HEADSCARVES AND NOSE RINGS: RELIGIOUS DISCRIMINATION LAWS REMAIN CLOUDY AT BEST

By

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The United States is an incredibly diverse society. Individuals with disparate cultural and religious backgrounds exist in every modern work environment. Employers are frequently confronted with issues of whether special considerations should be made for an employee in light of his or her particular background. Concepts as mundane as a uniformly applied dress code are now not nearly as simple to apply as they once were. Two federal court cases released on the same day reaching opposite conclusions demonstrate the inconsistent results courts may reach when addressing whether an employer's refusal to bend the rules constitutes a cause of action for religious discrimination.

In *EEOC v. Papin Enters, Inc.*, an employee at a Subway restaurant was asked to remove her nose ring after an inspector found the restaurant not in compliance with a ban on facial jewelry. The employee asked for a waiver which was not granted. Subway terminated the employee after she continued to wear her nose ring to work. The employee then filed suit alleging violation of Title VII of the Civil Rights Act of 1964. Subway promptly filed a motion for summary judgment arguing that they attempted to make a reasonable accommodation by requesting that the employee cover her nose ring with a Band-Aid. Subway further argued that it would be an undue hardship for Subway to allow the employee to continue wearing a nose ring to work because of the food safety standards that were implicated. The U.S. District Court for the Middle District of Florida rejected Subway's arguments and denied its motion for summary judgment.

On that same day, in *Webb v. Philadelphia*, the Third Circuit Court of Appeals decided a case involving the refusal of the City of Philadelphia to relax its dress code to permit a police officer to wear a headscarf while in uniform. As in *EEOC v. Papen Enters, Inc.*, the employee filed suit alleging violation of Title VII of the Civil Rights Act of 1964. The City of Philadelphia filed a motion for summary judgment arguing that accommodating the employee's request would create an undue hardship. The court granted the City of Philadelphia's motion for summary judgment placing reliance on the testimony of Police Commissioner Sylvester Johnson who stated that "uniformity encourages subordination of personal preferences in favor of the overall policing mission and conveys a sense of authority and competence to other officers inside the Department, as well as to the general public."

As evidenced by the two aforementioned cases, it is difficult to anticipate what constitutes religious discrimination in the employment context. There are no hard and fast rules regarding what is a "reasonable accommodation" or when an "undue hardship" will result if an employer is required to make such an accommodation. Employers are not, however, without

strategies to reduce the likelihood of liability. An employer who is reasonable and tolerant of disparate religious groups is far less likely to be a defendant in litigation. Assuming that litigation occurs, the court will strongly consider an employer's history of engaging in such reasonable and tolerant behavior in determining whether the employer engaged in religious discrimination.