

---

## **RELIGIOUS DISCRIMINATION**

---

Under Title VII of the Civil Rights Act of 1964, religion is considered a protected group. However, as the U.S. becomes a more diversified country in terms of its citizens' religious affiliations, there has also been a trend of an increasing number of religious discrimination charges being filed. While the focus on understanding religious discrimination in the workplace from a psychological perspective is limited, there is a lot of evidence in terms of court cases and statistics that points to the importance of understanding how religious discrimination impacts employees within their work environments.

### **Title VII**

Employers are prohibited from discriminating against and harassing employees based on their religious (or lack of religious) affiliation under Title VII. The term religion encompasses traditional organized religions (e.g., Christianity, Judaism, Islam, Hinduism, and Buddhism) as well as new, uncommon, informal religious affiliations and non-theistic affiliations (e.g., atheism). This concerns all employment decision including (but not limited to) decisions surrounding hiring, firing, recruitment, assignments, and discipline. In regards to selection and placement, Title VII prohibits the segregation of jobs based on the employee's religious affiliation. That is, an employer cannot assign an employee to a particular type of job due to that employee's religious affiliation (e.g., assigning employees of a particular religious affiliation to less visible roles given the employer's perception that customers may fear those individuals).

Additionally, Title VII requires that employers provide reasonable accommodation for the religious beliefs and practices of employees and applicants. Reasonable accommodation means that the employer must make any adjustment to the work environment to accommodate the religious needs of the employee as long as such accommodations do not cause undue hardship to the employer in regards to the organization's functioning (e.g., an accommodation that is too costly or difficult to provide). Examples of typical accommodations that employers make for

religious beliefs include flexible scheduling, voluntary shift substitutions, and exceptions to company dress codes. An example of undue hardship would be if an employee's request for flexible scheduling restricts the ability of other employees to fulfill their job roles.

Finally, Title VII prohibits the harassment or retaliation against employees related to religious discrimination. Harassment includes those behaviors that cause a hostile work environment that subject an employee to severe and unwelcomed ridicule, insult, or hostility. Harassment due to religious affiliation can either those behaviors directed at the employee's beliefs or the beliefs of the people with whom they associate. Retaliation includes those behaviors directed at an applicant or an employee who is participating in a protected activity such as filing an Equal Employment Opportunity (EEO) charge or testifying in an EEO matter.

Title VII covers all private employers, state and local governments, and educational institutions that employ 15 or more individuals as well as private and public employment agencies, labor organizations, and labor management committees controlling apprenticeship and training. Some state-level anti-discrimination laws extend coverage to organizations with fewer than 15 people. The exceptions to Title VII coverage are that (1) religious organizations and educational institutions can show preference to employees and applicants on the basis of religious affiliation and (2) clergy members cannot file claims of federal employment discrimination because it constitutes impermissible government entanglements with church authority.

## **Court Cases**

To combat religious discrimination in the workplace, it is important to understand how it is defined. A review of several landmark court rulings helps us understand the legal precedents that define workplace religious discrimination under Title VII. In its 1970 ruling, *Welsh v. United States*, the U.S. Supreme Court began to clarify the legal definition of "religious beliefs." One's beliefs can be adjudged "religious" when they represent in the believer's life a meaning analogous to the meaning God holds for believers of "traditional" religions. Accordingly, a "religious belief" is legally defined by a) the sincerity with which the believer demonstrates he or she holds the belief, as well as b) whether the belief holds a position parallel to God within the believer's life. In *Brown v. Pena* (1997), the Southern Federal District Court of Florida offered a

further clarifying ruling that built upon this definition. The court determined that the belief must not merely be a strongly held personal preference, but must have an institutional quality about it, and be rooted in a theory of “man’s nature of his place in the universe.” In its 2000 ruling, *Swartzentruber v. Gunito Corp*, the Northern Federal District Court of Indiana added that beliefs that are distinctly social and political in nature are not considered religious under Title VII.

The long-standing test for religious harassment was established originally in the Supreme Court’s ruling in *Meritor Savings Bank, FSB, v. Vinson* 477 U.S. 57 (1986). The High Court determined sexual harassment to be a specific form of sexual discrimination, and subsequent lower court cases have applied these same analyses to cases for religious harassment. Congruent with *Meritor*, religious harassment in violation of Title VII exists in workplace instances where: an employee is subject to unwelcome statements or conduct; the statements or conduct are based on religion; the conduct is severe enough for the employee to reasonably deem the environment abusive or hostile; and also the employer can reasonably be held liable for these occurrences. The Supreme Court’s 1993 ruling on *Harris v. Forklift Systems Inc.* further clarified that hostile work environments could be attributed not only to physical or verbal harassment, but also to unwelcome religious views and practices imposed upon the employee.

In a landmark ruling, *Griggs v. Duke Power Company*, the Supreme Court specified Title VII applies not only to overt acts of discrimination, but also to practices that appear “fair in form but discriminatory in operation”. This ruling established the disparate impact theory, which states that workplace policy that appears neutral on its’ face may be deemed discriminatory if it disproportionately impacts members of protected classes. While the often-cited disparate impact theory could also apply to religious workplace discrimination, especially regarding hiring practices (i.e. *Barrow v. Greenville Indep. Sch. Dist.* 2007), it is rarely used in the religious context. Reasonable accommodation/undue hardship analyses are most often applied to such cases where neutral workplace policies conflict with employees’ religious practices and beliefs (see *EEOC v. Abercrombie and Fitch Store Inc.* 2015).

## **Statistical Trends**

Over the last two decades, there has been a steady increase in the percentage of discrimination charges attributed to religious discrimination made to the Equal Employment Opportunity

Commission (EEOC). In 2014, 4% of discrimination charges (3,549 charges) were religious in nature. To help put this into perspective, this has increased from the 1,546 out of 91,189 charges filed in 1994 and 2,466 out of 79,432 changes filed in 2004.

One religious group that has been frequently affected by religious discrimination in the workplace is the U.S. Muslim population. In 2011, it was estimated that while only two percent of the U.S. population identified as Muslim, 21.3% of U.S. workplace discrimination cases investigated by the federal government involved charges of discrimination against Muslims. That is, of the 4,151 discrimination charges filed in 2011, 884 of those charges were for Muslim discrimination charges. Furthermore, a portion of national origin charges that are filed are also on the basis of the party's Muslim affiliation. For example, in 2011, 544 of the 11,833 charges filed on the basis of National Origin were associated with a Muslim religious affiliation.

## **Trends in Research**

While there is a large body of research focused on discrimination in the workplace, the research focused specifically on religious discrimination in the workplace is extremely limited. Ghumman and colleagues found that, as of 2013, there were only seven psychology articles that were empirical in nature that looked at discrimination in the context of the Civil Rights Act. Furthermore, most of those studies focused on discrimination in terms of specific religious groups (e.g., Christians, Jews, or Muslims). In an effort for shift the focuses beyond discrimination in terms of the Civil Rights Act, researchers have begun to look at how religious identity and intergroup relations impact employee perceptions (e.g., perceptions of another employee's competence) and interpersonal conflict.

—Christine R. Smith & C. Malik Boykin

*See also* Civil Rights Act of 1964, Civil Rights Act of 1991

### **FURTHER READING**

Equal Employment Opportunity Commission. (2015). *Religion Discrimination*. Retrieved May 29, 2015 from <http://eeoc.gov/laws/types/religion.cfm>

Ghumman, S., Ryan, A., Barclay, L., & Markel, K. (2013). Religious Discrimination in the Workplace: A Review and Examination of Current and Future Trends. *Journal of Business and Psychology*, 28, 439-454.

King, J. E., McKay, P. F. & Stewart, M. M. (2014). Religious bias and stigma: Attitudes toward working with a Muslim co-worker. *Journal of Management, Spirituality and Religion*.