



EEOC to Update Guidance on Combating Religious Bias at Work

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The Equal Employment Opportunity Commission (EEOC) plans to revise its guidance on religious-discrimination claims for the first time in 12 years.

In a 3-2 vote, the commission decided to publish a proposed update to its Compliance Manual Section on Religious Discrimination and will soon share the proposal for public comment. The proposed guidance incorporates U.S. Supreme Court precedent and other federal court opinions that have been issued since 2008, which interpret workplace protections based on religion under Title VII of the Civil Rights Act of 1964.

"As a grandson of holocaust survivors, I have a profound respect for religious freedom," said EEOC Vice Chair Keith Sonderling in a Nov. 9 meeting. "I am fully committed to protecting the rights of all workers to be free from religious discrimination in the workplace."

The guidance at issue, he said, is meant to be a practical resource for employers, employees and EEOC enforcement staff. "The guidance explains the variety of issues applicable to religious-discrimination claims and provides guidance to employers on how to balance the needs of individuals in a diverse workplace."

Sonderling, as well as EEOC Chair Janet Dhillon and Commissioner Andrea Lucas, approved the publication, while Commissioners Charlotte Burrows and Jocelyn Samuels said they needed more time to review the proposal.

The Details

The commissioners noted that the current Compliance Manual Section on Religious Discrimination doesn't reflect legal developments since 2008. The proposed update would describe how Title VII protects employees from religious discrimination and outline the legal protections that are available to religious employers.

"The revisions to the guidance include important updates to the discussion of protections for employees from religious discrimination in the context of reasonable accommodations and harassment," according to an EEOC announcement. The proposed update also "expands the discussion of defenses that may be available to religious employers."

For instance, the guidance would account for the Supreme Court's 2014 decision in *Burwell v. Hobby Lobby Stores Inc.*, No. 13-354. In that case, the court said the federal government could not enforce the Affordable Care Act's contraceptive coverage mandate against a closely held corporation because the requirement conflicted with the owners' religious beliefs.

In 2015, the Supreme Court sided with the EEOC in a case alleging religious discrimination because retailer Abercrombie & Fitch refused to hire an applicant whose headscarf—which was worn for religious reasons—didn't conform to its dress code policy. The high court held that an employer may not refuse to hire an applicant if the need for a religious accommodation is a motivating factor in the employer's decision, unless the accommodation would pose an undue hardship.

"This commission has a long record of vigorously enforcing laws protecting against religious discrimination in the workplace," Burrows said, noting that she is "deeply committed to protecting against religious discrimination as both a constitutional principal and a core civil right."

Burrows and Samuels, however, said they were only given five working days to review and revise a draft, whereas commissioners usually have 30 days or longer to ask questions, provide comments and vote on a draft for public comment.

Burrows said the subject matter "is particularly complex" and involves the scope and interpretation of Title VII and its interplay with other evolving areas of law.

Samuels believes that "all of the members of this commission can come together in a collaborative and respectful bipartisan way to resolve any issues that divide us."

She said the EEOC's role is to "balance the interest of safeguarding religious freedom and preserving other critical civil rights," and she has some concerns about whether that balance is maintained in the proposed guidelines.

Lucas, who also had a short time to review the draft, said "the public deserves to see this document sooner rather than later." She is "very concerned that certain types of religious discrimination are widespread," and she thinks the proposal is "already an excellent piece of work" that key stakeholders have had an opportunity to review.

Next Steps

The guidance will be sent to the White House Office of Management and Budget for review and will be posted for public comment.

"I encourage members of the public to carefully review the draft," Samuels said. "The public's input will be critical in ensuring that we have the most informed sense on how religious discrimination plays out" in the workplace and how the EEOC can provide helpful guidance.

Samuels asked these questions: Does the proposed guidance strike the right balance between religious liberty and other civil rights? Is the guidance accurately capturing the legal landscape interpreting Title VII's standards? Does it adequately respect the rights of lesbian, gay, bisexual, transgender and queer employees, as well as women and religious minorities? "If not, how should it be altered to sufficiently account for those concerns?" Samuels asked.

Chair Dhillon said she is pleased that the EEOC voted to publish the proposed update. "As the agency responsible for enforcing Title VII, it is imperative that we stay at the forefront of these issues to ensure compliance with the law," she said.

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