to sustain an undue hardship, such as increased wage costs or the loss of efficiency. Also, accommodation did not supersede honoring contractually negotiated seniority provisions. In most cases involving disciplinary action against employees, arbitrators have assessed management's efforts by the reasonableness of the discipline imposed. Discipline may be overturned in cases in which employers fail to explore the possibility of finding another position for the employee. Dismissal was upheld in a case in which after transfer to the employee's preferred position, the employee's absences interfered with emergency operations. Accommodation may include employment of replacement workers where the substitution does not generate increased costs or production problems. Co-workers' interests may be a consideration in arbitration. On the employee's side, workers must provide managers with appropriate notice of need and be willing to accept offers of job transfers to avoid scheduling conflicts. In addition, arbitrators upheld dress requirements where safety or efficiency required them.

Zeitlin, Andrew M. "A test of faith: accommodating religious employees' 'work-related misconduct' in the United States and Canada." *Comparative Labor Law Journal*. Vol. 15, no. 2. Winter, 1994. pp.250-282.

The author examines the relationship between freedom of religion and unemployment compensation. Prior to 1990, the Supreme Court uniformly applied the compelling state interest test, first established in the 1963 decision in *Sherbert v. Verner*, in all unemployment compensation cases, reaching the same result each time: accommodation of the religious employee, who refused to work on the sabbath or followed some other religious practice, by providing benefits. Several lower courts reached similar conclusions. Starting in 1982 the Supreme Court gave greater weight to governmental interest in several freedom of religion cases that did not relate to employment (*United States v. Lee*, *Goldman v. Weinberger*, *Bowen v. Roy*, and *Lying v. Northwest Indian Cemetery Protection Ass'n*). In 1990, in its decision in *Employment Division, Department of Human Resources v. Smith*, the Court refused to exempt the claimants, who were denied unemployment compensation after being dismissed from a private rehabilitation center for ingesting peyote, from Oregon law. The Court distinguished this case from *Sherbert* and related cases, which it felt had at least one constitutional claim in addition the Free Exercise Clause. The author summarizes criticisms of the *Smith* decision and then reviews the Canadian approach, which he rates highly. He believes that corrective legislation may be sufficient to protect religious claimants and appease those concerned with free expression.