

Religion and the Workplace: Rights and Accommodations

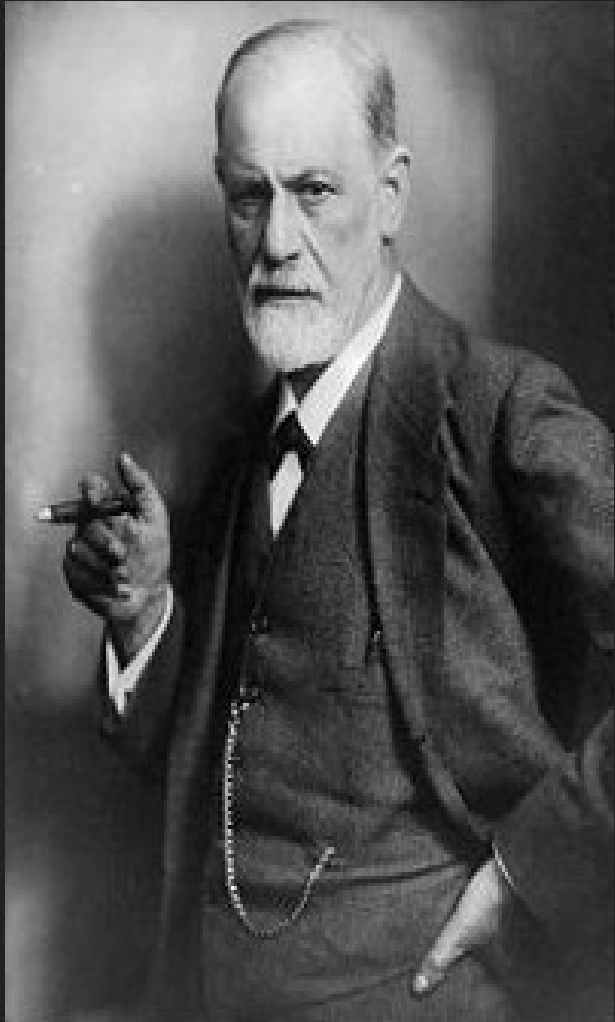
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Love and work are the cornerstones of our
humanness.

(Sigmund Freud)

THEOLOGY OF WORK

- (1) self-realization / **self-expression**
- (2) means to earn a **living**
- (3) contribution and gift to **community**

RELIGIOUS DISCRIMINATION IN EMPLOYMENT



QUESTIONS TO BE ADDRESSED

- What rights do I have as a worker to practice or manifest religious beliefs in the work place?
- What religious liberty rights are most often threatened in the workplace and, if I have a concern, how do I effectively approach my supervisor, human resources department or management?
- As an employer, how do I properly accommodate religion?
- What threats exist regarding accreditation of professionals and how might they be addressed?

THREE TYPES OF RELIGIOUS DISCRIMINATION

- (1) **DISPARATE TREATMENT**—generally hiring, firing, & retention cases; emerging professional accreditation and licensing cases
- (2) **DISPARATE IMPACT**—terms of employment cases; Sabbath & leave, workplace devotion, speech & symbols, grooming & garb, conscientious objection
- (3) **RELIGIOUS HARASSMENT**—prolonged and pervasive; sometimes by religious employees toward coworkers; duty of employers to prevent or risk liability

SEVEN KEY CASES FOR RELIGIOUS FREEDOM AND THE WORKPLACE

(1) *Corporation of the Presiding Bishop of The Church of Latter-day Saints v. Amos* (1987)

(2) *Employment Division, Dept of Human Resources of Oregon v. Smith* (1990)

(3) *Hosanna-Tabor Evangelical Church & School v. EEOC* (2012)

(4) ***EEOC v. Abercrombie & Fitch* (2015)**

(5) *Obergefell v. Hodges* (2015)

(6) *Miller v. Davis* (2015)

(7) *March for Life v. Burwell* (D.D.C. 2015)



Corporation of the Presiding Bishop of The Church of Latter-day Saints v. Amos (1987)

Section 702 of the Civil Rights Act of 1964 [the religious organizations exemption] does not violate the Establishment Clause by allowing religious employers to choose employees for nonreligious jobs based on their religion.

Employment Division, Department of Human Resources of Oregon v. Smith (1990)

The Free Exercise Clause permits the State to prohibit sacramental peyote use and thus to deny unemployment benefits to persons discharged for such use. Neutral laws of general applicability do not violate the Free Exercise Clause of the First Amendment.

Hosanna-Tabor Evangelical Church & School v. EEOC (2012)

The Establishment and Free Exercise Clauses of the First Amendment bar suits brought on behalf of ministers against their churches, claiming termination in violation of employment discrimination laws. Strong affirmation of the ministerial exception doctrine exempting religious institutions from anti-discrimination laws in hiring employees

EEOC v. Abercrombie & Fitch (2015)

Employees do not have to explicitly request an accommodation to obtain protection from Title VII, which prohibits religious discrimination in hiring. (Scalia decision) Evidence of employer knowledge is enough to find liability. (Alito concurrence)

Obergefell v. Hodges (2015)

The Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State.

Miller v. Davis (2015)

Preliminary injunction issued ordering county clerk Kim Davis of Kentucky to issue marriage licenses to any qualified couple. Davis would suffer no irreparable harm by having her signature on a marriage license issued to a same-sex couple.

March for Life v. Burwell (D.D.C. 2015)

- (1) Held that the contraceptive mandate substantially burdens the rights of the employees because they cannot not obtain health insurance that does not cover contraceptives.
- (2) Held that there is no compelling interest in making the individual plaintiffs, who did not want contraceptive coverage, purchase it.

BUT their First Amendment case failed, since individual mandate is religiously neutral law of general applicability.

Title VII of the Civil Rights Act of 1964



Title VII of the Civil Rights Act of 1964

DEFINITIONS

SEC. 2000e. *[Section 701]*

The term “person” includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint--stock companies, trusts, unincorporated organizations, trustees, trustees

- (a) The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person...
- (j) The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

Title VII of the Civil Rights Act of 1964 (contd.)

APPLICABILITY TO RELIGIOUS EMPLOYMENT

SEC. 2000e-1. [Section 702] (contd.)

(a) Inapplicability of subchapter to employees of religious entities

This subchapter shall not apply to an employer with respect to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.



Title VII of the Civil Rights Act of 1964 (contd.)

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. *[Section 703]* DISPARATE TREATMENT

(a) Employer practices

It shall be an unlawful employment practice for an employer –

- (1) **to fail or refuse to hire or to discharge** any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, **religion**, sex, or national origin; or
- (2) **to limit, segregate, or classify** his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, **religion**, sex, or national origin.

Title VII of the Civil Rights Act of 1964 (contd.)

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. [Section 703] (contd.)

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, . . . in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, **AND** (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

Title VII of the Civil Rights Act of 1964 (contd.)

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. [Section 703] (contd.) DISPARATE IMPACT CASES

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin **AND** the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; **OR**

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.)

MIXED MOTIVE AND PRETEXT CASES

McDonnell Douglas v. Green Burden Shifting Rule

3-step process

- Employee must prove prima facie case by preponderance of evidence.
- Then burden shifts to employer to rebut prima facie case with articulation of legitimate, non-discriminatory reason.
- Then burden shifts back to employee to show that employer's response is a pretext for actual discrimination.

Title VII of the Civil Rights Act of 1964 (contd.)

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-3. *[Section 704]* RETALIATION

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Title VII of the Civil Rights Act of 1964 (contd.)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2000e-4. *[Section 705]*

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

What You Should Know about the EEOC and Religious Discrimination

- Recent events, including the Supreme Court decision in *EEOC v. Abercrombie & Fitch* have focused attention on the issue of discrimination on the basis of religion.
- The EEOC has filed 68 lawsuits since the beginning of fiscal year 2010 involving claims of religious discrimination under Title VII of the Civil Rights Act of 1964.
- During the same period the EEOC recovered approximately \$4 million, as well as important injunctive and other case-specific "make whole" relief, for victims of religious discrimination.

Discrimination

The prejudicial treatment or of a person, racial group, mis based on category rather than based on or restricting men

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Facts and Statistics

- In fiscal year 2014 the EEOC received 3,549 charges alleging discrimination on the basis of religion. These charges represent a slight decrease from the past few years but remain significantly above the numbers from before fiscal year 2007.
- The top issues alleged in religion charges are Discharge, Harassment, Terms and Conditions of Employment, and Reasonable Accommodation.
- Religious-related lawsuits filed since FY 2010 have involved workers in all segments and sectors of the workforce - e.g., in healthcare, social services, hospitality, retail, staffing, manufacturing, wholesale supply, energy, and food/beverage service, among others.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Since the start of FY 2010, the Commission has filed 68 lawsuits involving claims of religious discrimination under Title VII of the Civil Rights Act of 1964.

- In FY 2014, the EEOC filed 8 religious-related lawsuits. This was 10% of all Title VII suits.
- In FY 2013, EEOC filed 12 religious-related lawsuits. This was 15% of all Title VII suits.
- In FY 2012, EEOC filed 9 religious-related lawsuits. This was 13% of all Title VII suits.
- In FY 2011, EEOC filed 15 religious-related lawsuits. This was 9% of all Title VII suits.
- In FY 2010, EEOC filed 24 religious-related lawsuits. This was 12.5% of all Title VII suits.

Religion-Based Charges

FY 1997 - FY 2015

The following chart represents the total number of charges filed and resolved under Title VII alleging religion-based discrimination.

The data are compiled by the Office of Research, Information and Planning from data compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Receipts	1,709	1,788	1,811	1,939	2,127	2,572	2,532	2,466	2,340	2,541	2,880	3,273	3,388	3,790	4,151	3,811	3,721	3,549	3,502
Resolutions	2,137	2,247	2,187	2,230	2,217	2,729	2,690	2,676	2,352	2,387	2,525	2,727	2,958	3,782	4,608	4,219	3,885	3,575	3,736
Resolutions By Type																			
Settlements	89	97	144	156	182	237	221	241	227	244	282	253	270	330	368	327	331	268	275
	4.2%	4.3%	6.6%	7.0%	8.2%	8.7%	8.2%	9.0%	9.7%	10.2%	11.2%	9.3%	9.1%	8.7%	8.0%	7.8%	8.6%	7.5%	7.4%
Withdrawals w/Benefits	74	81	87	94	77	100	86	101	98	118	133	138	162	203	188	171	198	177	150
	3.5%	3.6%	4.0%	4.2%	3.5%	3.7%	3.2%	3.8%	4.2%	4.6%	5.3%	5.1%	5.5%	5.4%	4.1%	4.1%	5.1%	5.0%	4.0%
Administrative Closures	614	559	532	429	382	451	434	490	384	384	418	459	585	628	1,012	821	810	687	630
	29.7%	24.0%	24.3%	19.3%	17.2%	15.5%	15.1%	19.3%	15.3%	15.2%	15.8%	15.8%	16.8%	15.8%	22.0%	14.7%	15.8%	19.2%	15.0%

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Educational Publications

- Questions and Answers: Religious Discrimination in the Workplace
- Best Practices for Eradicating Religious Discrimination in the Workplace
- Religious Garb and Grooming in the Workplace: Rights and Responsibilities
- Fact Sheet on Religious Garb and Grooming in the Workplace: Rights and Responsibilities
- What You Should Know About Workplace Religious Accommodation

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Educational Publications

- Employment Discrimination Based on Religion, Ethnicity, or Country of Origin
- Questions and Answers for Employees:
Workplace Rights of Employees Who Are, or Are Perceived to Be, Muslim or Middle Eastern
- Questions and Answers for Employers:
Responsibilities Concerning the Employment of Individuals Who Are, or Are Perceived to Be, Muslim or Middle Eastern

ADDITIONAL RESOURCES



Imagine a World Without Hate™

Religious Accommodation in the Workplace: Your Rights and Obligations

Religion in the American workplace is among the most contentious and difficult areas for employees and employers to navigate. In our increasingly diverse and religiously pluralistic society, conflict is bound to occur, and if Equal Employment Opportunity Commission (EEOC) statistics are correct, it is occurring at an ever quickening pace. EEOC religion-based charges of discrimination have increased approximately 41% since 1997, and payouts have increased approximately 174%.¹ The risks of getting it wrong - and, we believe, the rewards of getting it right - are powerful motivators to businesses to pay careful attention to this issue.

OVERVIEW OF THE LAW

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits employers, except religious organizations^{2 & 3}, from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Title VII also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer. This means that:

ADDITIONAL RESOURCES

The screenshot shows the Workplace Fairness website. The header includes the logo "workplacefairness. IT'S EVERYONE'S JOB" and navigation links: "Your Workplace Rights", "Protect Your Rights", "Our Programs", "Blog", "Press", and "About WF". A search bar with "Google" Custom Search is on the right. The main content area is titled "Religious Discrimination" under the "YOUR RIGHTS" section. It features a sidebar with a "Harassment Law" advertisement for Moore and Associates, a "FIND AN EMPLOYMENT LAWYER TODAY!" button, and a "SUPPORT WORKPLACE FAIRNESS" button. The main text explains that religious discrimination can take many forms and lists six questions to guide the reader: 1. What is religious discrimination? 2. Which federal law covers religious discrimination? 3. What is the Religious Freedom Restoration Act or RFRA? 4. Who enforces the law? 5. Who is protected under the law? 6. What should I do, as an employee, to avoid or resolve religious conflicts at work?

workplacefairness.
IT'S EVERYONE'S JOB

Your Workplace Rights Protect Your Rights Our Programs Blog Press About WF

Google Custom Search

Home > Your Rights > Discrimination > Religious Discrimination

Choose Language:

YOUR RIGHTS

Religious Discrimination

CHURCH STATE COUNCIL
Handling religious discrimination cases exclusively. 50 YEARS

Religious discrimination can take many forms. If you have been denied work or a promotion, harassed at work, or denied an accommodation at work because of your religious beliefs or practices, or because of your lack of certain religious beliefs you may have recourse. Title VII of the Civil Rights Act of 1964 (Title VII) and the Religious Freedom Restoration Act (RFRA) prohibit many employers from engaging in religious discrimination in the workplace. To find out more about what religious discrimination is and how you may be protected, read below:

1. [What is religious discrimination?](#)
2. [Which federal law covers religious discrimination?](#)
3. [What is the Religious Freedom Restoration Act or RFRA?](#)
4. [Who enforces the law?](#)
5. [Who is protected under the law?](#)
6. [What should I do, as an employee, to avoid or resolve religious conflicts at work?](#)

Harassment Law

Trusted Harassment Lawyers.
Call in Houston for Legal Representation.

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FIND AN EMPLOYMENT LAWYER TODAY!

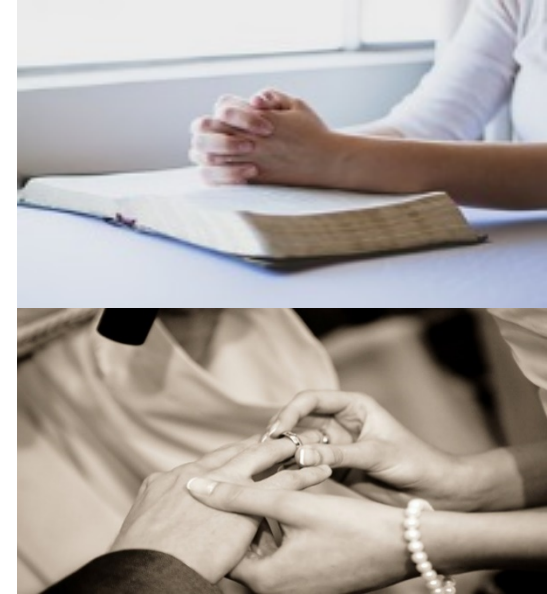
SUPPORT WORKPLACE FAIRNESS

The root of all your stomach problems

FURTHER NOTES FROM THE EEOC

Religion & Personal Association

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.



Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion.

FURTHER NOTES FROM THE EEOC

Employment Discrimination Aspects

The law forbids discrimination when it comes to any aspect of employment, including

- hiring & firing
- pay & fringe benefits job assignments
- promotions
- training & professional development
- layoffs

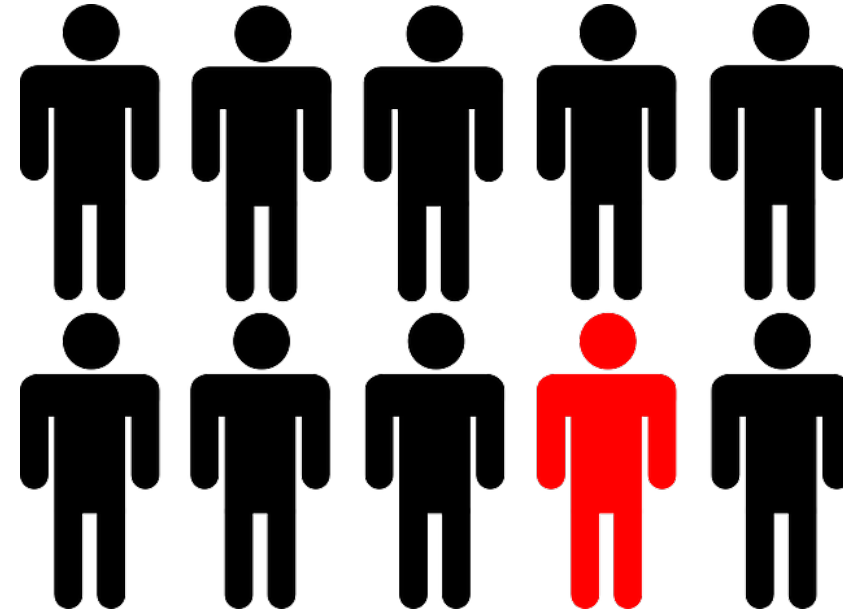
and any other term or condition of employment.



FURTHER NOTES FROM THE EEOC

Segregation

Title VII also prohibits workplace or job segregation based on religion (including religious garb and grooming practices), such as assigning an employee to a non-customer contact position because of actual or feared customer preference.



FURTHER NOTES FROM THE EEOC

Reasonable Accommodation

The law requires an employer or other covered entity to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business.

This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion. Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.



FURTHER NOTES FROM THE EEOC

Dress & Grooming Accommodations

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to . . . such things as dress or grooming practices that an employee has for religious reasons. These might include, for example, wearing particular head coverings or other religious dress (such as a **Jewish** yarmulke or a **Muslim** headscarf), or wearing certain hairstyles or facial hair (such as **Rastafarian** dreadlocks or **Sikh** uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

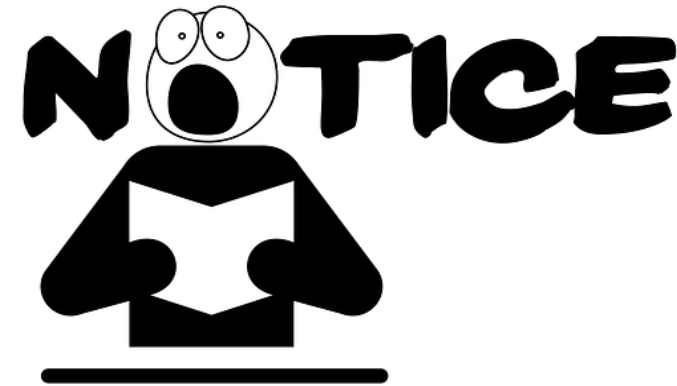


FURTHER NOTES FROM THE EEOC

Notification Requirement

When an employee or applicant needs a dress or grooming accommodation for religious reasons, he should notify the employer that he needs such an accommodation for religious reasons.

If the employer reasonably needs more information, the employer and the employee should engage in an interactive process to discuss the request. If it would not pose an undue hardship, the employer must grant the accommodation.



FURTHER NOTES FROM THE EEOC

Forced Religious Observance

An employee cannot be forced to participate (or not participate) in a religious activity as a condition of employment.



FURTHER NOTES FROM THE EEOC

Undue Hardship

An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.



RELIGIOUS HARASSMENT

1. subjected to unwelcome **religious harassment**;
2. harassment was based on **religion**
3. harassment so severe and pervasive that it has the effect of unreasonably interfering with **work performance** by creating an intimidating, hostile, or offensive work environment
4. the employer was liable for the harassment

DUTIES OF EMPLOYEES

- (1) **NOTICE**—should be given to employer as soon as the need for accommodation becomes apparent and updated if circumstances change
- (2) **CLARITY**—need to be clear with employer about the nature of the accommodation being requested
- (3) **REASON**—need to identify the reason for accommodation as religious, but do not need to go further unless necessary to give clarity to employer

DUTIES OF EMPLOYERS

- (1) **REASONABLE ACCOMMODATION**—good faith effort to resolve the conflict between the employee's religious needs and job requirements
- (2) **UNDUE HARDSHIP**—identify an actual monetary or administrative expense
- (3) **PREVENT HARASSMENT** --reasonable care to prevent and correct promptly any harassing behavior

PROFESSIONALS, ACCREDITATION & LICENSURE

***Keeton v. Anderson* (11th Cir., 2011)**—Augusta State University student in graduate counseling program expressed desire to avoid LGBTQ students entirely or to submit to conversion therapy. Keeton rejected university's remediation program that would have required greater exposure to LGBTQ students and readings in counseling on LGBTQ issues. District Court and Eleventh Circuit ruled for university.

***Walden v. Centers for Disease Control and Prevention* (11th Cir., 2012)** —CDC staff counselor fired for refusing to counsel an employee in a same-sex relationship. Eleventh Circuit panel found Walden failed to establish case for religious discrimination and that her religious and free exercise rights not substantially burdened by being removed from her counseling position.

***Ward v. Polite* (6th Cir., 2012)** —Eastern Michigan University student in graduate counseling program expelled for inquiring about referring a gay client seeking counseling program. Sixth Circuit found that a jury could find evidence of "hostility toward her speech and faith."

ANOTHER COUNSELING CASE

Buxton v. Kurtinitis (D. Md., 2016) —Applicant for a community college vocational training program in radiation therapy mentioned religion in the job interview. Interviewer and program director reported that Buxton “brought up religion a great deal during the interview. Yes, this is a field that involves death and dying; but religion cannot be brought up in the clinic by therapists or students.” Court’s rationale was that when “an applicant brought up his or her religion during an interview, he or she may also bring it up in communications with a patient.”

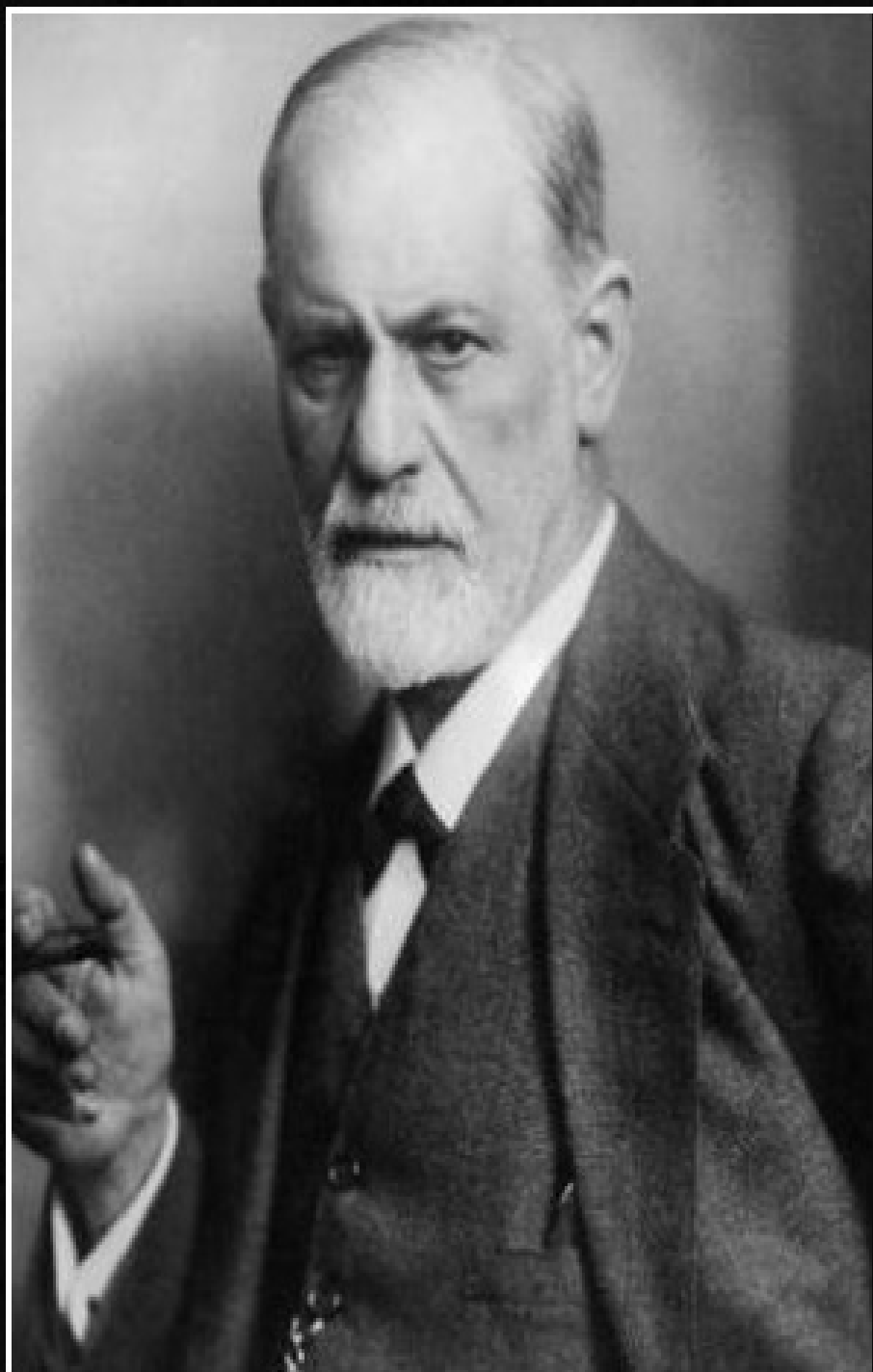
PROFESSIONALS, ACCREDITATION & LICENSURE

Related and emerging issues

California SB 1146—nondiscrimination legislation would narrow the number of California colleges and universities that are able to claim exemptions from federal Title IX anti-discrimination law, applying the exemption only to seminaries and schools of divinity; intended to restrict Christian colleges and schools from discriminating on the grounds of sexual orientation, gender identity, and gender expression.

Trinity Western University—Canadian case, bound for Canadian Supreme Court as of June 30, 2016, on the denial of accreditation to a law school at a private Christian university for its student covenant restricting sexual activity unless between husband and wife; interpreted as discrimination against LGBT individuals.

Will there be denial or revocation of professional license cases?



Love and work, work and love...that's
all there is.

— *Sigmund Freud* —