

February 18, 2005

**Re: Religious Rights in the Workplace**

Dear \_\_\_\_\_,

Recently, you contacted the Alliance Defense Fund requesting information regarding Bible studies at work before working hours. This letter provides an overview of the law regarding this matter. In addition, I have included a pamphlet prepared by one of our attorneys that provides a discussion of the broader issue of religious expression in the workplace.

**Important Note:** This letter is intended for informational purposes only. It does not reflect an offer of legal representation. However, if you believe that an employer is violating any of the legal principles explained above or in the included brochure, please contact ADF and we would be happy to review the matter further.

**Legal Analysis**

Employees of private companies are protected from religious discrimination by Title VII of the Civil Rights Act of 1964.<sup>1</sup> In order to be protected by Title VII, an employee must show that: (1) He holds a sincere religious belief that conflicts with an employment requirement; (2) He has informed the employer about the conflict; and (3) He was discharged, disciplined or subjected to discriminatory treatment for failing to comply with the conflicting employment requirement.<sup>2</sup>

Under Title VII, sincerely held religious belief “includes all aspects of religious observance and practice, as well as belief...”<sup>3</sup> Thus, an employee may hold a sincere religious belief that he is mandated to study the Bible, even at work. This belief stems from several biblical commands, including Joshua 1:8, which says “This book of the law shall not depart from your mouth, but you shall meditate on it day and night, so that you may be carefully to do all that is written in it...”<sup>4</sup>

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<sup>1</sup> See, e.g., *Bodett v. CoxCom, Inc.*, 366 F.3d 736 (9th Cir. 2004); *Landgraf v. USI Film Products*, 511 U.S. 244, 254 (1994); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 421 (1975)(explaining that Title VII is designed to broadly eradicate discrimination throughout the economy).

<sup>2</sup> *Smith v. Pyro Mining*, 827 F.2d 1081, 1085 (6th Cir. 1987), cert. den. 485 U.S. 989 (1988); *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993); *Turpen v. Missouri-Kansas-Texas R. Co.*, 736 F.2d 1022, 1026 (5th Cir. 1984).

<sup>3</sup> 42 U.S.C. 2000e(j).

<sup>4</sup> New American Standard Version. Also see 2 Timothy 3:16-17; Psalms 1:2; Proverbs 1:1-7.

It is not necessary for an employee to explicitly ask for an accommodation for a specific religious activity.<sup>5</sup> An employer that knows enough about the employee's "religious needs to permit the employer to understand the existence of a conflict between employee's religious practices and the employer's job requirements," has sufficient notice of an employee's religious belief.<sup>6</sup> However, we strongly recommend that all employees notify their employers, in writing, of any religious beliefs which they feel may come into conflict with employment requirements.

Any concrete adverse employment action is sufficient to trigger Title VII protection from religious discrimination. Discrimination includes, but is not limited to, demotion, layoff, transfer, failure to promote, discharge, harassment, intimidation, or the threat of these adverse employment actions.<sup>7</sup> This would, of course, include a written reprimand for reading the Bible during a break.

Once an employer knows an employee's sincerely held religious belief conflicts with an employment requirement, the employer has a mandated duty to reasonably accommodate that employee's religious beliefs, unless the employer can demonstrate that all possible accommodations would result in undue hardship to the employer.<sup>8</sup> In other words, the employer is required to accommodate an employee's adherence to the principles of his religion unless such accommodation will actually interfere with the operations of the employer.<sup>9</sup>

There is no basis for any employer to contend that allowing an employee to have a Bible study during off hours or have a Bible in his office and read it during lunch breaks would create undue hardship. It does not require employers to expend any resources, provide any employee with special treatment, or interfere with any employees' work time. Complaints or discomfort by other employees about the Bible are inadequate to prove undue hardship.<sup>10</sup> It is also inadequate to argue that the employee's actions may polarize employees who share different religious views or that the employee would favor subordinates who share the same beliefs.<sup>11</sup> Furthermore, employers may not discriminate merely because the employee's actions are inconsistent with the employer's values.<sup>12</sup> Justifications such as these are "insufficiently real, and too hypothetical, to satisfy the standard required to show undue hardship."<sup>13</sup>

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<sup>5</sup> *Brown v. Polk County, Iowa*, 61 F.3d 650, 654 (8th Cir. 1995).

<sup>6</sup> *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1439 (9th Cir. 1993).

<sup>7</sup> Gregory G. Sarno, *Harassment or Termination of Employee Due to Religious Beliefs or Practices*, 35 P.O.F. 2d 209, 222 (1983).

<sup>8</sup> *Trans World Airlines v. Hardison*, 432 U.S. 63, 74 (1977).

<sup>9</sup> *Toledo v. Nobel-Sysco, Inc.*, 892 F.2d 1481, 1490 (10th Cir. 1989), *cert. den.*, 495 U.S. 948 (1990); *United States v. Board of Education*, 911 F.2d 882, 887 (3rd Cir. 1990).

<sup>10</sup> *Anderson v. General Dynamics Convair Aerospace Div.*, 589 F.2d 397 (9th Cir. 1978); *Burns v. Southern Pac. Transp. Co.*, 559 F.2d 403, 407 (9th Cir. 1978), *cert. den.*, 439 U.S. 1072 (1972).

<sup>11</sup> *Brown v. Polk County*, 61 F.3d 650, 657 (8th Cir. 1995) (explaining that the employer must show actual evidence that the employee's personnel decisions were affected by religious beliefs).

<sup>12</sup> See, e.g., *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610 (9th Cir. 1988).

<sup>13</sup> *Brown, supra*, 61 F.3d at 657 (citations omitted).

## Conclusion

In short, there is no law requiring the workplace to be a religion-free zone. The U.S. Supreme Court has declared that “it is abundantly clear that Title VII tolerates no discrimination, subtle or otherwise.”<sup>14</sup> Title VII strikes a balance between the rights of employees to engage in religious activity without interfering with the efficiency of the workplace. Thus, Title VII protects the right of employees to read the Bible during their lunch breaks and other non-work time.

If you have any additional questions or concerns, please do not hesitate to contact me.

Sincerely,

Timothy D. Chandler  
Litigation Staff Attorney

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<sup>14</sup> *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973).