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Online Feature

April 25, 2007

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Collective Bargaining Agreement Protects Employer in Religious Accommodation Case

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SPECIAL TO LAW.COM
APRIL 25, 2007

Employers have a duty under Title VII to "reasonably accommodate" their employees' bona fide religious beliefs, even when they conflict with company policies, unless such accommodation would be an undue hardship to the employer. 42 U.S.C. § 2000e-2.

An employee's unwillingness to work on the Sabbath is the religious accommodation issue that arises most frequently.

To state a prima facie Title VII failure to accommodate case, the employee must show that he or she:

1. Had a bona fide religious belief that conflicts with an employment requirement;

2. Informed the employer of this belief; and

3. Was disciplined for failure to comply with the conflicting requirement. Baker v. The Home Depot, 455 F.3d 541, 546 (2d Cir. 2006).

The burden then shifts to the employer to show that it attempted to provide a reasonable accommodation or that an accommodation would be an undue hardship. *Berry v. Dep't of Social Services*, 447 F.3d 642, 655 (9th Cir. 2006).

An "undue hardship" is anything more than a minor, or "de minimis," burden on the employer. *Ansonia Bd. of Education v. Philbrook*, 479 U.S. 60, 67 (1986).

In *Stolley v. Lockheed Martin Aeronautics Co.*, No. 06-11068, 2007 WL 1010418 (5th Cir. Mar. 28, 2007), the 5th U.S. Circuit Court of Appeals upheld summary judgment in favor of an employer who fired an employee for refusing to work on the Sabbath where accommodating the employee would have violated the collective bargaining agreement (CBA) between the employee's union and the employer.

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In *Stolley*, Lockheed Martin hired Daniel Stolley as an aircraft assembler at its manufacturing facility in Fort Worth, Texas. Soon after Stolley began work, he learned that he had been assigned to a shift that required him to work from 3:45 p.m. to 12:15 a.m. on Fridays. Stolley was a member of the United Church of God. Stolley informed Lockheed that he would not be able to work after sundown on Fridays because he observed the Sabbath from sundown Friday to sundown Saturday, and his religious views prohibited him from working during that time.

Lockheed looked into reassigning Stolley to an earlier

shift, but found that doing so would violate its CBA with the International Association of Machinists and Aerospace Workers.

The CBA governed the terms of employment for people in Stolley's position, including a seniority system for shift swapping and shift transfers. Giving Stolley the change he requested would have given him a shift selection opportunity before others with more seniority. A Lockheed labor analyst asked the union if it would waive the CBA shift-transfer requirements for Stolley, but the union refused. As a result, less than a month after Stolley began work, Lockheed terminated him for leaving work before sunset each time he was scheduled to work on Friday.

In granting summary judgment to Lockheed, the district court held that Lockheed could not reasonably accommodate Stolley because it would violate the CBA. The 5th Circuit affirmed, because "Title VII does not require employers to make religious accommodations that infringe on the rights of fellow employees." *Stolley*, 2007 WL 1010418, at *3 (internal citation omitted). "[W]here seniority-bidding provisions in collective bargaining agreements conflict with the religious beliefs of an employee so that no accommodation is possible, an employer will not be liable for failure to accommodate." Id.

The court noted that the employer had attempted to make accommodations for Stolley that would not violate the CBA by asking the union to waive the CBA requirements. Stolley, 2007 WL 1010418, at *2. The court further noted that Lockheed may have been able to accommodate Stolley if he had disclosed his need for accommodation in his job application, so that Lockheed could have placed him on a different shift before the CBA would have been implicated. Id. at *3.

A "reasonable accommodation," by definition, means a deviation from an existing rule -- that is what makes it an accommodation. As such, it is noteworthy that the court in *Stolley* has stated, in near blanket fashion, that an employer need not deviate from terms of a collective bargaining agreement to accommodate an employee's religious views.

Other courts have reached varying conclusions in determining whether an employer was obligated to accommodate an employee's unwillingness to work on the Sabbath, based on the particular circumstances. Compare *Ansonia Bd. of Education v. Philbrook*, 479 U.S. 60 (1986) (offered accommodation of three days of unpaid leave for observance of religious holidays, which complied with CBA, was reasonable), with *Smith v. Pyro Mining Co.*, 827 F.2d 1081 (6th Cir. 1987) (allowing employee to find his own replacement for Sabbath shifts, when doing so also violated his religious beliefs, was not a reasonable accommodation).

As these cases illustrate, determining what is a "reasonable accommodation" of a religious belief requires a fact-specific analysis of what is required by the courts of the applicable jurisdiction.

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