



**BUSINESS WITH CONVICTION:**

*EMPLOYER RELIGIOUS BELIEFS*

*August 2010*

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Many private employers have deeply held religious convictions that influence every part of their lives, including their businesses. Consequently, corporate culture often reflects the morality fostered by the business owner's religious beliefs, creating the potential for conflict with employees.

Some employers have sought to avoid this potential conflict by attempting to eliminate all religious influences from the workplace. But the need for a moral compass in the business world has never been greater.<sup>1</sup> Keeping religion out of the workplace only contributes to the lack of integrity plaguing industries and professions in the United States.

There is a place for religious conviction in business. This publication is an effort to address religion's proper place in a private employer's business. It provides a general legal framework for how private employers can be sure that their companies reflect the religious convictions that are so important to them and to the future of good business in our country.<sup>2</sup>

**Q Do Employers Unlawfully Discriminate If They Base Business Objectives and Goals Upon Biblical Principles?**

**A** An employer does not discriminate on the basis of religion by affirming the faith of its owners in business objectives.<sup>3</sup> "Title VII does not, and could not, require individual

employers to abandon their religion.”<sup>4</sup> However, employers must be careful not to give prospective or current employees the perception that employment or advancement with the company depends on acquiescence in the religious beliefs of the employer. This can be accomplished in a number of ways. For instance, applications for employment should state that applicants are considered for all positions without regard to religion. This statement should also be included in any orientation materials, employee handbooks, or employee evaluation forms. Of course, employers must also be sure that this statement is accurate by not discriminating on the basis of religion.

**Q      What Kinds of Discrimination are Prohibited by Law?**

**A**      Generally, discrimination based upon race, color, religion, sex, national origin, ancestry, age, veteran status, marital status, or the presence of non job-related disability, is illegal under federal and/or state law. Cities and other municipalities have added other categories, like sexual orientation and gender identity, to this list.<sup>5</sup> If an employer is uncertain as to whether discrimination based on a particular characteristic is illegal in the jurisdictions where it has offices, it should contact a local attorney. The Alliance Defense Fund ([www.alliancedefensefund.org](http://www.alliancedefensefund.org)) may be able to refer you to an attorney in your area.

**Q      As the Owner of the Business, Can I Witness to My Employees?**

**A**      Employers can talk about their religious beliefs with employees as long as employees know that continued employment or advancement within the company is not conditioned upon acquiescence in the employer’s religious beliefs. For instance, one court has held that an employer did not discriminate against an employee by sharing the gospel with him and inviting him to church.<sup>6</sup> Another court held that owners of a company are free to share their

faith with their employees, as long as they did not do so at meetings where attendance is mandatory.<sup>7</sup> Thus, employers must be careful not to require employees to listen to unwanted witnessing, or to persist in witnessing if the employee objects. Such unwanted proselytizing could be deemed religious harassment. Employers cannot impose their religious beliefs on employees.<sup>8</sup>

**Q Are Employers Permitted to Give Employees Religious Literature or Post it in the Workplace?**

**A** As with spoken religious speech, employers can share their religious beliefs with their employees in printed form such as pamphlets, books, and newsletters.<sup>9</sup> Employers must be careful, however, not to give employees the impression that they have to agree with the employer's religious beliefs in order to keep their job or be promoted. In one case a Jewish employee was wrongfully terminated for complaining about the printing of Bible verses on his paychecks and the religious content of a company newsletter.<sup>10</sup> If an employer shares religious convictions with employees, and an employee disagrees or protests, no adverse action can be taken against the employee.<sup>11</sup>

Furthermore, employers should be ready to accommodate any employee's objections to the religious speech contained in publications distributed to employees. Sufficient accommodation may be to provide the objecting employee with a publication that does not contain the religious content. If an accommodation is requested regarding posting of religious materials, employers should attempt to post the materials in a place that can be avoided by the employee. However, the employer is not required to make an accommodation that would hinder its right to base business goals and objectives on religious principles, as outlined above. In order

to counter any impression given by publications that job security and advancement are contingent upon faith, it is also recommended that publications with religious material state that the employer does not discriminate on the basis of religion for purposes of continued employment, employee benefits, or promotion.

**Q Can an Employer Hold Regular Prayer Meetings or Chapel Services for Employees?**

**A** Employers can hold regular devotionals like prayer meetings or chapel services for employees so long as attendance is not required.<sup>12</sup> Moreover, active participation of management personnel in these meetings is permitted.<sup>13</sup> To ensure that employees understand that devotional meetings are voluntary, notice of the meetings should state that they are not mandatory and it is wise to hold these meetings before the work day begins, during breaks, or after work.

**Q Can an Employer Require Employees to Attend Training Based on Biblical Principles?**

**A** Employers can use training programs that are based on the Bible. For example, requiring an employee to attend a management seminar put on by the Institute of Basic Life Principles which used scriptural passages to support the lessons it sought to promote did not violate a Massachusetts civil rights law.<sup>14</sup> However, employees cannot be required to undergo religious training, participate in religious services, or engage in behavior that would violate their sincerely held religious beliefs.

**Q     What is an Employer’s Obligation Toward Employees Who Have Religious Objections to Certain Work Requirements?**

**A**     The religious freedom of most employees is protected by a federal law called “Title VII”.<sup>15</sup> In order to be protected by Title VII, an employee must show: (1) A sincere religious belief that conflicts with an employment requirement; (2) The employer was informed about the conflict; and (3) Discharge, discipline or discriminatory treatment resulted from failing to comply with the conflicting employment requirement.<sup>16</sup>

**1.     Sincerely held religious belief.**

The sincerity of religious belief is rarely at issue in Title VII cases. Although failure to act on a religious belief consistently may be considered evidence that the belief is not sincerely held,<sup>17</sup> the fact that the belief was only recently acquired does not render it an insincere one.<sup>18</sup> An employee is not held “to a standard of conduct which would have discounted his beliefs based on the slightest perceived flaw in the consistency of his religious practice.”<sup>19</sup>

Religion under Title VII is broadly defined as including “all aspects of religious observance and practice, as well as belief. . . .”<sup>20</sup> The EEOC defines religious practices as including “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views . . . . The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee . . . .”<sup>21</sup> In other words, the EEOC’s test does not require that the employee’s religious beliefs coincide with the tenets of his church: “Title VII protects more than the observance of Sabbath or practices specifically mandated by an employee’s religion . . . .”<sup>22</sup> Religion under Title VII has been held

to include the Black Muslim faith, the “old Catholic Religion,” a “faith in humanity being,” and atheism.<sup>23</sup> However, “religion” has not been so broadly defined as to include membership in the Ku Klux Klan, membership in the United Klans of America, or belief in the spiritual power of a certain cat food.<sup>24</sup>

## **2. Employee informed employer of religious belief.**

Next the employee must show that the employer was aware of the belief. An employer has sufficient notice of an employee’s religious belief if it has enough information 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.”<sup>25</sup>

Notification in writing is not absolutely necessary, as long as the employer is aware of the beliefs.<sup>26</sup> However, an employee’s claim will be rejected if the employer does not understand the religious beliefs involved.<sup>27</sup>

## **3. Discriminatory treatment of employee.**

If an employee can show they have a sincerely held religious belief and that the employer knew about it, Title VII prohibits the employer from discriminating against the employee because of the belief. “Discrimination” includes demotion, layoff, transfer, failure to promote, discharge, harassment, or intimidation, or the threat of these adverse employment actions.<sup>28</sup>

The employer is also required to reasonably accommodate the employee’s religious beliefs unless such accommodation would result in undue hardship to the employer.<sup>29</sup> One example of undue hardship is if it would cost more than a minimal amount of money to provide the accommodation. *See* Endnote 29. “Accommodation” means that employer neutrality is not enough.<sup>30</sup> In general, an 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.

**Q     **What are the Consequences of Providing Domestic Partnership Benefits for Employees?****

**A**     There is no conclusive data on what it actually costs an employer to provide the same benefits to the domestic partners of its employees as it does for spouses of employees.<sup>31</sup>

This is due in large part to the fact that it is unclear how many employees would actually take advantage of domestic partnership benefits in a given company.

To date, there is no generally applicable law requiring private employers to provide unmarried couples with the same benefits as married couples. However, it is clear that doing so has serious negative consequences for the status of marriage in our society.<sup>32</sup>

**Q     **Can an Employer Refuse to Hire a Person Based on Sexual Orientation?****

**A**     There is no simple answer to this question. Although there is no federal law prohibiting sexual orientation discrimination, twenty states and the District of Columbia have made it illegal for private employers to discriminate based on sexual orientation:

- |                      |                         |
|----------------------|-------------------------|
| California           | Nevada                  |
| Colorado             | New Hampshire           |
| Connecticut          | New Jersey              |
| District of Columbia | New Mexico              |
| Hawaii               | New York                |
| Illinois             | Oregon                  |
| Iowa                 | Rhode Island            |
| Maine                | Vermont                 |
| Maryland             | Washington              |
| Massachusetts        | Wisconsin <sup>33</sup> |
| Minnesota            |                         |

If your business is in any of these states, you may be prohibited from discriminating based on

sexual orientation.

Some cities and counties have also enacted similar restrictions on private employers. Employers should check with all municipalities where they have offices to determine if there is a prohibition on discrimination based on sexual orientation by private employers.<sup>34</sup>

Some of these state statutes and municipal ordinances do have exemptions for religious organizations. See Appendix I.

**Q Can an Employer Regulate Employee Speech and the Literature Displayed on an Employee's Desk, or in an Employee's Office?**

**A** Employers are permitted to control the image presented to the public by their business.<sup>35</sup> There is no right to free speech for private employees because the First Amendment to the United States Constitution only applies to governmental entities.<sup>36</sup> Accordingly, the employer can determine which literature can be displayed at desks and in offices that are frequented by customers and other members of the public. For example, a private employer can prohibit an employee from displaying a picture of a burning United States Flag because it would reflect poorly on the business. Employers can also prohibit employees from saying things to customers that actually hurt business.<sup>37</sup>

Employers also can restrict the posting of material that will affect the efficiency of the office. Title VII has been found to protect an employee's religious belief that she must wear a picture of an unborn child at all times, even at work, but the employer could require her to keep the button covered because it was causing disruption with other employees.<sup>38</sup> Signs disparaging co-workers or management do not have to be permitted. Furthermore, literature that constitutes sexual harassment like pornography<sup>39</sup> or religious harassment (e.g. a sign saying Jews are "Christ

Killers”<sup>40</sup>), can and should be prohibited. For example, an employer’s dismissal of an argumentative atheist employee who proselytized on the job and switched off religious music at a Christmas party in favor of secular music did not violate Minnesota’s version of Title VII. The court found that the case involved “aggressively offensive behavior exhibited by an outspoken advocate of atheism wholly intolerant of those foolish enough to admit to other views on the existence of a Deity. He was, indeed an argumentative, proselytizing polemicist.” *Id* at 313. Thus, the court determined that he was not discriminated against because of his religious beliefs, but because of “his offensive conduct in the office and in the field, his expressed attitude toward other workers, and his unproductive job performance.”<sup>41</sup>

Of course, an employer must attempt to accommodate an employee’s request to display items in their work space pursuant to their religious beliefs. Employees should be allowed to display religious items and speak about their religious faith at work as long as there is no actual imposition on co-workers or disruption of the work routine.<sup>42</sup>

**Q Can an Employer Regulate the Music an Employee Listens to at Work?**

**A** Like the display of literature, an employer can regulate music that affects the image the company is attempting to display to the public. See note 35. An upscale retail clothing establishment targeting women in their fifties and sixties does not have to allow the store manager to play alternative rock and roll or rap.

Moreover, music that is disruptive to the work environment can also be restricted, even if the public will not be exposed to it. See notes 39 & 40. Employers have no obligation to allow their employees to listen to music on the job.<sup>43</sup> However, if music is allowed, an employer cannot prohibit an employee from listening to religious music if that employee has a sincerely

held religious belief to do so, and it is not disruptive. See pages 4-6 above.

**Q Can an Employer Regulate Employee Grooming and Clothing Worn at Work?**

**A** Yes. For instance, an employer does not discriminate against an employee by requiring him to shave his long facial hair and refrain from wearing a turban, if both of these religious practices result in safety hazards by preventing a hardhat and respirator from being worn properly.<sup>44</sup>

However, employers must accommodate religious beliefs requiring an employee to dress or groom in a certain manner, unless the rule prohibiting dressing that way is justified by a business necessity or undue hardship. The EEOC has ruled that a nurse whose Old Catholic faith required her to wear a scarf was unlawfully discharged for refusing to come to work without the scarf, because requiring the nurse to wear a cap instead of the scarf was “not so necessary to the operation of [the employer’s] business as to justify the effect that this policy has upon the religious convictions.”<sup>45</sup>

**Q What Should an Employer Do When Faced With a Discrimination Claim?**

**A** All employers should have a written set of procedures for handling discrimination claims. These procedures should be created under the direction of an attorney and made available to all employees. Employers should also require mandatory training for all employees and supervisors on the types of discrimination prohibited.

Following is a general check list of initial steps to take when an employee claims discrimination has occurred:

1. Contact an attorney that specializes in employment law. No notes or other

documentation of the incident should be made until an attorney has been consulted and they have advised the employer about the proper documentation of the matter. The employer should then take the following steps outlined below *under the direction and approval of the attorney retained.*

2. Two supervisors should interview the employee making the claim and obtain all of the facts and information surrounding the incident. If possible, the supervisors conducting the interview should be individuals who are not implicated in the charge of discrimination.
3. The claim should be investigated immediately (within a matter of days) by interviewing the parties involved. Any documentation of the investigation should be carefully supervised by an attorney.
4. If the discrimination is ongoing, the employee should be given the option of taking a paid leave of absence during the investigation.
5. If the claim of discrimination is found to have merit, appropriate action should be taken to eliminate the discrimination immediately. This may include placing the parties on administrative leave until the matter is resolved, and/or disciplining the appropriate parties. The employer should also consider, under the advice of an attorney, what training or policies need to be developed to prohibit future discrimination.
6. If the claim does not have merit, the extent of the investigation should be carefully documented under an attorney's direction, and the complaining

employee should be given the option of bringing the matter to the attention of a more senior supervisor.

**Q Are All Employers Subject to Anti-Discrimination Laws?**

**A** The general rule is employers that employ fifteen or more employees are prohibited from discriminating on the basis of race, color, sex, national origin, and religion by federal law.<sup>46</sup> Many states have lowered this number so that even very small businesses are restricted by state anti-discrimination laws. *See* Appendix II.

**Q Are Religious Organizations Treated Differently Than Secular Employers?**

**A** The federal government does allow religious groups to discriminate on the basis of religion. 42 U.S.C. 2000e-1 (2000). Under federal law, an employer qualifies for this exemption if it “is established primarily or exclusively to perform religious activities.”<sup>47</sup> Simply conducting business according to religious principles does not qualify for this exemption.<sup>48</sup> Most states with anti-discrimination statutes also provide an exemption from religious anti-discrimination laws for religious organizations. *See* Appendix I. However, Michigan and West Virginia *do not* provide an exemption to state discrimination laws for religious organizations. *See* Appendix I. Local governments like cities and counties may also have discrimination laws to which religious organizations may be subject.

Laws that do not allow religious organizations to discriminate on the basis of religion may not be constitutional. If such a law is affecting your religious organization, you should contact an attorney.

## **Conclusion**

Employers have every right to incorporate their religious principles in their business. As long as the business owner does not discriminate among employees based on religion or attempt to force their beliefs on employees, the workplace can reflect the owner's religious convictions. Given the current ethics crises in the business world, employers should be sure that their business reflects sound religious ethics like integrity, courtesy, and charity.

**Appendix I**  
**State Quick Reference Guide to**  
**Religious Organization Religious Discrimination Exemptions**

<b><u>State</u></b>	<b><u>Code Section</u></b>	<b><u>Type of Exception</u></b>
1. Alabama	Ala. Code § 25-1-20 (2000) (age discrimination only)	None given
2. Alaska	Alaska Stat. § 18.80.300(4) (2001)	Religious org.
3. Arizona	Ariz. Rev. Stat. Ann § 41-1462 (2000)	Religious org./edu. institution
4. Arkansas	Ark. Code Ann. § 16-123-103 (2001)	Religious org.
5. California	Ca. Gov't Code § 12940 (2001)	Religious org./non-profit
6. Colorado	Colo. Rev. Stat. § 24-34-401 (2000)	Religious org.
7. Connecticut	Conn. Gen. Stat. Ann. 46a-81p (2001)	General
8. Delaware	19 Del. Code § 710 (2000)	Religious org.
9. Dist. of Columbia	D.C. Code Ann. § 2-1401.03 (2001)	Religious org./charitable
10. Florida	Fla. Stat. Ann. § 760.10(9) (2001)	Religious org./edu. institution
11. Georgia	Ga. Code Ann. § 45-19-22(5) (2001) (only applies to gov. employers)	None needed
12. Hawaii	Hi. Rev. Stat. § 378-3 (2000)	Religious org./edu. institution
13. Idaho	Idaho Code § 67-5910 (2000)	Religious org./edu. institution
14. Illinois	775 Ill. Comp. Stat. 5/2-101(B)(2) (2001)	Religious org./edu. institution
15. Indiana	Ind. Code Ann. § 22-9-1-3 (2001)	Religious org./edu. institution
16. Iowa	Iowa Code Ann. § 216.6(6)(d) (2001)	Religious org./edu. institution
17. Kansas	Kan. Stat. Ann. § 44-1002(b) (2000)	Non-profit frat./social assoc.
18. Kentucky	Ky. Rev. Stat. Ann. § 344.090 (2002)	Religious org./edu. institution
19. Louisiana	La. Rev. Stat. Ann. §§ 23.302 & 23.332 (2001)	Religious org./edu. instit.
20. Maine	Me. Rev. Stat. Ann. tit. 5 §§ 4553(4) & 4573-A (2000)	Religious org./edu. institution
21. Maryland	Md. Code Ann. art. 49-B § 18 (2000)	Religious org./edu. institution
22. Massachusetts	Mass. Gen. Laws. Ann. ch. 151B § 4 (2000)	General
23. Michigan	Mich. Comp. Laws. § 37.2101 (2001) et seq	None given
24. Minnesota	Minn. Stat. Ann. 363A.20 (2004)	Religious org./service org.
25. Mississippi	Miss. Code Ann. § 25-9-149 (2001) (only applies to gov. employers)	None needed
26. Missouri	Mo. Stat. Ann. § 213.010(7) (2000)	Religious org.
27. Montana	Mont. Code Ann. § 49-2-101(11) (2001)	Religious org.
28. Nebraska	Neb. Rev. Stat. Ann. § 48-1103 & 48-1108 (2001)	General/edu. institution
29. Nevada	Nev. Rev. Stat. §§ 613.320 & 613.350 (2001)	General/edu. institution
30. New Hampshire	N.H. Rev. Stat. Ann. § 354-A:7 (2000)	General
31. New Jersey	N.J. Stat. Ann. § 10:5-12	Religious org.

32. New Mexico	N.M. Stat. Ann. § 28-1-9(B) (2001)	Religious org.
33. New York	N.Y. Exec. Law 296(11) (2001)	Religious org./edu. institution
34. North Carolina	N.C. Gen. Stat. § 143-422.2 (2000) (no state remedies apart from Title VII)	Title VII exemption applies
35. North Dakota	N.D. Cent. Code 14-02.4-08 (2001)	General
36. Ohio	Ohio Rev. Code Ann. § 4112.02 (2001)	General
37. Oklahoma	25 Okla. Stat. Ann. §§ 1307-1308 (2000)	Religious org./edu. institution
38. Oregon	Or. Rev. Stat. § 659A.006 (2007)	Religious org./edu. institution
39. Pennsylvania	43 Pa. Cons. Stat. Ann. § 954(b) (2001)	Religious org.
40. Rhode Island	R.I Gen. Laws § 28-5-6(7)(ii) (2001)	Religious org./edu. institution
41. South Carolina	S.C. Code § 1-13-80(I)(5) (2000)	Religious org./edu. institution
42. South Dakota	S.D. Codified Laws Ann. § 20-13-18(2001)	Religious org.
43. Tennessee	Tenn. Code Ann. § 4-21-405 (2001)	Religious org./edu. institution
44. Texas	Texas Code Ann. Lab. § 21.109 (2000)	Religious org./edu. institution
45. Utah	Utah Code Ann. § 34A-5-102(8)(b) (2001)	Religious org./edu. institution
46. Vermont	Vt. Stat. Ann. tit. 21 § 495 (2001)	Religious org.
47. Virginia	Va. Code Ann. § 2.2-3900 (2001)	No private right of action apart from federal remedies, <i>Ennis v. National Ass'n of Bus. &amp; Educ. Radio</i> , 53 F.3d 55 (4 <sup>th</sup> Cir. 1995); <i>Lamb v. Qualex, Inc.</i> , 28 F. Supp. 2d 374 (E.D. Va. 1998)
48. Washington	Wash. Rev. Code § 49.60.040(3)(2001)	Religious org.
49. West Virginia	W.V. Code § 5-11-9 (2000)	None given
50. Wisconsin	Wis. Stat. Ann. § 111.337 (2000)	Religious org.
51. Wyoming	Wy. Stat. § 27-9-102(b) (2001)	Religious org.

## Appendix II

States with reduced number of employees required to be considered  
an “employer” for purposes of applicability of state anti-discrimination laws  
to private employers:

<u>State</u>	<u># of</u> <u>Employees</u>	<u>Code Section</u>
Alaska	1	Alaska Stat. § 18.80.300(5) (2001)
Arizona	1 (sex harassment only)	Ariz. Rev. Stat. Ann § 41-1461 (2001)
Arkansas	9	Ark. Code Ann. § 16-123-102(5) (2001)
California	5	Ca. Gov’t Code § 12926 (2001)
	1 (for harassment only)	Ca. Gov’t Code § 12940(j)(4)(A) (2001)
Colorado	1	Colo. Rev. Stat § 24-34-301(5)& 401 (2001)
Connecticut	3	Conn. Gen. Stat. Ann. 46a-51(10) (2001)
Delaware	4	Del. Code Ann. tit. 19 § 710(6) (2004)
D. Columbia	1	D.C. Code Ann. § 2-1401.02(10) (2001)
Hawaii	1	Haw. Rev. Stat. § 378-1 (2001)
Idaho	5	Idaho Code § 67-5902 (6) (2000)
Illinois	1 (handicap only)	775 Ill. Comp. Stat. 5/2-101(B)(1)(b) (2001)
Indiana	6	Ind. Code § 22-9-1-3 (2001)
Iowa	4	Iowa Code § 216.6(6)(a) (2001)
Kansas	4	Kan. Stat. Ann. § 44-1002(b) (2000)
Kentucky	8	Ky. Rev. Stat. Ann. § 344.030(2) (2001)
Maine	1	Me. Rev. Stat. Ann. tit. 5 §§ 4553(4) (2000)
Maryland	1	<i>Molesworth v. Brandon</i> , 341 Md. 621, 672 A.2d 608 (1996) (subject to wrongful discharge claim based on public policy only, not enforcement provisions of Md. Ann. Code 49B @ 14 (2001), <i>et seq.</i> )
Massachusetts	6	Mass. Gen. Laws ch. 151B, § 1(5)
Michigan	1	Mich. Comp. Laws § 37.2201(a) (2001)
Minnesota	1	Minn. Stat. § 363A.03(16) (2003)
Missouri	6	Mo. Stat. Ann. § 213.010(7) (2000)
Montana	1	Mont. Code Ann. § 49-2-101(11) (2001)
New Hampshire	6	N.H. Rev. Stat. Ann. § 354-A:2(VII)
New Jersey	1	N.J. Stat. Ann. § 10:5-5 (2001)
New Mexico	4	N.M. Stat. Ann. § 28-1-2 (2000)
New York	4	N.Y. Exec. Law 292(5) (2001)
North Dakota	1	N.D. Cent. Code § 14-02.4-02(7) (2001)
Ohio	4	Ohio Rev. Code Ann. § 4112.01(A)(2) (2001)
Oregon	1	Or Rev. Stat. § 659A.001(4) (2007)
Pennsylvania	4	Pa. Cons. Stat. Ann. § 954(b) (2001)

Rhode Island	4	R.I. Gen. Laws § 28-5-6 (2001)
South Dakota	1	S.D. Codified Laws Ann. § 20-13-1(7) (2001)
Tennessee	8	Tenn. Code Ann. § 4-21-102(4)
Vermont	1	Vt. Stat. Ann. tit. 21, § 495d(1)
Washington	8	Wash. Rev. Code Ann. § 49.60.040(3) (2001)
West Virginia	12	W.V. Code § 5-11-3(d) (2001)
Wisconsin	1	Wis. Stat. § 111.32(6)(a)
Wyoming	2	Wy. Stat. § 27-9-102(b) (2001)

## ENDNOTES

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1. A recent Gallup Poll indicates that only 23% of people believe that business executives have a high degree of honesty and ethics, as compared to 79% for nurses, 62% for teachers, and 56% for engineers. Darren K. Carlson, *Nurses Remain at Top of Honesty and Ethics Poll*, The Gallup Organization, [www.gallup.com](http://www.gallup.com), Nov. 27, 2000. See also, *Cheating is Acceptable on Taxes*, USA Today, April 9, 2001, at 1B (40% of Americans approve of cheating on income taxes in areas like reporting excess business expenses and failing to report income).
  2. Employers should only view this booklet as a general guide. Situations involving specific facts of a particular business should be addressed by that business' legal counsel. This booklet is not intended to address the issue of religion in the government workplace.
  3. *E.E.O.C. v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 621 (9th Cir. 1988), *cert. denied*, 489 U.S. 1077 (1989).
  4. *Id.*
  5. See Endnotes 33 for a list of states that prohibit sexual orientation discrimination by employers, and 34 regarding municipalities.
  6. *Meltebeke v. Bureau of Labor & Indus.*, 903 P.2d 351, 362-63 (Or. 1995) (evangelical Christian employer did not violate state law prohibiting employers from "making religious advances" by witnessing to his employee and inviting him to church).
  7. *Townley*, 859 F.2d at 620.
  8. *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1021 (4th Cir. 1996), *cert. denied*, 522 U.S. 813 (1997). See also *Bodett v. ComCast, Inc.*, 366 F.3d 736 (9th Cir. 2004) (employer was justified in firing supervisor for telling homosexual subordinate that homosexuality is a sin, praying with her to receive salvation, and inviting her to church)
  9. *Taylor v. Nat'l Group of Co's.*, 729 F. Supp. 575 (N.D. Ohio 1989) (employer's gift of a book endorsing secular humanism to new employees on their first day of work did not rise to the level of religious discrimination against a Christian employee).
  10. *Brown Transp. Corp. v. Human Relations Com'n.*, 578 A.2d 555 (Pa. Commw. Ct. 1990).
  11. *Id.*
  12. *Young v. Southwestern Sav. & Loan Assoc.*, 509 F.2d 140 (5th Cir. 1975).
  13. *Brown v. Polk County*, 61 F.3d 650 (8th Cir. 1995), *cert. denied*, 516 U.S. 1158 (1996).

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14. *Kolodziej v. Smith*, 588 N.E.2d 634 (Mass. 1992), *cert. denied*, 522 U.S. 1029 (1997).
  15. Title VII is codified at 42 U.S.C §§ 2000e *et seq.* (2005). It applies to virtually all employers with fifteen or more employees.
  16. *Smith v. Pyro Mining*, 827 F.2d 1081, 1085 (6th Cir. 1987), *cert. denied*, 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).
  17. *Hansard v. Johns-Manville Products*, 5 Emp. Prac. Dec. ¶ 8543 (E.D. Tex. 1973). Compare *Mississippi Employment Sec. Comm'n v. McGlothlin*, 556 So. 2d 324 (Miss. 1990), *cert. denied*, 498 U.S. 879 (1990) (employee's belief was sincerely held even though she was not an active member of her religious group and wore her head wrap only occasionally).
  18. *Cooper v. General Dynamics*, 378 F. Supp. 1258 (N.D. Tex. 1974), *rev'd on other grounds*, 533 F.2d 163 (5th Cir. 1976), *cert. denied*, 433 U.S. 908 (1977).
  19. *E.E.O.C. v. University of Detroit*, 701 F. Supp. 1326, 1331 (E.D. Mich. 1988), *rev'd. on other grounds*, 904 F.2d 331 (6th Cir. 1990).
  20. 42 U.S.C. 2000e(j). The courts and the EEOC have interpreted this provision very liberally. Donald T. Kramer, *Validity, Construction, and Application of Provisions of Title VII of the Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.) and Implementing Regulations, Making Religious Discrimination in Employment Unlawful*, 22 A.L.R. Fed. 580, 602 (1975).
  21. Guidelines On Discrimination Because Of Religion, 29 C.F.R § 1605.1.
  22. *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438-39 (9th Cir. 1993) (summarizing authorities); *see also Redmond v. GAF Corp.*, 574 F.2d 897 (7th Cir. 1978); 22 A.L.R. Fed. at 601-03.
  23. EEOC Dec. No. 71-2620 (1970), CCH EEOC Dec. ¶ 6823; EEOC Dec. No. 71-779 (1970), CCH EEOC Dec. ¶ 6180; EEOC Dec. No. 72-1301 (1972), CCH EEOC Dec. ¶ 6338; *Young v. Southwestern Sav. & Loan Assoc.*, 509 F.2d 140 (5th Cir. 1975).
  24. EEOC Dec. No. 79-6 (1978), CCH EEOC Dec. ¶ 6737; *Brown v. Pena*, 441 F. Supp. 1382 (S.D. Fla. 1977), *aff'd*, 589 F.2d 1113 (5th Cir. 1979).
  25. *Heller*, 8 F.3d at 1439.
  26. *Brown v. Polk County*, 61 F.3d 650, 654-55 (8th Cir. 1995), *cert. denied*, 516 U.S. 1158 (1996).
  27. *Chrysler Corp. v. Mann*, 561 F.2d 1282, 1285-86 (8th Cir. 1977), *cert. denied*, 434 U.S. 1039 (1978); *Chalmers v. Tulon Co.*, 101 F.3d 1012 (4th Cir. 1996), *cert. denied*, 522 U.S. 813 (1997).

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28. Gregory S. Sarno, *Harassment or Termination of Employee Due to Religious Beliefs or Practices*, 35 P.O.F.2d 209, 222 (1983); *EEOC v. Townley Eng'g and Mfg.*, 859 F.2d 610, 614 n.5 (9th Cir. 1988), *cert denied*, 489 U.S. 1077 (1989).
29. *Trans World Airlines v. Hardison*, 432 U.S. 63, 73-74 (1977); *EEOC v. READS, Inc.*, 759 F. Supp. 1150, 1155 (E.D. Pa. 1991); 29 C.F.R. § 1605.2(c).
30. *Riley v. Bendix Corp.*, 464 F.2d 1113, 1115 (5th Cir. 1972); *Reid v. Memphis Publ'g Co.*, 468 F.2d 346, 350-51 (6th Cir. 1972) (the fact that a particular policy is applied uniformly to all employees does not lessen the discriminatory effect upon a particular employee's religious beliefs).
31. In a lawsuit that addressed this issue, *S.D. Myers, Inc. v. City and County of San Francisco*, 253 F.3d 461 (9th Cir. 2001), both sides agreed that providing benefits to unmarried couples would cost more, but could not agree on how much more.
32. Lynn D. Wardle, *Deconstructing Family: A Critique of the American Law Institute's "Domestic Partners" Proposal*, 2001 B.Y.U.L. REV. 1189 (2001).
33. CAL. GOV'T CODE § 12920 (West 2000) (amended 2007); CAL. GOV'T CODE § 12940 (West 2004) (amended 2007); Cal. Lab. Code §§ 1101; 1102 (2005); *Delaney v. Superior Fast Freight*, 18 Cal. Rptr. 2d 33, 35 (Cal. Ct. App. 1993), *rev'd on other grounds*, *Claxton v. Waters*, 34 Cal. 4th 367 (2004); *Gay Law Students v. Pacific Tel. & Tel. Co.*, 595 P.2d 592, 610 Cal. (1979); COLO. REV. STAT. ANN. § 24-34-402 (West 2008); Conn. Gen. Stat. § 46a-81c (2004); D.C. Code Ann. § 2-1402.11 (2005); Haw. Rev. Stat. § 378-2 (2004); 775 ILL. COMP. STAT. ANN. 5/1-102 (West 2008); IOWA CODE ANN. § 216.6 (West 2008); ME. REV. STAT. ANN. tit. 5, § 4572 (2008); Md. Ann. Code 49B @ 16 (2004); Mass. Gen. Laws ch. 151B, § 3,4 (2005); Minn. Stat. § 363.03 (2004); Nev. Rev. Stat. Ann. § 613.330 (Michie 2004); N.H. Rev. Stat. Ann. § 354-A:6, 354-A:7 (2004); N.J. Stat. Ann. § 10:5-4, 10:5-12 (2005); N.M. STAT. ANN. § 28-1-7 (West 2008); N.Y. EXEC. LAW § 296 (McKinney 2008); OR. REV. STAT. ANN. § 659A.030 (West 2008); R.I. Gen. Laws § 28-5-7 (2005); Vt. Stat. Ann. tit. 21, § 495 (2004); WASH. REV. CODE ANN. §§ 49.60.010, 49.60.030 (West 2008); Wis. Stat § 111.36 (2004).
34. Some homosexual rights organizations (e.g. Lambda Legal Defense and Education Fund - [www.lambdalegal.org](http://www.lambdalegal.org)) have published lists of municipalities that prohibit sexual orientation discrimination by private employers. However, mistakes were found in these lists and many of the citations could not be confirmed because of the difficulty of obtaining copies of each municipality's code. Employers should always check the code of each municipality and state where they have business operations and rely on published lists (including those in this publication) only as a starting point for research.
35. *Johnson v. Halls Merch.*, 49 Fair Empl. Prac. Cas. (BNA) EP 527 (W.D. Mo. 1989) (retail business justified in firing sales associate who often began her conversations to customers with the phrase "in the name of Jesus Christ of Nazareth"); *EEOC v. Sambo's of Georgia, Inc.*,

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530 F. Supp. 86 (N.D. Ga. 1981) (restaurant could require all employees to shave beards to protect its public image); *Knight v. Connecticut*, 275 F.3d 156 (2d Cir. 2001) (employer not required to accommodate employees' religious beliefs that they evangelize clients).

36. Private employers should be aware that employee statements regarding illegal activity of employers may be protected under "Whistle Blower" statutes. *See, e.g., Fla. Stat. Ann. § 448.102* (2005).

37. *See* note 35. The fact that the speech to customers actually adversely affects business is vital. A company could not prevent its employees from saying "God Bless You" and "Praise the Lord" to its food service customers because there was no evidence that it had actually caused business to be affected. *Banks v. Service Am. Corp.*, 952 F. Supp. 703 (D. Kan. 1996).

38. *Wilson v. U.S. West Communications*, 58 F.3d 1337 (8th Cir. 1995). However, the court in this case found that the employee's religious belief that she must wear a Pro-Life button depicting an unborn child was reasonably accommodated when the employer offered to let the employee wear the button as long as it was covered, or let the employee wear a button with a similar message, but without the picture of the unborn child. *See also Peterson v. Hewlett Packard, Inc.*, 358 F.3d 599 (9<sup>th</sup> Cir. 2004) (termination of employee for posting Bible passages in his work space condemning homosexuality was not religious discrimination under Title VII).

39. *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486 (M.D. Fla. 1991); *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1475 & 1486 (3d Cir. 1990).

40. *Weiss v. United States*, 595 F. Supp. 1050 (E.D. Va. 1984). *See also Abramson v. William Paterson College of NJ*, 260 F.3d 265 (3d Cir. 2001) (supervisor's criticism of Orthodox Jewish belief not to work on Sabbath could create hostile work environment); *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012 (4<sup>th</sup> Cir. 1996), *cert. denied*, 522 U.S. 813 (1997) (employer did not have to accommodate employee's letter to co-worker stating that he needed to repent of his sin).

41. *Minnesota Dep't of Highways v. Minnesota Dep't of Human Rights*, 241 N.W.2d 310, 313 (Minn. 1976), *cert. denied*, 429 U.S. 863.

42. *Brown v. Polk County*, 61 F.3d 650, 657 (8th Cir. 1995), *cert. denied*, 516 U.S. 1158 (1996). (quoting *Burns v. Southern Pacific Transit Co.*, 589 F.2d 403, 407 (9th Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979)). *See also* EEOC Dec. No. 76-98, EEOC Dec. ¶ 6674 (1976), where an Orthodox Muslim was unlawfully fired for being "overzealous in his practices of his beliefs in his conversation with officers and inmates." The employer fired him because he "cannot be persuaded to tone down his religious practices on the job and continually gets wrapped up in conversations with the inmates." Because there was no evidence that the employee's conduct had made him unable to perform his duties or hampered the efficient operation of the workplace, the employee prevailed in his claim.

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43. *Gunning v. Runyon*, 3 F. Supp. 2d 1423, 1428-29 (S.D. Fla. 1998).
44. EEOC Dec. No. 82-1, EEOC Dec. ¶ 6817 (1982). *See also Bhatia v. Chevron USA, Inc.*, 734 F.2d 1382 (9th Cir. 1984); *E.E.O.C. v. Sambo's of Georgia, Inc.*, 530 F. Supp. 86 (N.D. Ga. 1981) (restaurant could require all employees to shave beards to protect its public image).
45. EEOC Dec. ¶ 6180 (1970). *See also* EEOC Dec. No. 71-2620, EEOC Dec. ¶ 6283 (1971) (where an employer could not fire employee for wearing traditional Islam garb because there was no evidence that requiring employees to wear traditional office attire was necessary to the safe and efficient operation of the business); *Carter v. Bruce Oakley, Inc.*, 849 F. Supp. 673 (E.D. Ark. 1993) (employer could not demonstrate that beard imposed safety risk so there was no undue burden); EEOC Dec. 81-20, EEOC Dec. ¶ 6769 (1981) (employer required to permit employee to wear skirt instead of pants, as required by her religious beliefs).
46. 42 U.S.C. § 2000e-2 & 2000e(b) (2005).
47. William W. Bassett, *Religious Organizations and the Law*, § 6:15 (2001) (citing Internal Revenue Code Section 501(c)(3) and the Revised Model Nonprofit Corporation Act, § 1.40).
48. *E.E.O.C. v. Townley Eng'g and Mfg.*, 859 F.2d 610, 619 (9th Cir. 1988), *cert. denied*, 489 U.S. 1077 (1989) (company that produced mining equipment was not “religious organization” for purposes of Title VII even though it enclosed Gospel tracts in its outgoing mail, printed Bible verses on its commercial documents, financially supported churches, missionaries, a prison ministry, and Christian radio broadcasts, and conducted a weekly devotional service).