

INDIANA FEDERAL COURT RULES ON DISCRIMINATION BASED ON RELIGION

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In *Tyson v. Clarian Health Partners, Inc.*, 2004 U.S. Dist. LEXIS 13973 (S.D. Ind. 2004), the plaintiff claimed that her former employer unlawfully discriminated against her in violation of Title VII by, among others, failing to accommodate her religious practices and discharging her based on her religion. The United States District Court for the Southern District of Indiana determined that a jury had to decide whether the employer fulfilled its legal duty to reasonably accommodate the plaintiff's religious beliefs and whether the plaintiff's religion was a motivating factor in her discharge.

The plaintiff worked as a patient service assistant. She was responsible for cleaning patient rooms and common areas on a floor where new mothers stayed during post-partum recovery. She is a Muslim woman whose religion requires her to pray five times a day. The times for prayer varied, but she generally had to pray at least three times during her work shift. Before she prays, she engages in a religious cleaning ritual known as "ablution." This ritual usually takes 2 or 3 minutes and involves cleaning the feet, hands and forehead. The plaintiff was terminated for accumulating three reprimands within her probationary period, one of which resulted from her engaging in ablution in the shower of an empty patient room.

With regard to the plaintiff's failure to accommodate claim, the court noted that employers must reasonably accommodate an employee's religious beliefs and observances unless the employer can demonstrate that it is unable to do so without undue hardship. To move forward in a case of religious discrimination for failure to accommodate, an employee must show: (1) she follows a bona fide religious practice that conflicts with an employment requirement; (2) she brought the practice to the employer's attention; and (3) the religious practice was the basis for an adverse employment action. The employer may respond by proving that it offered a reasonable accommodation that the employee did not accept, or that it was unable to provide a reasonable accommodation due to undue hardship.

There were two religious practices at issue in this case: (1) the requirement that the plaintiff pray several times a day, and (2) the requirement that she perform ablution before prayer. The court determined that the employer reasonably accommodated the plaintiff's need to pray several times a day. Approximately a week into her employment, the plaintiff told her supervisor that she is a Muslim and would need to pray as many as three times during her work shift. Her supervisor said that it was OK and showed her the hospital's two non-denominational chapels where she could pray. The plaintiff knew that other Muslims who worked at the hospital prayed in the basement. She asked her supervisor if she could pray in the basement. He said that would be fine and that she should just inform him when she went to pray. Although she eventually switched locations for prayer, she was able to continue praying throughout the course of her employment.

The court concluded, however, that a jury would have to decide whether the employer reasonably accommodated the plaintiff's practice of ablution. The employer argued that the plaintiff's termination had nothing to do with this practice. The court determined that the plaintiff was terminated for accumulating three reprimands within her probationary period, one of which resulted from her engaging in ablution in the shower of an empty patient room. Therefore, her religious practice had to be at issue. The plaintiff claimed that the sinks in the public restrooms were too high for her to be able to wash her feet (possibly setting up an argument that allowing

her to wash in empty patient rooms would have been a reasonable accommodation). The court was not provided with enough information concerning specific requirements of the practice of ablution to allow it to determine whether the employer met its reasonable accommodation obligations. In the absence of more information, the court had to let a jury decide.

Title VII not only requires employers to reasonably accommodate the religious practices of employees absent undue hardship, it also prohibits employers from taking adverse employment actions on the basis of an employee's religious beliefs. Unlike the initial inquiry in a case alleging failure to accommodate, which focuses on the extent to which an employee's religious practices influence an adverse employment action, an employee's initial burden of moving forward with a case of alleged discharge on the basis of religion focuses on the extent to which an employee's religious beliefs and affiliation motivated the discharge. To move forward on such a claim, an employee must show: (1) she was a member of a protected class; (2) she was performing her job satisfactorily; (3) she was the subject of an adverse employment action; and (4) similarly situated employees outside the protected class were treated more favorably. The employer then has an opportunity to provide a legitimate, non-discriminatory reason for its action.

In this case, the plaintiff did not have direct evidence of the employer's discriminatory intent, so she tried to prove her case with circumstantial evidence. To support her claim, she alleged that her supervisor made several insensitive comments about her religion. The court determined that these comments, if made, could support a claim that the termination was motivated at least in part by her religion. The court decided that a jury had to determine whether the supervisor actually made the comments.

Employers should consider training managers and supervisors to be sensitive to an employee's religious beliefs and practices. Jokes and comments, even if made without evil intent, can jeopardize the defense of an otherwise lawful employment action. If an employee's religious practices may interfere with job performance, the manager or supervisor should immediately seek assistance from Human Resources to consider accommodations.

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