RELIGIOUS ACCOMMODATION IN THE WORKPLACE

First Run Broadcast: April 18, 2013
1:00 p.m. E.T./12:00 p.m. C.T./11:00 a.m. M.T./10:00 a.m. P.T. **(60 minutes)**

Expressions of religious belief and the workplace are a potentially volatile combination that can lead to substantial employer liability if an employee is harassed or discriminated against. Liability may arise from employer actions or the actions of other employees, whether proselytizing or otherwise discriminating against employees who do not share the same religious belief. But there's a real tension in the law for employers because employers are also required to make reasonable accommodations of religious belief. Failure to accommodate an employee's beliefs can, as easily as allowing discrimination can, give rise to liability. This program will provide you with a real-world guide to the sources of law in this area, the types of religious discrimination and harassment in the workplace, how employers are required to accommodate religious belief, and best practices to avoid liability.

- Sources of law on religious discrimination and accommodation
- Types of religious discrimination or harassment, including *quid pro quo*, hostile work environment and disparate impact
- Discriminatory action by employers and by other employees
- Employee notification of religious belief that conflicts with work requirements
- Forms of reasonable accommodation of religious beliefs
- Circumstances where religious discrimination is legally defensible, including religious organizations and "BFOQ" requirements

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CASE SUMMARIES:
TITLE VII AND RELIGIOUS DISCRIMINATION

Carol R. Miaskoff

April 17, 2013

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TITLE VII AND RELIGIOUS DISCRIMINATION

I. Religion

A. Definition of "Religion"

Welsh v. United States, 398 U.S. 333 (1970). In a case involving the Universal Military Training and Service Act, the Supreme Court held that the definition of "religion" is not dependent on a belief in a "Supreme Being." A person's beliefs may be deemed "religious beliefs" if those beliefs occupy in the life of that individual a place parallel to that of God in traditional religions. See also United States v. Seeger, 380 U.S. 163 (1965) (in a military induction case, the Court defined "religious belief" as one that is sincere and that occupies in the life of the believer a place parallel to that of God in traditional religions).

Cloutier v. Costco Wholesale Corp., 390 F.3d 126 (1st Cir. 2004). The court found it unnecessary to decide whether membership in the Church of Body Modification is a religious belief where it held that the exemption that the plaintiff sought from the employer's dress code would have posed an undue hardship.

Storey v. Burns Int'l Sec. Servs., 390 F.3d 760 (3d Cir. 2004). The court declined to decide whether being a "Confederate Southern-American" is a sincere religious belief. Granting summary judgment to the employer, the court found no evidence of discriminatory animus and no adverse employment action when an employee was terminated for refusing to remove Confederate flag stickers from his lunch box and pickup truck. See also Chaplin v. Du Pont Advance Fiber Sys., 293 F. Supp. 2d 622 (E.D. Va. 2003) (although the court had no authority to determine whether "Confederate Southern American" is a valid religion, the plaintiffs were not subjected to an adverse employment action when prohibited from displaying the Confederate flag).

Campos v. City of Blue Springs, 289 F.3d 546 (8th Cir. 2002). The evidence was sufficient to demonstrate that an employee who followed the tenets of Native American spirituality was denied compensation for additional work, taken off counseling assignments, denied leave to meet with her dissertation professor, and ultimately forced to quit because her supervisor wanted someone in the job who shared the supervisor's religious beliefs. See also Backus v. Mena Newspapers, Inc., 224 F. Supp. 2d 1228 (W.D. Ark. 2002) (plaintiff stated a claim for disparate treatment based on religion when he alleged that he was terminated not because of his own religious beliefs, but because he did not hold the same religious beliefs as his supervisors).

Seshadri v. Kasraian, 130 F.3d 798 (7th Cir. 1997). An employee bringing a religious discrimination claim need not belong to an established church. An individual who seeks to obtain a privileged legal status because of his religion cannot preclude, however, inquiry into whether he or she has a religion.

Heller v. EBB Auto Co., 8 F.3d 1433 (9th Cir. 1993). "Title VII protects more than the observance of Sabbath or practices specifically mandated by an employee's religion." Title VII's protections encompassed an employee's participation in the religious ceremony in which

his wife and children were converting to Judaism. The employee "testified that the ceremony, and the role of the father and husband in it, is part of the basic teachings of Judaism . . . [and he demonstrated] that he attached the utmost religious significance to the ceremony." "'[T]o restrict the act to those practices which are mandated or prohibited by a tenet of the religion, would involve the court in determining not only what are the tenets of a particular religion, . . . but would frequently require the courts to decide whether a particular practice is or is not required by the tenets of the religion.'"

McDaniel v. Essex Int'l Co., 571 F.2d 338 (6th Cir. 1978). Title VII "applies to all religious observances and is not limited to claims of discrimination based on requirements of Sabbath work."

Chenzira v. Cincinnati Children's Hosp. Med. Ctr., 117 Fair Empl. Prac. Cas. (BNA) 91, 2012 WL 6721098 (S.D. Ohio Dec. 27, 2012). The plaintiff, a hospital customer service representative, was terminated for refusing to be vaccinated for the flu pursuant to the hospital's mandatory policy. The plaintiff alleged that her discharge constituted religious discrimination and denial of accommodation for her religious and philosophical convictions, because she is a vegan, a person who does not ingest any animal or animal by-products. The hospital moved to dismiss, arguing that veganism is a dietary preference or social philosophy, not a religion. Denying the motion, the court found it "plausible that Plaintiff could subscribe to veganism with a sincerity equating that of traditional religious views." The court further noted that its conclusion was bolstered by the plaintiff's citation to essays about veganism and to Biblical excerpts. Although EEOC regulations make it "clear that it is not necessary that a religious group espouse a belief before it can qualify as religious . . . the fact here that Plaintiff is not alone in articulating her view lends credence to her position."

Gadling-Cole v. West Chester Univ., 868 F. Supp. 2d 390 (E.D. Pa. 2012). The plaintiff, a university professor, alleged that she was subjected to a hostile work environment based on religion and that she was denied an Assistant Professor position because, on account of her Baptist religious beliefs, she did not support or advocate on behalf of the LGBTQ (lesbian, gay, bisexual, transgender, and queer) community. Denying the university's motion to dismiss, the court held that the allegations were sufficient for pleading purposes to state a Title VII claim. Considering whether what was at issue was a "religious" belief under Title VII, the court held: "While Plaintiff's claims for religious discrimination are based on the single religious belief that a man should not lay with another man, this does not make Plaintiff's claim any less cognizable under Title VII. . . . Plaintiff's claims are not dependent on her sexual orientation, but instead are wholly based on her religious beliefs." The university argued that, pursuant to this reasoning, discrimination based on "countless social or political topics, such as abortion, the death penalty, and foreign wars, would become actionable under Title VII so long as it coincided with the employee's religion's position on the matter." The court found this argument unpersuasive, noting that courts have held Title VII religious discrimination claims cognizable as to topics that "overlap both the religious and political spectrum, such as abortion, so long as the claims are based on a plaintiff's bona fide religious belief."

Waltzer v. Triumph Apparel Corp., 108 Fair Empl. Prac. Cas. (BNA) 1228, 2010 WL 565428 (S.D.N.Y. Feb. 18, 2010). The plaintiff, a product development manager at the employer's

Manhattan office, requested that she be permitted to leave work at noon on Fridays so she would have sufficient time before sundown to travel to her second home in Pennsylvania, where she preferred to observe the Jewish Sabbath from sundown Friday through sundown Saturday. Following a bench trial, the court ruled in favor of the employer on the plaintiff's denial of religious accommodation claim, reasoning that the plaintiff only showed a sincerely held religious belief that she could neither work nor travel during the Jewish Sabbath, not a belief that she needed to leave work early enough to observe the Sabbath at her Pennsylvania home rather than at her New Jersey home. Even assuming that observing the Sabbath in Pennsylvania was part of the plaintiff's sincerely held religious belief (a contention that was undermined by the fact that she sought to leave invariably by 1:00 p.m. even though the time of sunset fluctuates throughout the year), she failed to put the employer on notice of her need for accommodation since she never disclosed that she was living part time in Pennsylvania and trying to commute there before sundown, but rather only told the employer that she needed to go to the kosher butcher and to prepare mentally for the Sabbath. See also summaries at §§ III.E.4.b and III.E.4.e(1), at pages 23 and 33.

Toronka v. Continental Airlines, 649 F. Supp. 2d 608 (S.D. Tex. 2009). The plaintiff, an airline material specialist, alleged that he was disciplined more harshly by his employer than other workers who had been in on-the-job accidents because he told his employer at the time of the incident that the accident was inevitable as a result of a dream that his wife had about him earlier that day. Rejecting the employer's argument that the claim should be dismissed on the grounds that the plaintiff's beliefs were not "religious," the court found that a moral and ethical belief in the power of dreams that is based on religious convictions and traditions of African descent is a religious belief, citing authorities holding that whether a belief is religious does not turn on its veracity and that a religious belief is one which is based on a theory of "man's nature or his place in the Universe," however "eccentric."

Peterson v. Wilmur Commc'ns, Inc., 205 F. Supp. 2d 1014 (E.D. Wis. 2002). The plaintiff's white Supremacist belief system called "Creativity" is a religion within the meaning of Title VII because it "functions as religion in [his] life." The plaintiff had been a minister in the World Church of the Creator for more than three years, worked to put the church's teachings into practice by reading the "White Man's Bible," and actively proselytized.

Eatman v. United Parcel Serv., 194 F. Supp. 2d 256 (S.D.N.Y. 2002). The employer's appearance policy, which required its drivers with unconventional hairstyles, including dreadlocks, to wear hats, did not constitute religious discrimination. The court held that in this case, plaintiff's "impulse to grow locks was not prompted by a dictate of his religious conscience or engendered by a divine command . . . . [He] candidly admits that '[w]earing [his] locks is a personal choice [he] made in [his] life.' Nowhere does he claim that his own religious tenets require or dictate that particular hairstyle, or that locks are an essential part of his faith, … [and] he conceded that 'locks are a choice' and 'not a mandate.' … it is not enough that [he] also considers his locks a 'testament' or an 'outward expression' of his commitment to Protestantism and the principles of Nubianism."

Swartzentruber v. Gunite Corp., 99 F. Supp. 2d 976 (N.D. Ind. 2000). Membership in the Ku Klux Klan (KKK) is distinguishable from a religious belief. The employee had no claim for

hostile environment harassment because the alleged harassment occurred because of his self-identification as a member of the KKK and not because of his religious beliefs. See also Slater v. King Soopers, Inc., 809 F. Supp. 809 (D. Colo. 1992) (KKK is "political and social in nature" and is not a religion for Title VII purposes).

B. Sincerity

United States v. Seeger, 380 U.S. 163 (1965). In this First Amendment case, the Court stated that "[w]hile the 'truth' of a belief is not open to question, there remains the significant question of whether it is 'truly held.'"

EEOC v. Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico, 279 F.3d 49 (1st Cir. 2002). Evidence tending to show that an employee acted in a manner inconsistent with his professed religious belief is relevant to the factfinder's evaluation of sincerity. However, "at trial the court must be careful in separating the verity and sincerity of an employee's beliefs in order to prevent the verdict from turning on 'the factfinder's own idea of what a religion should resemble.'" In this case, a genuine issue of material fact existed as to whether the plaintiff's objection to union membership, which he asserted was based on his Seventh Day Adventist religious beliefs, was sincerely held, given evidence that he often acted in a manner inconsistent with his professed religious beliefs. The employer argued that his insincerity was exemplified by the facts that plaintiff was divorced, took an oath before a notary upon becoming a public employee, worked five days a week (instead of the six days required by his faith), and did not mention his religious objection to union membership when he initially joined the union but subsequently objected to certain membership requirements.

EEOC v. Ilona of Hungary, Inc., 108 F.3d 1569 (7th Cir. 1997). The element of sincerity is fundamental because "if the religious beliefs that apparently prompted a request are not sincerely held, there has been no showing of a religious observance or practice that conflicts with an employment requirement." The court upheld the lower court's finding that a hair salon employee's request for a day off to observe Yom Kippur satisfied the requirement of a sincerely held religious practice even though she readily conceded she was not a particularly religious person and that she did not observe every Jewish holiday.

Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012). The plaintiff alleged discrimination and denial of accommodation relating to his wearing of a lanyard around his neck printed with the phrase "I Jesus." Attached to the lanyard was a clear plastic badge holder containing a piece of paper with the handwritten words "Jesus Loves You!" and a drawing of a cross. On the reverse side, vertically aligned, was the handwritten message: "F False E Evidence A Appearing R Real." Denying the parties' cross-motions for summary judgment on the plaintiff's claims of discriminatory termination and denial of accommodation, the court held that there was evidence in the record to support the conclusion that the lanyard was a "necessary expression" of the plaintiff's religion, and "[w]hether that belief is sincere is a question of fact that requires trial." In reaching this conclusion, the court noted that Title VII protects "[i]mpulses prompted by dictates of conscience as well as those engendered by divine commands . . . so long as the [plaintiff] conceives of the beliefs as religious in nature."

EEOC v. Aldi, Inc., 103 Fair Empl. Prac. Cas. (BNA) 79, 2008 WL 859249 (W.D. Pa. Mar. 28, 2008). The employer argued that a casual cashier who described herself as a "Christian, Protestant, and a Born Again Christian," did not establish that she had a sincerely held religious belief that it is a sin to work on Sundays or to "support" another person working on Sundays, given that she did not attend church on Sundays. Denying the employer's motion for summary judgment, the court held that the sincerity of the employee's belief "turns on the fact-finder's determination of her credibility" and that there was sufficient evidence to create a question for the jury. The court noted that the plaintiff testified in great depth at her deposition about her religious beliefs, including the fact that she had been a Protestant her whole life and that she had been observing Sunday as the Sabbath for at least as long as she had been working for the employer.

Pozo v. J & J Hotel Co., L.L.C., 2007 WL 1376403 (S.D.N.Y. May 10, 2007). A reasonable jury could find that the plaintiff, a hotel housekeeper, had a sincerely held religious need to be accommodated by having off at least one Sunday per month to attend Mass at her Catholic parish. Although the employer argued that her belief was not sincerely held because she could not identify all the elements of a Catholic Mass and because she mentioned that one reason she would like to be off on the weekends was to be home with her husband, there was also evidence that she was baptized in the Catholic Church and had attended Sunday mass at her parish for approximately 25 years.

Bailey v. Associated Press, 2003 WL 22232967 (S.D.N.Y. Sept. 29, 2003). The employer did not violate Title VII when it denied a request for time off on Sundays from an employee who had not requested Sundays off during years of employment, did not inform the employer that his request was for religious reasons, and testified that he did not attend religious services on Sundays, and was subject to no religious prohibition against working on Sundays.

EEOC v. Chemsico, Inc., 216 F. Supp. 2d 940 (E.D. Miss. 2002). A question of fact existed as to whether an employee who did not follow all of the teachings of her church and stopped attending church services had a sincere religious belief that precluded her from working on the Sabbath. A jury could conclude that the employee had a sincere religious belief, because she continued to engage in Bible study and had consistently refused to work on the Sabbath.

Hussein v. Waldorf-Astoria, 134 F. Supp. 2d 591 (S.D.N.Y. 2001). Employer had a good-faith basis to doubt the employee's sincerity as he had never before engaged in the practice of wearing a beard in his 14 years of employment and had never mentioned his religious beliefs to anyone at the hotel.

Bushouse v. Local Union 2209, UAW, 164 F. Supp. 2d 1066 (N.D. Ind. 2001). The union did not violate Title VII when it required the plaintiff to provide a corroborating statement from a third party that he held a sincere religious belief that precluded him from financially contributing to labor unions.

Burns v. Warwick Valley Cent. Sch. Dist., 166 F. Supp. 2d 881 (S.D.N.Y. 2001). While an employer is not permitted to assess the objective accuracy of a religious belief, it is permitted to

inquire into the religious basis of a request for accommodation in order to assess whether the belief is sincerely held.

EEOC v. IBP, Inc., 824 F. Supp. 147 (C.D. Ill. 1993). The sincerity of an employee's religious beliefs or practices must be determined at the time of the alleged discrimination. Although the employee did not continue to hold his religious beliefs after the employer fired him, he observed the Sabbath while employed by the defendant and lost a second job as a result of his religious practices.

II. Disparate Treatment Based on Religion

A. Religious-Based Statements as Evidence of Discrimination

Hasan v. Foley & Lardner L.L.P., 552 F.3d 520 (7th Cir. 2008). Reversing summary judgment for the employer and remanding the case for trial, the court held that the plaintiff, a Muslim law firm associate of Indian descent, could rely on a comment by a law firm partner who was not his direct supervisor but participated in the adverse employment action as evidence that his termination was based on his religion and national origin. After the terrorist attacks of September 11, 2001, a partner on the firm's management committee (Simon) was overheard remarking, "Those people don't belong here…. [T]hey should kick them all out." The person who overheard the remark understood it to refer to Muslims. The court held that this comment and other record evidence, "while possibly weak proof of discrimination individually, together would allow a jury to infer" that the plaintiff was fired because of his religion and national origin. In addition to the comment at issue, the evidence included comparative evidence regarding performance, assignments, and productivity; a comment to the plaintiff that it was "too bad that [Simon] and those guys took out their religious dispute in Israel on you and had you fired"; and a warning to the plaintiff that he should be "careful" and not "upset any sacred cows" after he posted articles on his office door publicizing his view of Islam as a peaceful religion.

Fisher v. Forestwood Co., 525 F.3d 972 (10th Cir. 2008). Reversing summary judgment for the employer, the Tenth Circuit ruled that the district court should have admitted evidence in support of a former employee's claim that he was not rehired based on his refusal to rejoin the Mormon church, from which he had been expelled. The tape-recorded telephone calls between the plaintiff and his father, who was president of the employer company, revealed that the plaintiff would only have been rehired if he rejoined the Mormon church.

Adelman-Reyes v. Saint Xavier Univ., 500 F.3d 662 (7th Cir. 2007). The court upheld summary judgment for the university on an associate professor's claim that she was denied tenure because of her Jewish faith. Evidence that a colleague overheard the dean call the plaintiff a "liberal union-oriented Jew" and complained that she missed work or university events because of Jewish holidays was insufficient to prove that the cited reasons for the university's decision – negative student comments and declining enrollment trends in her program – were a pretext for religious discrimination by the dean. In reaching this conclusion, the court noted that the alleged discriminatory decision in this case involved multiple layers of independent review typical of a tenure process and that, "in the absence of clear discrimination, we are generally 'reluctant to review the merits of tenure decisions.'"

Ollis v. HearthStone Homes, Inc., 495 F.3d 570 (8th Cir. 2007). The court upheld a jury verdict awarding nominal damages of $1 in favor of a salesman who was a member of Assemblies of God, a Protestant Christian church, who alleged religious discrimination and retaliation when he was terminated. Although it was a close case, there was sufficient evidence for a reasonable jury to have concluded that the plaintiff was terminated because of religious discrimination and because he had complained about the company's encouragement of employees to believe in spirituality and reincarnation, including requiring employees to carry a card outlining the company's views on these topics and encouraging attendance at a "mind body energy" course and coaching sessions during which attendance was taken. Based on this evidence, a reasonable jury could have rejected as pretext the reason cited by the company, i.e., that the plaintiff had sexually harassed a female colleague.

Noyes v. Kelly Servs. Inc., 488 F.3d 1163 (9th Cir. 2007). The plaintiff alleged religious discrimination when she was not promoted because she did not follow the religious beliefs of her supervisor and management, who were members of a small religious group, and the employer instead favored and promoted other members of the religious group. Reversing summary judgment for the employer, the court ruled that while the plaintiff did not adhere to a particular religion, the fact that she did not share the employer's religious beliefs was the basis for the alleged discrimination against her, and the evidence was sufficient to create an issue for trial as to whether the employer's decision to promote another employee was a pretext for religious discrimination.

Burton v. Town of Littleton, 426 F.3d 9 (1st Cir. 2005). A supervisor's alleged statement calling a public school teacher an "old Jew bitch" was insufficient to permit a reasonable jury to conclude that discriminatory animus motivated the teacher's discharge. The remark came "at the end of a testy phone conversation" in which the teacher was informed of her termination, but the decision to terminate had been made prior to the call. Moreover, the teacher had been hired by the same decision makers only two weeks earlier, and there was evidence that she was terminated because a student complained – and other students confirmed – that she had hit him.

EEOC v. WilTel Inc., 81 F.3d 1508 (10th Cir. 1996). A supervisor's statement, following the applicant's rejection, that she did not like the applicant because of her expression of evangelical Christian beliefs, did not constitute direct proof of discrimination. The supervisor did not play a dominant role in interviewing process, and there was no evidence that her aversion to the applicant's religious views was a factor in the final decision. The plaintiff did not demonstrate that she was as qualified as other applicants, and the employer hired an evangelical Christian for the position.

Burroughs v. Chase Manhattan Bank, 2005 WL 497790 (S.D.N.Y. Mar. 2, 2005). The court denied summary judgment to a bank on a former teller's claim of discriminatory discharge because there was evidence that the stated reasons for termination were false. A human resources department representative told the teller, an ordained minister, that she was being terminated because her religious beliefs created a conflict of interest with the bank.

Tyson v. Clarian Health Partners, 2004 WL 1629538 (S.D. Ind. June 17, 2004). The employer's motion for summary judgment was denied where a jury could reasonably infer discriminatory because the plaintiff's supervisor referred to Muslims as "you guys," warned her that people did not like Muslims, and believed that married Muslim women did not work and expressed surprise that the plaintiff continued to work after she got married.

EEOC v. Preferred Mgmt. Corp., 216 F. Supp. 2d 763 (S.D. Ind. 2002). The owner's statements that her company is a Christian company, that her religious beliefs permeate her thinking, and that she makes employment decisions on the basis of religious criteria were direct evidence of religious discrimination where the owner took adverse employment actions against employees who did not share her religious beliefs.

EEOC v. News & Observer Publ'g Co., 180 F. Supp. 2d 763 (E.D.N.C. 2001). A supervisor's comments that religion has no place in the workplace and that the employee's religious views would hurt the newspaper's circulation were stray comments, which did not demonstrate discrimination based on the employee's belief that Christian teachings could transform gay men and lesbians into heterosexuals.

B. Employer Knowledge of Employee's Religion

Mousa v. Capital Area Human Servs. Dist., 2012 WL 602690 (5th Cir. Feb. 23, 2012) (unpublished). The fact that the employer knew the plaintiff's ethnicity (Egyptian) from his employment interview was insufficient evidence from which to infer that the employer knew his religion (Muslim).

Reed v. Great Lakes Cos., 330 F.3d 931 (7th Cir. 2003). The court upheld summary judgment for the employer on a claim by a hotel employee that he was subjected to religious discrimination when his supervisor fired him for walking out of a meeting with members of a religious group during which the group began to pray and read the Bible. There was "no indication that Reed was fired because of his religious beliefs, identity, or observances or because of his aversion to religion, to Christianity, or to the Gideons, whatever the case may be." The court noted that Reed refused to tell anybody what his religious beliefs – or lack thereof – were, and "it is difficult to see how an employer can be charged with discrimination on the basis of an employee's religion" when the employee has not revealed his religion or even attested that his beliefs differ from his employer's.

Lubetsky v. Applied Card Sys., Inc., 296 F.3d 1301 (11th Cir. 2002). The decision to rescind a job offer made to an Orthodox Jewish job applicant did not constitute religious discrimination because the evidence showed that the decision maker had no prior knowledge of the applicant's religion but rather based the rescission of the offer on the applicant's personality and demeanor during an earlier encounter.

Middleton v. Deblasis, 844 F. Supp. 2d 556 (E.D. Pa. 2011). The plaintiff, a law enforcement officer, alleged constitutional and Title VII violations, including that she was subjected to continuous and frequent derogatory comments regarding her religion (e.g., calling her "the blessed one" and telling her that she "wouldn't be going to church anymore") and was denied

permission to attend religious services during lunch breaks as had previously been permitted for her and other officers while on duty. The defendants argued that they could not be liable because they were not aware of the plaintiff's religion. Rejecting this argument, the court held that the nature of the allegations was sufficient to permit an inference that the defendants were aware of the plaintiff's religion.

Davis v. Mothers Work, Inc., 2005 WL 1863211 (E.D. Pa. Aug. 4, 2005). An African-American Muslim hired as a part-time supervisor at a retail clothing store claimed that the employer sent her home from work, made unfavorable changes to her work schedule, and discharged her based on her race and religion and in retaliation for her complaints about racial and religious discrimination. The employer responded to the religious discrimination claim by asserting that the supervisor mistakenly believed that the plaintiff, who wore religious overgarments, was Mormon rather than Muslim, and therefore the requisite "knowledge" of the plaintiff's religion could not be established. In rejecting this argument, the court ruled that even if the decision maker truly believed plaintiff was Mormon, it would be sufficient for Title VII purposes that he knew the garments were religious, even if he was mistaken regarding the specific religion.

C. The Plaintiff's Replacement

Murray v. Kaiser Permanente, 2002 WL 31805454 (6th Cir. Dec. 10, 2002) (unpublished). An employee who was terminated after making several errors did not establish a prima facie case of religious discrimination because she failed to allege that she was replaced by an individual of a different religion.

Thompson v. St. Johns Unified Sch. Dist., 2002 WL 72895 (9th Cir. Jan. 17, 2002) (unpublished). A Catholic plaintiff failed to establish that his Mormon employer favored Mormons in the hiring process because three of four people hired were, like plaintiff, also Catholic.

Andrews v. Virginia Union Univ., 102 Fair Empl. Prac. Cas. (BNA) 580, 2007 WL 4143080 (E.D. Va. Nov. 19, 2007). Denying the university's motion to dismiss, the court held that the plaintiff, an Assistant Professor of Social Work and the Chairperson of the Department of Social Work, stated a claim of religious discrimination, failure to accommodate, and retaliation. The plaintiff, who was an ordained Baptist minister, had for many years been addressed as "Reverend" by students, faculty, and the administration. When a new administrator ordered that faculty be addressed only by their academic titles, the plaintiff complained that the order discriminated against her based on her religious beliefs. Shortly thereafter, the university refused to renew her appointment as department Chair, notwithstanding that she apparently had been quite effective in that role and had been named Outstanding Faculty Member of the Year for the previous year. The university also subsequently demoted her and replaced her with another woman who was Baptist but, unlike the plaintiff, did not publicly manifest her religion by using a religious title. The district court ruled that the plaintiff's disparate treatment claim, which was based not on the allegation that she was replaced by someone of a different religion but rather by someone with less outward identification of religious belief, stated a claim on which relief could be granted.

Gee v. Dallas, 2002 WL 31627253 (N.D. Tex. 2002). The employee's claim that he was terminated because he was not a Mormon failed since he could not show that he was replaced by a Mormon.

D. Similarly Situated Comparators

Bodett v. Coxcom, Inc., 366 F.3d 736 (9th Cir. 2004). The court granted summary judgment to the employer, finding that an evangelical Christian supervisor failed to show that her employer discriminated against her on the basis of her religion when it fired her for harassing a lesbian employee. The supervisor failed to establish religious discrimination because she did not show evidence of discriminatory animus, i.e., that any similarly situated employee outside the protected class was treated more favorably, or other evidence sufficient to support an inference of discrimination.

Peterson v. Hewlett-Packard Co., 358 F.3d 599 (9th Cir. 2004). The employer did not violate Title VII when it terminated for insubordination a Christian employee who refused to remove biblical scriptures that condemned homosexuality from an area of his workspace that was visible to coworkers and customers. The employee asserted that his termination constituted disparate treatment in that he was not allowed to display messages conveying his religiously motivated disapproval of homosexuality while the company displayed diversity posters approving of homosexuality and other employees displayed religious and secular messages. The court held that they were not similarly situated because the plaintiff's activities were intended to be hurtful or critical of other employees and violated the company's anti-harassment policy while the other employees' activities and the company's diversity posters did neither.

Kosereis v. Rhode Island, 331 F.3d 207 (1st Cir. 2003). A Turkish-born Muslim who worked as a vocational teacher at a juvenile correctional facility failed to show that his discipline for absenteeism and tardiness was a pretext for disparate treatment. The teacher did not show that he was treated differently from similarly situated non-Muslim teachers where he presented no evidence to show that other teachers who were absent or tardy were not disciplined. Other alleged instances of failure to discipline non-Muslim teachers were not sufficiently similar to the facts and circumstances which led to his being disciplined. One incident where the plaintiff was improperly reprimanded for falsification of time records was not sufficient to show pretext where he admitted a history of absenteeism and tardiness which warranted the supervisor's erroneous belief that he had engaged in misconduct.

Tyson v. Clarian Health Partners, 2004 WL 1629538 (S.D. Ind. June 17, 2004). The court denied the employer's motion for summary judgment because a reasonable jury could find that the decision to discipline and ultimately terminate the plaintiff, a hospital employee, for using the shower in an empty patient room to perform a ritualistic washing prior to prayer was motivated by discrimination, in light of evidence that non-Muslim employees who used empty patient bathrooms were not disciplined.

Nichols v. Caroline Cnty. Bd. of Educ., 2004 WL 350337 (D. Md. Feb. 23, 2004), aff'd, 2004 WL 2699962 (4th Cir. Nov. 29 2004) (unpublished). A school teacher who was a Jehovah's Witness failed to show that he was discriminated against because of his religion when the school

board frequently observed him in the classroom, placed him on a performance improvement plan, gave him a negative evaluation, downgraded his teaching certificate, and ultimately terminated him. The school board had legitimate, nondiscriminatory business reasons for its actions. For instance, the teacher frequently subjected students to his personal religious views and gave them an assignment to use biblical references to write a paper on Jesus' crucifixion and resurrection. While other teachers made references to religious topics in the classroom, those religious references occurred in the context of historical lessons and did not impose the teachers' personal religious views on the students.

E. Employer's Reasons

Tsaganea v. City Univ. of New York, Baruch Coll., 2011 WL 4036101 (2d Cir. Sept. 13, 2011) (unpublished). Affirming summary judgment for the employer, the court held that the selection of other candidates over the plaintiff for interview for a full-time faculty position was not pretext for national origin and religious discrimination in violation of Title VII, where the plaintiff had fewer publications than any of the interviewed candidates and his references were not as strong.

Adams v. Trustees of the Univ. of N.C.-Wilmington, 640 F.3d 550 (4th Cir. 2011). Affirming summary judgment for the University defendant, the court held that the plaintiff, an associate professor of criminology, failed to show that he was denied promotion to full professor because of his religion. The record showed that after becoming a Christian, the plaintiff "became increasingly vocal about various political and social issues that arose within both the UNCW community and society at large." To establish that he was denied promotion under circumstances giving rise to an inference of unlawful discrimination, the plaintiff alleged that he was the only Christian conservative in his department and that he was the only professor in the past 25 years with teaching awards and 10 or more refereed publications to be denied promotion to full professor. Concluding that the plaintiff had not established a prima facie case, the court stated that although the plaintiff contended that he was the only "conservative Christian," he had presented no evidence that he was the only Christian in the department. Furthermore, "[a]lthough some of his writings contained religious content and were considered during the decision-making process, that fact, in and of itself, [did] not give rise to an inference of discrimination." Concluding that the plaintiff also failed to show pretext, the court noted that the plaintiff's attempt to compare his qualifications to those of other professors "ignore[d] 'the inevitable element of subjectivity' involved in promotion decisions in the university setting" and that the plaintiff could not rely on his own assertions of discrimination to counter substantial evidence of nondiscriminatory reasons.

DeFreitas v. Horizon Inv. Mgmt., 577 F.3d 1151 (10th Cir. 2009). The plaintiff, who was terminated from her position with a property management company while she was on medical leave recuperating from a hysterectomy, alleged discriminatory discharge based on favoritism toward Mormon employees. The employer's alleged reasons for the termination included the plaintiff's poor interpersonal skills, filing a false time slip, and poor job performance. As evidence of discriminatory intent, the plaintiff cited the following: other Catholic staffers were also fired, whereas a Mormon employee was promoted notwithstanding a reputation for swearing at employees; religious discussion permeated the workplace; and the company president gave her religious literature and made religion-based comments, including joking about converting the

plaintiff to Mormonism, commenting that another employee who, unlike plaintiff, did not return to work after having a child was a "good Mormon girl," and referencing "Ecclesiastes 3" in the plaintiff's termination e-mail. Affirming summary judgment for the employer, the court ruled that while there was evidence of partiality toward Mormon employees, there was insufficient evidence to permit a reasonable factfinder to infer religious animosity toward the plaintiff, given undisputed evidence that she initiated religious conversations, that her Catholicism was well known throughout her tenure, and that she had been treated well, including receiving large raises. The court concluded, however, that a reasonable jury could conclude that the plaintiff was fired for missing too much work, and therefore, it allowed her FMLA claim to proceed.

Steadman v. Urban Retail Props. Co., 2008 WL 2497692 (7th Cir. June 24, 2008) (unpublished). The plaintiff alleged that she was fired because of her atheism after a dispute with a coworker, whose openly religious conduct offended the plaintiff. The dispute arose after the coworker made an overtly religious statement in the plaintiff's presence, and the two met to "discuss their differences." After the meeting, the coworker filed a complaint against the plaintiff, alleging that the plaintiff had blocked the office door and that she felt physically threatened by the plaintiff. The employer conducted an investigation but could not determine who was telling the truth, advising both workers that they should engage in only "cordial business interaction." Following this, the plaintiff continued to complain that the coworker had lied about feeling physically threatened and demanded that the coworker "take responsibility for her lies." After meeting with the plaintiff again, the employer decided to terminate her because she was unwilling to accept the employer's resolution of the dispute and move forward. Affirming summary judgment for the employer, the court concluded that the plaintiff effectively conceded that the reason for her termination was her dissatisfaction with the employer's response to her complaints rather than her religion and that even apart from this concession, she had failed to adduce evidence from which a jury could infer that her atheism was the reason for her discharge given that the employer knew of her atheism during the many years of her complaints about prior incidents and had issued her a positive performance review during the midst of those complaints.

Rice v. City of Kendallville, 2009 WL 857463 (N.D. Ind. Mar. 31, 2009). The plaintiff, a municipal water department employee, was supervised by an individual who was a pastor at Grace Christian Church, which the plaintiff had visited four or five times even though he did not subscribe to the same beliefs or practices as his supervisor. The plaintiff's supervisor displayed religious signs and a poster of Jesus in the workplace, as well as a note about overtime that stated "Remember, you are Christians. Be true to your word," and he made numerous hostile comments to the plaintiff in front of other employees condemning him in religious terms for engaging in pre-marital sex and other conduct that the supervisor disapproved of. After an altercation with an employee in the clerk's office, the plaintiff was terminated. The court denied summary judgment to the employer on the plaintiff's claim that he was subjected to religious discrimination when he was terminated while a coworker who attended the supervisor's church and had engaged in similar misconduct was not even disciplined. The court ruled that the evidence of pretext was sufficient to infer discriminatory intent where the plaintiff showed that he was meeting performance expectations, that his supervisor had threatened to discipline or fire him for objecting to religious instructions and moral judgments about his lifestyle, and that the employer had retained the plaintiff's disciplinary record beyond the three-year expungement period.

F. Relationship Between Religious Discrimination and "Neutral" Factors

1. Employee Misconduct

Jordan v. Conway, 2011 WL 4537134 (11th Cir. Oct. 3, 2011) (unpublished), cert. denied, 132 S. Ct. 1975 (2012). The plaintiff, a deputy sheriff, was terminated following an incident in which he appeared at his ex-wife's church, after having been told by the pastor on previous occasions not to return. Granting summary judgment for the employer, the court held that the plaintiff failed to establish a prima facie case of religious discrimination under Title VII based on circumstantial evidence. No one from the sheriff's department had ordered him to stay away from the church until after the incident in question, and therefore, the plaintiff could not have been terminated for failing to comply with a defendant requirement that he avoid the church.

Malouse v. Winter, 2009 WL 1577670 (5th Cir. 2009) (unpublished). In an MSPB claim, the plaintiff, a civilian pharmacist employed by the Department of the Navy, alleged that he was subjected to discrimination based on his religious objection to dispensing emergency contraceptives. Affirming summary judgment for the agency, the court found that there was no evidence that the legitimate, nondiscriminatory reasons proffered for the plaintiff's termination were pretextual, given the plaintiff's numerous instances of misconduct and extensive disciplinary record.

EEOC v. Trans States Airlines, Inc., 462 F.3d 987 (8th Cir. 2006). Summary judgment for the employer was affirmed on a claim that the discharge of a probationary Muslim airline pilot of Indian descent was motivated by race, national origin, and religious discrimination. The Vice President of Flight Operations fired the pilot on September 13, 2001, based on an anonymous phone call that a pilot named Hussein had been seen in a hotel bar near the airport drinking while in uniform. The incident occurred while all air travel was suspended in the days following September 11th. Initially, noting that the plaintiff was not Arab, the court rejected EEOC's contention that it would "defy belief" and "ignore common sense" for a jury to conclude that the vice president did not mistakenly assume that someone named Hussein was Arab. The court rejected the EEOC's further contention that the case should be submitted to a jury on the grounds that the employer's explanation for the termination – that the plaintiff was dismissed based on an anonymous phone call without an investigation of his misconduct – was "inherently incredible." The court reasoned that the collective bargaining agreement controlled and did not require "just cause" or "notice" before a probationary employee was fired and that the EEOC did not provide any evidence that similarly situated probationary pilots were treated more favorably.

Bodett v. CoxCom, Inc., 366 F.3d 736 (9th Cir. 2004). The employer prevailed on a claim brought by a terminated employee for disparate treatment based on religion; the employee's violation of employer's anti-harassment policy was a legitimate nondiscriminatory reason for termination, even if the violations were motivated by the employee's religious beliefs.

Reed v. Great Lakes Cos., 330 F.3d 931 (7th Cir. 2003). A hotel did not engage in religious discrimination when it terminated for insubordination an employee who walked out of a meeting he was required to attend with his supervisor and members of the Gideons, a nonprofit Christian

group that engages in evangelism by distributing free Bibles. Unlike previous meetings at which they had simply delivered Bibles to the hotel, at this meeting the Gideons prayed and read Bible verses. The court held that while the employer could not compel an atheist employee to participate in religious activity, there was no evidence to show the employee was fired for his religious views, since the supervisor did not know the employee's religious beliefs and the employee never indicated that he had any religious objection to the meeting.

Chalmers v. Tulon Co. of Richmond, 101 F.3d 1012 (4th Cir. 1996). An evangelical Christian employee who was discharged for sending religiously motivated letters to the home of her supervisor and a coworker accusing them of immoral conduct and encouraging them to get their lives "right" failed to establish disparate treatment based on religion. The employer's proffered reasons for discharging plaintiff – because her letters, which criticized her fellow employees' personal lives and beliefs, invaded the employees' privacy, offended them and damaged her working relationships – were legitimate and nondiscriminatory.

Averett v. Honda of Am. Mfg., Inc., 2010 WL 522826 (S.D. Ohio Feb. 9, 2010). The plaintiff, a production associate in an automobile engine plant, complained to management that coworkers were taunting her and conspiring against her, and she was disciplined and terminated for repeatedly making written and oral statements that, on judgment day, God would punish the coworkers who were harassing her. The employer maintained that these statements violated a company policy prohibiting abusive or threatening language to or about coworkers and that the plaintiff was coached about violating the policy but continued to make similar statements, thus warranting her discharge. Granting summary judgment to the employer on the plaintiff's claim of disparate treatment based on religion, the court found that there was no reasonable inference that the employer acted out of religious animus in interpreting its facially neutral policy to prohibit the plaintiff's threatening statements to coworkers, even if the statements were motivated by the plaintiff's religious convictions. "[N]o one told [p]laintiff she was being disciplined because of what she believed. [She was told] that although she was entitled to her religious beliefs, she should not make statements that could be perceived as threatening." Moreover, to the extent the plaintiff claimed denial of accommodation, Title VII did not require the employer to allow her to impose her religious beliefs on others or to otherwise infringe on the rights of coworkers.

McIntyre-Handy v. West Telemktg. Corp., 97 F. Supp. 2d 718 (E.D. Va. 2000), aff'd, 238 F.3d 413 (4th Cir. 2000) (per curiam) (Table). An employee did not establish a mixed-motives case when he alleged that his employer terminated him in part for telling a caller/customer that he was an atheist. The employee's blatant rudeness to callers and derogatory remarks about one of the employer's clients in violation of company policy were legitimate, nondiscriminatory reasons for terminating her. Additionally, the employer reasonably accommodated the employee's atheism by transferring her to a group that did not answer calls from religious organizations.

2. Uniformly Applied Employer Policies

Tepper v. Potter, 505 F.3d 508 (6th Cir. 2007). A Jewish letter carrier was not subjected to unlawful religious discrimination when, due to decreased staffing and other employees' objections, the Postal Service stopped its longstanding practice of not scheduling him to work on

Saturdays, but allowed him to use annual leave and leave without pay to take off on Saturdays and allowed him to exchange days off with other letter carriers. In response to his argument that his use of unpaid leave reduced his annual pay and future pension, the court held that he was "simply not being paid for time that he ha[d] not worked," so there was no materially adverse employment action. In rejecting the argument that he was treated less favorably than his coworkers because other full-time letter carriers were able to avoid working on their Sabbath, which was Sunday, the court reasoned that the letter carriers "are granted Sunday off not so that they may celebrate their Sabbath, but because it fits the needs of their employer," who did not need many employees on Sundays when there was no regular mail delivery.

Winnie v. City of Buffalo Police Dep't, 2003 WL 251951 (W.D.N.Y. Jan. 13, 2003). A Native American police officer failed to establish disparate treatment based on his religion when he was required to use vacation days to attend a two-day religious observance which occurred while he was on medical leave. The evidence showed that his employer uniformly applied its confinement policy, which required any officer on medical leave to use vacation days if he left his place of confinement for an extended time period.

3. Objections to Homosexuality

Walden v. Centers for Disease Control & Prevention, 669 F.3d 1277 (11th Cir. 2012). See summary at § III.4.e(2), at page 36.

Matthews v. Wal-Mart Stores, Inc., 111 Fair Empl. Prac. Cas. (BNA) 1774, 2011 WL 1192945 (7th Cir. Mar. 31, 2011) (unpublished). The plaintiff was terminated for making comments to a lesbian coworker that lesbians and gay men are sinners and will "go to hell." Affirming summary judgment for the employer, the court held that the termination was not religious discrimination, because the comments at issue could reasonably have been interpreted as harassment based on sexual orientation in violation of the company's anti-discrimination policy. In rejecting the plaintiff's argument that the employer should have accommodated her comments by excusing any violation of the harassment policy as based on religious beliefs, the court ruled that "such an accommodation could place Wal-Mart on the 'razor's edge' of liability by exposing it to claims of permitting workplace harassment." The court also concluded that coworkers who participated in the conversation but were not terminated were not similarly situated as none of them commented on someone's "individual status, homosexuality or race," and there was no evidence of other employees who had violated the harassment policy and not been fired.

Patterson v. Indiana Newspapers, 589 F.3d 357 (7th Cir. 2009). The plaintiffs, two former newspaper editorial writers, alleged that they were subjected to adverse actions – one was transferred and the other was discharged – motivated by animus toward their Christian religious belief that homosexual conduct is sinful. The court noted that a plaintiff may proceed on a claim that "her supervisors, though also Christian, did not like her brand of Christianity," because "[t]he issue is whether plaintiff's specific religious beliefs were a ground for" an adverse employment action. However, the court affirmed summary judgment for the employer because the plaintiffs failed to introduce evidence permitting an inference that their religious belief against homosexual conduct, as opposed to the violation of company rules, motivated the employment actions at issue.

Pedreira v. Kentucky Baptist Homes for Children, Inc., 579 F.3d 722 (6th Cir. 2009). The plaintiffs, a terminated lesbian employee and a lesbian prospective applicant, challenged the employer's policy of terminating gay and lesbian employees as religious discrimination under Title VII. The terminated plaintiff was discharged from her position as a family specialist at a facility for abused and neglected children after management discovered a photograph of the plaintiff and her partner at an AIDS fundraiser, and the termination notice indicated she was fired "because her admitted homosexual lifestyle is contrary to [the employer's] values." After she was terminated, the employer announced as its official policy that "[i]t is important that we stay true to our Christian values. Homosexuality is a lifestyle that would prohibit employment." Affirming the dismissal of the terminated plaintiff's religious discrimination claims, the court held that she had failed to allege any particulars about her religion or her religious differences with the employer that would permit an inference of religious discrimination. The plaintiff was required to "'show that it was the religious aspect of her conduct that motivated her employer's actions.'" "While there may be factual situations in which an employer equates an employee's sexuality with her religious beliefs or lack thereof," the complaint in this case was properly dismissed for failure to state a claim.

Gadling-Cole v. West Chester Univ., 868 F. Supp. 2d 390 (E.D. Pa. 2012). The plaintiff, a university professor, alleged that she was subjected to a hostile work environment based on religion and that she was denied an Assistant Professor position because, on account of her Baptist religious beliefs, she did not support or advocate on behalf of the LGBTQ (lesbian, gay, bisexual, transgender, and queer) community. Denying the university's motion to dismiss, the court held that the allegations were sufficient for pleading purposes to state a Title VII claim. "At this early procedural posture, the Court does not have the benefit of discovery to determine whether the Plaintiff was discriminated against because of her Baptist religion or rather was disliked by the Social Work department because of her personal animosity towards the LGBTQ community. Once a record is developed, the court will have the ability to examine relevant factors in determining whether the Plaintiff was discriminated against because of her Baptist faith including for example: whether the Faculty Defendants were aware the Plaintiff was a Baptist, whether discussions about Plaintiff's religion occurred, whether derogatory comments about the Plaintiff's Baptist faith were made, whether the Plaintiff was forced to conform to another's religious precepts and whether the Plaintiff was the only member of the Social Work Department required to advocate on behalf of the LGBTQ community or alternatively whether Plaintiff was treated the same as non-Baptist employees . . . . In addition, on a motion for summary judgment, the parties will be able to address whether Plaintiff's refusal to support the LGBTQ community created an undue hardship on West Chester's Social Work Department and whether Plaintiff's animus prevented the effective teaching and counseling of students."

Schwartzberg v. Mellon Bank, N.A., 2009 WL 162885 (3d Cir. Jan. 26, 2009) (unpublished). The plaintiff, an Orthodox Jew with a religious belief that homosexuality is immoral, sent correspondence to coworkers expressing this belief in strident terms. After the first instance, management issued him a warning and advised him that the conduct violated its harassment policy and would not be tolerated. After the second instance, he was given a "final written warning," informing him that subsequent violations could result in termination. He was subsequently terminated for four instances of sleeping on the job. He brought suit under Title

VII, alleging that the termination constituted discrimination based on his religious beliefs. Granting summary judgment to the employer, the district court held that because the plaintiff conceded that there was no conflict between his religious beliefs and the employer's prohibition against denigrating coworkers based on sexual orientation, the employer therefore had no duty to accommodate. The district court also noted that the employer had not required the plaintiff to change his religious beliefs or to participate in any affinity group events to which he objected on religious grounds. On appeal, the Third Circuit found "no basis for disturbing the District Court's rulings" and therefore affirmed the judgment "for substantially the same reasons."

Piggee v. Carl Sandburg Coll., 464 F.3d 667 (7th Cir. 2006). The plaintiff, a cosmetology instructor at a community college, brought an action under 42 U.S.C. § 1983 alleging violation of her First Amendment rights when she was instructed to refrain from engaging in speech related to her religious beliefs and her employment contract was not renewed. The plaintiff had given a gay student two religious pamphlets condemning homosexuality, telling him to read the materials later and inviting him to discuss them with her. She also gave various religious pamphlets to other students as part of her religiously motivated effort to "witness." Upon receipt of a student complaint, the college notified the plaintiff that her conduct was deemed inappropriate and in violation of the school's anti-harassment policy. Applying Garcetti v. Ceballos, 547 U.S. 410 (2006), the court affirmed summary judgment for the employer, concluding that the plaintiff's First Amendment rights were trumped by the defendant's interest in promoting a non-disruptive classroom setting, noting that even though only one student had filed a formal complaint, numerous others had noted her proselytizing on their class evaluations.

Peterson v. Hewlett-Packard Co., 358 F.3d 599 (9th Cir. 2004). The employer did not violate Title VII when it terminated a Christian employee for insubordination after he responded to the employer's diversity initiative by posting biblical scriptures condemning homosexuality and refusing to remove them when asked to do so. The employee's statement that he posted the scripture in an area visible to coworkers and customers because he intended for the scriptures to hurt and condemn homosexuals and lead them to repent revealed that the posting was a violation of the employer's harassment policy. The court found that there was no evidence that the employee was terminated because of his religious views, noting in particular that the company did not object when the local newspaper printed a letter from the employee which condemned the company's diversity policy, nor did the company punish the employee for a bumper sticker on his car which stated "Sodomy is not A Family Value."

Bruff v. North Miss. Health Servs., Inc., 244 F.3d 495 (5th Cir. 2001). The plaintiff, one of three counselors at a health service, requested that she be exempt from counseling clients who were homosexual, involved in extramarital relationships, or engaged in other conduct contrary to her religious beliefs. Accommodating her desire not to engage in such counseling would constitute an undue hardship because it would require the other counselors to assume a disproportionate workload. The employer reasonably accommodated her when it offered to give her 30 days and the assistance of its in-house employment counselor to find another position at the hospital, where the likelihood of encountering conflicts with her religious beliefs would be reduced.

Slater v. Douglas Cnty., 743 F. Supp. 2d 1188 (D. Or. 2010). The court denied the parties' cross motions for summary judgment where the plaintiff, a county clerk's office employee, alleged

denial of accommodation and discriminatory termination when the county denied her request to be excused from processing paperwork related to domestic partnership registrations because of her religious belief that homosexuality is a sin.

Buonanno v. AT&T Broadband, L.L.C., 313 F. Supp. 2d 1069 (D. Colo. 2004). The court concluded that the employer wrongfully terminated the plaintiff after he refused to sign a diversity policy requiring him to "respect and value the differences in all of us," even though he explained that he refused to sign it because he could not value homosexuality as it was contrary to his Christian religious beliefs. The court found that by terminating the plaintiff for his refusal to sign the diversity policy, the employer failed to accommodate his religious beliefs. The court noted that the plaintiff had agreed to treat all of his coworkers respectfully and not discriminate against them, but had refused to sign the statement as worded by the employer because he reasonably believed that it required him to condone homosexuality in contravention of his religious beliefs.

III. Harassment Based on Religion

Prowel v. Wise Bus. Forms, Inc., 579 F.3d 285 (3d Cir. 2009). The plaintiff, a machine operator, alleged that he was harassed based on sex (gender stereotyping) and religion, and terminated in retaliation for his harassment complaints. Affirming summary judgment for the employer on the plaintiff's claim of religious harassment, the court ruled that while Title VII prohibits not only harassment against an employee because of his own religious beliefs but also harassment of an employee for failure to conform to the employer's religious beliefs, the plaintiff's identification of the religious beliefs at issue as "that a man should not lay with a man" and that his coworkers viewed his status as a gay male as "contrary to being a good Christian" leads "ineluctably" to the conclusion that he was fired not because of religion but because of his sexual orientation.

Thompson v. Carrier Corp., 2009 WL 4980425 (11th Cir. Dec. 23, 2009) (unpublished). Affirming summary judgment for the employer on the plaintiff technician's claim of a hostile work environment based on religion, the court found that the alleged actions were not based on religion. The plaintiff acknowledged that some of the alleged harassment stemmed not from her religion but rather from her tendency to fall asleep on the job and from litigation she pursued against a former employer. Moreover, the court held, the two comments made to the plaintiff "with an arguably religious theme" (that a shirt she wore with a religious theme was a "nasty look" and that a Christian should be able to handle harassment) did not rise to the level of severe or pervasive harassment required by law.

Rivera v. Puerto Rico Aqueduct & Sewers Auth., 331 F.3d 183 (1st Cir. 2003). While conduct need not be explicitly religious to constitute harassment, a plaintiff who alleges harassment based on religion must show that the alleged discriminatory conduct was not merely tinged with remarks abhorrent to her religion, but was actually directed at her because of her religion. There was insufficient evidence to show that the plaintiff, a charismatic Catholic, was subjected to a hostile work environment because of her religion when her coworkers nicknamed her Mother Teresa, sang a Christmas carol to her, and gave her a birthday card which portrayed a pig wearing a rosary bead. While a person with the plaintiff's religious beliefs could find the co-workers actions offensive, there was no evidence that the actions were motivated by religious

animus, but rather that the conduct occurred because the office had an unprofessional environment where employees regularly swore and engaged in crude horseplay.

Abramson v. William Paterson Coll., 260 F.3d 265 (3d Cir. 2001). The plaintiff is not required to show direct proof that the employer's intent was to create a discriminatory environment; the intent to discriminate can be inferred from the employer's conduct. In this case, almost all of the incidents were related to the plaintiff's insistence that she not work during the Sabbath, and thus, the evidence showed that the harasser's conduct was intentionally directed toward the plaintiff because of her religion.

Zidan v. Maryland, 115 Fair Empl. Prac. Ca. (BNA) 884, 2012 WL 2923150 (D. Md. July 17, 2012). The plaintiff, an Egyptian Muslim who wore a modified cap as a religious accommodation, alleged that she was subjected to religious harassment by her coworkers at a maximum security correctional facility. The plaintiff alleged that "she was arbitrarily segregated from co-workers, laughed and stared at by co-workers, and prevented from performing her job duties." The court noted, however, that the plaintiff had conceded that no one had made any religious comments or slurs. The comments by the plaintiff's coworkers (e.g., "Oh, we wish that we can sit like you, not doing nothing, get paid, and you sitting here crying") were directed at the plaintiff's behavior and did not reflect religious animus. Although the plaintiff identified one instance in which a reference was made to her religious headwear ("What the hell is that on your head?"), "[t]his isolated query about her religious garb by itself [was] certainly not enough to establish a hostile work environment and certainly [did] not infect the other comments with a religious overtone." Moreover, this remark was made in the parking lot, not the plaintiff's actual workplace, by an individual with whom she did not work and who may even have worked for a different correctional institution. Because the plaintiff failed to present sufficient evidence to show that the alleged harassment was based on her religion, the employer was entitled to summary judgment.

EEOC v. T-N-T Carparts, 112 Fair Empl. Prac. Cas. (BNA) 503, 2011 WL 1769352 (M.D.N.C. May 9, 2011). Denying summary judgment for the employer on a claim of religious harassment, the court held that while there was evidence that some conduct toward Brenda Thompson by her coworkers was motivated by jealousy, there was also evidence that Thompson's coworkers, knowing she was a devout Christian, engaged in conduct clearly showing religious animosity. Conduct showing religious animosity included: (1) suggesting Thompson belonged to a cult and was a devil worshipper; (2) physically intimidating her while simultaneously using derogatory words about her religion; (3) calling Thompson "crazy" about her religious beliefs; (4) drawing devil horns, a devil tail, and a pitchfork on Thompson's Christmas photo; (5) using profanity followed by mock apologies; and (6) cursing the Bible and teasing about Bible reading. Taken as a whole, these instances established a disputed question of material fact as to whether the harassment was because of religion.

Davis v. Dimensions Health Corp., 639 F. Supp. 2d 610 (D. Md. 2009). The plaintiff, a Muslim respiratory specialist who was terminated allegedly for poor performance and misconduct, failed to demonstrate that the alleged harassment was on the basis of religion where the only religion-based incidents he cited involved being questioned several times about going out to his car to

pray during breaks and an instance in which several nurses were talking about religion and the plaintiff informed them that he did not feel comfortable discussing religious issues at work.

IV. Reasonable Accommodation of Religious Practices and Undue Hardship

A. Generally

Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986). Title VII does not require an employer to grant, absent undue hardship, the religious accommodation preferred by the employee. An employer meets its Title VII obligation when it offers a "reasonable accommodation" that removes the conflict between a worker's employment and his or her religious beliefs.

Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977). Neither an employer nor a union is obliged to take steps inconsistent with a valid collective bargaining agreement to accommodate an employee's religious belief or practice under Title VII. An employer has no obligation to impose an undesirable shift on other employees, or to substitute or replace workers if such an accommodation would require more than a de minimis cost.

Sturgill v. United Parcel Serv., Inc., 512 F.3d 1024 (8th Cir. 2008). A UPS package car driver was terminated for refusing to complete his route after the employer denied his request to be excused from working past sundown on Fridays as a religious accommodation. Following a jury verdict for the plaintiff, the Eighth Circuit held that the district court had erroneously instructed the jury that a reasonable accommodation must "eliminate" any work-religion conflict. The court reasoned that a reasonable accommodation need not, as a matter of law, eliminate a work-religion conflict and that "in close cases, that is a question for the jury because it turns on fact-intensive issues such as work demands, the strength and nature of the employee's religious conviction, the terms of an applicable CBA, and the contractual rights and workplace attitudes of coworker." Nonetheless, the court concluded that the erroneous jury instruction was not reversible error. In particular, there was evidence of a specific, one-time failure to accommodate resulting in the severe sanction of termination, which justified the jury's verdict without regard to whether the employer had a broader Title VII duty to completely and permanently eliminate the religious conflict. See also EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307 (4th Cir. 2008) (summarized below at § III.E.4.e(1), at page 29).

B. Employer Notice of the Conflict Between Religion and Work

Xodus v. Wackenhut Corp., 619 F.3d 683 (7th Cir. 2010). The plaintiff appealed the district court's ruling in favor of the employer following a bench trial. The plaintiff contended that he was denied accommodation when he was not hired after allegedly informing the interviewing official that, due to his Rastafarian beliefs, he could not comply with the employer's grooming policy by cutting his dreadlocks. The employer contended that the plaintiff only cited his beliefs, not his religious beliefs, so the employer was not on notice of a religious conflict and therefore not required under Title VII to make an exception to the grooming policy as a religious accommodation absent undue hardship. The appeals court was required to affirm the ruling for the employer as long as the lower court's finding represented a "plausible view of the evidence at trial." Affirming the ruling in favor of the employer under this standard, the appeals court

concluded that the district court's decision "to credit [the manager's] testimony that [the plaintiff] never informed him that religious belief required him to wear dreadlocks [was] both plausible from the evidence and sufficiently explained in the district court's opinion."

Wilkerson v. New Media Tech. Charter Sch. Inc., 522 F.3d 315 (3d Cir. 2008). The court affirmed dismissal of the plaintiff's failure to accommodate claim because the plaintiff, a teacher, did not allege that she ever informed the school that mandatory attendance at a banquet that included a "libations ceremony" would violate her religious beliefs. Although she had disclosed her Christian ministry activities to the school and it was aware of her faith, she did not notify the school prior to the ceremony that her religious beliefs prevented her from participating. Since she failed to satisfy her duty to provide "fair warning," the school had no duty to accommodate her.

Reed v. Great Lakes Cos., 330 F.3d 931 (7th Cir. 2003). A hotel was not liable for failure to accommodate an employee, because it was not on notice that he needed an accommodation. An employee and his manager attended a meeting with a nonprofit Christian group that evangelizes by distributing free Bibles to hotels. When the group members unexpectedly conducted prayers and Bible reading, the employee abruptly left the meeting, embarrassing the manager. When the manager later told the employee not to engage in such conduct in the future and the employee said that he could not be compelled to participate in a religious event, the two argued about it and the manager fired the employee for insubordination. Absent undue hardship, an employer would typically have to accommodate an employee who objected to attendance on grounds of his religious beliefs or lack thereof, by excusing him from the meeting. However, the court held that in this case the employee merely asserted the right to disobey orders that he deemed inconsistent with his religious beliefs, while refusing to explain to his manager the nature of the conflict with his religious beliefs or lack thereof. His failure to adequately notify his employer of his religious needs defeated his accommodation claim.

Chalmers v. Tulon Co. of Richmond, 101 F.3d 1012 (4th Cir. 1996). An evangelical Christian employee who was discharged for sending religiously motivated letters to the home of her supervisor and a coworker accusing them of immoral conduct and encouraging them to get their lives "right" failed to establish denial of religious accommodation. While accommodating an employee's desire to send personal, disturbing letters to coworkers would pose an undue hardship, the court held that even without reaching that defense, any potential claim of denial of accommodation was defeated in this case because the plaintiff never notified her employer that her religious beliefs required her to send personal letters to her coworkers. The letters themselves sent by the employee did not provide adequate notice to the employer that her religion compelled her to write them, and the mere notoriety of the plaintiff's religious views in the workplace was insufficient to place the employer on notice that she might engage in any activity for religious reasons.

Heller v. EBB Auto Co., 8 F.3d 1433 (9th Cir. 1993). "A sensible approach would require only enough information about an employee's religious needs to permit the employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirements." In this case, the notice was sufficient where the plaintiff's superiors knew that he was Jewish and that his wife was studying for conversion, and when he requested the time off, he

informed his superior that it was to attend his wife and children's religious conversion ceremony. "Any greater notice requirement would permit an employer to delve into the religious practices of an employee in order to determine whether religion mandates the employee's adherence. If courts may not make such an inquiry, then neither should employers."

Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012). The plaintiff, a hospital painter, regularly wore a lanyard around his neck printed with the phrase "I Jesus." Attached to the lanyard was a clear plastic badge holder containing a piece of paper with the handwritten words "Jesus Loves You!" and a drawing of a cross. On the reverse side, vertically aligned, was the handwritten message: "F False E Evidence A Appearing R Real." When management directed him to remove it because it was not part of his uniform, he refused, saying that he would only do so if Muslim woman was told to take off her headscarf, a Hindu his turban, and a Jewish man his yarmulke. Rejecting the employer's argument that the plaintiff never specifically requested an accommodation to wear the lanyard, the court ruled that "the test is whether the employee notified his employer of a conflict – not whether he specifically requested accommodation." Denying summary judgment to the employer, the court found that there was enough evidence in this case to put the employer on notice, because the defendant "knew not only that Plaintiff was a devout Born Again Christian, but that he insisted that the lanyard was a necessary expression of his faith."

Weathers v. FedEx Corporate Servs., Inc., 2011 WL 5184406 (N.D. Ill. Nov. 1, 2011). The plaintiff, a sales manager who described himself as a conservative evangelical Christian, belonged to an internal Christian employee organization and, in that capacity, had been invited to speak at FedEx sales conferences about his faith. He was issued a "letter of counseling" after one of his subordinates complained that he had quoted biblical passages to her about the master/slave relationship and analogized it to work. The letter instructed the plaintiff that his discussions of religion with coworkers, even if initiated by others, "must cease." In response, he sent an e-mail asking for "clarity" as to how he was supposed to answer when questioned about his faith, and asking when Title VII would permit him to discuss religion in response to genuine inquiries from coworkers. The e-mail cited a passage of Scripture that the plaintiff believed obligated him to answer questions about his religion. He never received a reply. Denying summary judgment to the employer on the plaintiff's religious accommodation claim, the court ruled that the e-mail was a request for accommodation, even absent the word "accommodate," since it included a "request for assistance" to "resolve the tension" between the letter of counseling and the plaintiff's religious beliefs. See also summary at § III.E.4.f, at page 50.

Waltzer v. Triumph Apparel Corp., 2010 WL 565428 (S.D.N.Y. Feb. 18, 2010). The court held that even assuming that observing the Sabbath in Pennsylvania was part of the plaintiff's sincerely held religious beliefs, she failed to put the employer on notice of her need for an early departure time every Friday as a religious accommodation so that she could get to her home by sundown. The plaintiff, who worked in New York City, never disclosed that she was living part time in Pennsylvania and trying to make the three-hour commute there before sundown, but rather only told the employer that she needed to go to the kosher butcher and to prepare mentally for the Sabbath. See also summaries at §§ III.E.1.a and III.E.4.e(1), at pages 3 and 33.

Xodus v. Wackenhut Corp., 626 F. Supp. 2d 861 (N.D. Ill. 2009). Denying the employer's motion for summary judgment, the court ruled that many material facts were disputed with respect to the plaintiff's claim that he was denied accommodation when he was not hired after informing the job interviewer that, due to his religious beliefs, he could not cut his dreadlocks in conformance with the employer's grooming policy. The employer contended that the plaintiff only cited his beliefs, not his "religious" beliefs. The court noted that both parties agreed that the plaintiff did not specifically identify during the interview what religion was at issue, but the court held that "that type of declaration is not required to prove religious discrimination." (Following a bench trial, the district court ruled for the employer, and the appeals court affirmed. See above summary.)

Andrews v. Virginia Union Univ., 2008 WL 2096964 (E.D. Va. May 16, 2008). Denying the employer's motion for summary judgment, the court ruled that while the employer's knowledge that the plaintiff had strong religious beliefs was insufficient to provide notice of the plaintiff's religiously based desire to be called "Reverend," the plaintiff was not required to "officially" inform the employer of her religious belief. Rather, the plaintiff was merely required to provide enough information about her religious belief to make the employer aware of the conflict between the belief and the employer's policies. Here, the plaintiff informed her supervisor of the conflict between her desire to be called Reverend and the academic title policy, and therefore, a reasonable jury could conclude that the notice requirement was satisfied.

Al-Jabery v. ConAgra Foods, Inc., 101 Fair Empl. Prac. Cas. (BNA) 1633, 2007 WL 3124628 (D. Neb. Oct. 24, 2007). The plaintiff failed to prove that he placed his employer, a ham processing plant, on sufficient notice that he desired the religious accommodation of not being required to touch pork. There was no evidence that he made such a request during his employment, and the fact that his employer knew he was a Muslim was insufficient to place it on notice that he needed accommodation. Moreover, during the employment interview process, he wrote on his application that he would perform any job at the plant, and "[g]iven the fact that he was applying for a job in a ham processing plant, it strains credulity to believe that he also told [the employer] he did not mean what his application clearly stated."

Sistrunk v. Camden Cnty. Workforce Inv. Bd., 100 Fair Empl. Prac. Cas. (BNA) 1330, 2007 WL 1175701 (D.N.J. Apr. 18, 2007). The plaintiff, a youth coordinator, alleged that he was terminated in violation of Title VII for failure to conform to the county's dress and grooming code due to his Rastafarian dreadlocks. The plaintiff contended that he was told by a supervisor either to cut his hair in conformance with the dress and grooming code or not to return to work, and that in response he informed the supervisor that cutting his hair would conflict with his "way of life." He subsequently stayed away from work for three days, allegedly because he was awaiting a decision on his requested exemption from the policy, and was terminated based on his absences. Denying summary judgment for the employer on the plaintiff's Title VII accommodation claim, the court ruled that there were disputed issues of material fact as to whether the plaintiff sufficiently placed the employer on notice that his objection to the grooming requirement was based on his religious beliefs, and if so, whether he could have been accommodated absent undue hardship.

C. Discussion of Request

EEOC v. AutoNation USA Corp., 2002 WL 31650749 (9th Cir. Nov. 22, 2002) (unpublished). A devout Christian who sought not to work on Sundays failed to make a good-faith attempt to obtain accommodation when he resigned on the first day of discussions with his employer regarding his religious scheduling needs. The employer satisfied its initial burden by suggesting possible accommodations, but the employee short-circuited the interactive process required by Title VII by resigning without giving the accommodations the opportunity to be implemented or tested.

Heller v. EBB Auto Co., 8 F.3d 1433 (9th Cir. 1993). "Once an employee proves a prima facie case under Title VII, the burden shifts to the employer to show that it undertook 'some initial step to reasonably accommodate the religious belief of that employee.'. . . Although neither Congress nor the EEOC has delineated the scope of this obligation, it requires that, 'at a minimum, the employer . . . negotiate with the employee in an effort reasonably to accommodate the employee's religious beliefs.'" The employer need not make such an effort if it can show that any accommodation would impose undue hardship." In this case, the employer failed to show it made a sufficient effort to accommodate an employee after he scheduled his wife's religious conversion ceremony in reliance on a supervisor's initial grant of permission, then withdrew permission yet made no effort to negotiate with him or accommodate his conflict. "At the very least, Title VII requires that, once an employer gives an employee leave of absence to attend a religious ceremony, the employer should provide a good faith reason for rescinding that permission. The employee whose employer gives permission and then takes it away is no better off, and is perhaps worse off, than one whose employer never gave permission at all. Because it never gave [the plaintiff] any reason for [the] countermand order, the employer did not meet its Title VII burden." A manager's attempt to call plaintiff at home to try to discuss the situation with him was insufficient because it did not occur until after the plaintiff's termination, and thus only related to mitigation of damages.

Kenner v. Domtar Indus., Inc., 97 Fair Empl. Prac. Cas. (BNA) 1359, 2006 WL 662466 (W.D. Ark. Mar. 13, 2006). The court held that the existence of a shift swap system in a collective bargaining agreement does not establish a reasonable accommodation as a matter of law. Rather, where a plaintiff has established a prima facie case of denial of accommodation, the employer "has the burden of proving that it offered [p]laintiff a reasonable accommodation. . . . Title VII's reasonable accommodation provisions contemplate an interactive process, with cooperation between the employer and the employee, but which must be initiated by the employer." Rejecting the employer's motion for summary judgment in this case, the court found "there is no evidence before the [c]ourt that [the employer] initiated this process, only that a shift-swap system was in existence." See also 97 Fair Empl. Prac. Cas. (BNA) 1354, 2006 WL 522468 (W.D. Ark. Mar 3, 2006).

D. Seniority Systems and Collectively Bargained Rights

Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977). See summary above.

Creusere v. Board of Educ., 2003 WL 23156643 (6th Cir. Dec. 18, 2003) (unpublished). An employer that granted an employee's request for Saturdays off as a reasonable accommodation of his Sabbath observance was not required to make overtime work available to the employee on Sundays instead of Saturdays. Even if the employee agreed to be paid the rate of time-and-a-half instead of the normal Sunday rate of double time, it would have been an undue hardship to require the employer to violate the collective bargaining agreement provision which required that employees who worked on Sunday be paid double-time.

Virts v. Consol. Freightways Corp. of Del., 285 F.3d 508 (6th Cir. 2002). An employer was not required to accommodate a truck driver's religious objection to going on sleeper runs with females. The driver's proposed accommodations would result in a violation of the seniority provisions of the collective bargaining agreement, and affect the shift and job preferences and contractual rights of other employees. See also Kalsi v. New York City Transit Auth., 62 F. Supp. 2d 745 (E.D.N.Y. 1998) (ruling an employer has no obligation to violate its seniority system by giving an employee one of a few unique "choice" inspector jobs), aff'd, 189 F.3d 461 (2d Cir. 1999).

Thomas v. National Ass'n of Letter Carriers, 225 F.3d 1149 (10th Cir. 2000). The Postal Service was not required to grant a letter carrier's requested accommodations because they would have violated the collective bargaining agreement. In addition, the Postal Service already had attempted to accommodate the employee's religious practices by: (1) approving his use of leave on Saturdays; (2) approving the use of substitutes for him on Saturdays when such substitutes could be found; (3) seeking a waiver from the union of the requirement that all letter carriers work five out of six Saturdays; and (4) recommending that he bid for a position that would not require him to work on Saturday.

Balint v. Carson City, 180 F.3d 1047 (9th Cir. 1999). The mere existence of a seniority system does not relieve an employer of its duty to attempt a reasonable accommodation of its employees' religious practices, as long as the accommodation can be accomplished without disruption to the seniority system and without more than de minimis cost to the employer.

E. Specific Accommodation and Undue Hardship Issues

1. Schedule Changes, Shift Swaps, Voluntary Substitutes, and Leave

EEOC v. Thompson Contracting, Grading, Paving, & Utils., Inc., 2012 WL 6217612 (4th Cir. Dec. 14, 2012) (unpublished). The court affirmed summary judgment for the employer on the EEOC's claims of denial of accommodation and discriminatory termination on behalf of a Hebrew Israelite who was one of four company dump truck drivers who requested Saturdays off to observe the Sabbath. The court concluded that excusing him from Saturday work would have imposed an undue hardship (more than de minimis cost) because any work left undone would necessarily have to be completed by the other drivers or by hired independent contractors, or else

would not be completed at all. Moreover, it would have imposed an undue hardship on the company to arrange ahead of time for an alternative dump truck driver from among its workforce, because securing proper substitutes would have required the company to incur the costs of recruiting, training, and qualifying each driver on its insurance policy. Finally, the company was not required to offer the driver a transfer to a general equipment operator position, because it reasonably believed that he would have rejected such an offer in light of evidence that he had previously indicated that he preferred driving a dump truck to performing manual labor.

Porter v. City of Chicago, 700 F.3d 944 (7th Cir. 2012). The plaintiff, a Christian employee of the Chicago police department, objected when she was assigned to work 7:30 am to 3:30 pm on Sundays, because it conflicted with her Sunday morning church attendance. In response, the administrator who had the authority to reassign work schedules offered, among other options, that he could assign her to work 3:30 pm to 11:30 pm on Sundays instead, thereby permitting her to attend church. Affirming summary judgment for the employer on the plaintiff's denial of accommodation claim, the court ruled that the city reasonably accommodated her religious beliefs by offering her the work shift change, even though if it was not the option she preferred.

Crider v. Univ. of Tenn., Knoxville, 115 Fair Empl. Prac. Cas. (BNA) 988, 2012 WL 3002756 (6th Cir. July 23, 2012). The plaintiff was hired as one of three Programs Abroad coordinators, whose duties included being available on a rotating basis, including weekends, to monitor and address any emergency phone calls. Four days after she was hired, the plaintiff advised management that as a Seventh Day Adventist she could not perform work-related tasks from sundown Fridays until sundown Saturdays, and asked to be excused from phone monitoring during that time. The other two coordinators objected to handling all the weekend shifts, so the school offered instead to partially accommodate the plaintiff by allowing her to cover the phone only in emergency situations or when the two other coordinators were out of town. The plaintiff rejected this offer, and was subsequently terminated. Reversing summary judgment for the employer, the court held that the university would only be excused from providing full accommodation if it would pose an undue hardship. Even though one of the coordinators threatened to quit if forced to carry the emergency phone every other weekend, the court found that judgment as a matter of law for the employer was premature. To prevail, the employer was required to prove that the accommodation would result in an undue hardship on the operation of its business, in terms of the personnel ramifications, rather than mere coworker "grumbling." In addition, the court held that, by telling the plaintiff's coworkers "not to do anything different at work," the Human Resources Director may have interfered with their willingness to accept the shift exchange, even if his intent was to be able to assess the situation before an accommodation was arranged. Dissenting, one judge wrote that he would have affirmed summary judgment for the employer because the evidence clearly demonstrated this was a core duty of the job and it would have posed a financial and structural undue hardship to grant the requested accommodations.

Tomasino v. St. John's Univ., 2012 WL 1372062 (2d Cir. Apr. 20, 2012) (unpublished). The employer, a private university, complied with Title VII when it offered to allow the plaintiff to take an early lunch hour to accommodate her desire to act as a lector at a weekday Mass. The accommodation offered was not unreasonable merely because the plaintiff requested or preferred a different one.

Sanchez-Rodriguez v. AT&T Mobility Puerto Rico, Inc., 673 F.3d 1 (1st Cir. 2012). The plaintiff worked as a retail sales consultant selling cellular phones and accessories at a shopping center kiosk. All sales consultants were required to be available for Saturday and Sunday work. When the plaintiff advised his supervisor that he had become a Seventh Day Adventist and must abstain from work on Saturdays for religious reasons, the employer responded that making an exception to the required rotating Saturday shifts would pose an undue hardship, but offered transfer to two other possible positions (which unlike his job, however, did not pay commissions) and/or voluntary shift swaps with coworkers. Affirming summary judgment for the employer on the plaintiff's religious accommodation claim, the court ruled that the offer to transfer the plaintiff or allow him to swap shifts, combined with the employer's decision not to discipline him for Saturday absenteeism for months, satisfied its accommodation obligations.

Harrell v. Donahue, 638 F.3d 975 (8th Cir. 2011). Affirming summary judgment for the U.S. Postal Service, the court held that it would have posed an undue hardship under Title VII to accommodate the religious request of a Seventh Day Adventist to have every Saturday off by changing his rotating schedule or, alternatively, by allowing him to use annual leave or leave without pay. Because it was impossible to give each carrier every Saturday off, the schedule was determined by a seniority system set forth in a collective bargaining agreement. The court held that either of the requested accommodations would pose an undue hardship, because granting the plaintiff a fixed rather than rotating schedule would violate the collective bargaining agreement, and, alternatively, allowing the plaintiff to take leave every Saturday would have substantially imposed on coworkers by depriving them of their rights under the seniority system. While voluntary shift swaps or substitutions also would have been a reasonable accommodation, the Postal Service had asked the other full-time carriers at the facility, who all had more seniority than the plaintiff, if any would voluntarily give up any of their Saturdays off, but none agreed. The Postal Service also offered the plaintiff a transfer to another office and the possibility of his arranging to swap scheduled days off with other employees, but he declined those offers.

Burdette v. Federal Express Corp., 108 Fair Empl. Prac. Cas. (BNA) 1291, 2010 WL 729505 (6th Cir. Mar. 3, 2010) (unpublished). Affirming summary judgment for the employer on the plaintiff's denial of accommodation and discriminatory termination claims, the court ruled that the plaintiff's request to have every Saturday off for Sabbath observance yet remain in her managerial position would have posed an undue hardship on the employer and that her insistence on this particular accommodation was evidence of her failure to cooperate with her employer's attempts to accommodate. The employer presented evidence that such an accommodation would have created safety risks because all managers were needed during peak season to assist in loading and launching aircraft on all days of the week due to increased traffic.

Jones v. United Parcel Serv., 2009 WL 161223 (5th Cir. Jan. 23, 2009) (unpublished). The court affirmed summary judgment for the employer on a denial of accommodation claim by a package driver who was terminated for twice failing to complete his route. As a Seventh Day Adventist, the plaintiff did not work from sundown on Friday to sundown on Saturday. The court noted that while there were 10 positions that would have accommodated the plaintiff's religious practices, he provided evidence that he bid on three and lost those because he had too little seniority. While the plaintiff presented evidence that he did not bid on the other seven positions because he

was on leave, he did not present this evidence to the district court, and therefore, the evidence could not be considered on appeal. Given the absence of admissible evidence as to why the plaintiff could not have bid on the other seven positions, the court held that the employer offered the plaintiff reasonable accommodations of which he had failed to avail himself. In reaching this conclusion, the court noted that an employee is not entitled to the form of accommodation he prefers, and has a duty to cooperate in achieving accommodation of his religious beliefs.

Adams v. Retail Ventures, Inc., 2009 WL 1137731 (7th Cir. Apr. 28, 2009) (unpublished). Affirming summary judgment for the employer, the court ruled that the employer had established that it would have posed an undue hardship to accommodate a retail store cashier's request for a schedule that would permit him to attend three weekly services at his church that took place every Wednesday morning, Sunday morning, and Sunday evening. Uncontroverted evidence showed that the company required all 10 of its cashiers to work on some Sundays (one of the two most popular days off) because of customer demand during busy sales. During those times, allowing the plaintiff the day off would cause the store either to be short a cashier, resulting in lost efficiency, or to need to hire another one, incurring extra cost. The accommodation also would have required the store to alter the schedules of other cashiers and receivers, denying them their shift preferences merely because they were secular rather than religious, "a practice that Title VII does not require of employers."

EEOC v. Firestone Fibers & Textiles Co., 515 F.3d 307 (4th Cir. 2008). The EEOC alleged that the employer unlawfully denied a religious accommodation to David Wise, a member of the Living Church of God, which requires observance of the Sabbath from sundown on Friday to sundown on Saturday and religious observance on certain other days. Affirming summary judgment for the employer, the court held that the employer reasonably accommodated Wise through leave and flexible scheduling policies under the collective bargaining agreement (CBA), as well as through an available shift-swapping arrangement, which Wise failed to utilize. Under these policies, Wise was entitled to 15 eight-hour vacation days and 3 floating holidays, plus up to 60 hours of unpaid leave a year. He was terminated for not reporting to work after he had exceeded the limits under these policies. Rejecting the EEOC's argument that an employer provides a reasonable accommodation only when it "eliminates" the conflict between a religious practice and work requirement, the court held that "'reasonably accommodate' means what it says: reasonably accommodate" and that an accommodation may be reasonable in some circumstances without necessarily totally accommodating an employee's religious practices. The court noted that "the combination of vacation days, floating holidays, shift swaps, and unpaid leave time could be structured in a way to permit most employees the opportunity to meet all of their religious observances." The court rejected the EEOC's contention that the employer should have excused Wise from the 60-hour limit on unpaid leave. Given the "extraordinary number of hours" of leave sought by Wise, the employer's staffing requirements, the round-the-clock operation of the testing laboratory in which Wise worked, and employees' perceptions of fairness, "it was sensible for [the employer] to believe that Wise's proposed accommodation was not a reasonable one." See also Sturgill v. United Parcel Serv., Inc., 512 F.3d 1024 (8th Cir. 2008) (summarized below at § III.E.4.a, at page 21).

Stolley v. Lockheed Martin Aeronautics Co., 100 Fair Empl. Prac. Cas. (BNA) 642, 2007 WL 1010418 (5th Cir. Mar. 28, 2007) (unpublished). Affirming summary judgment for the

employer, the court ruled that a newly hired aircraft assembly line worker was not entitled to have the employer reassign him to a different shift as an accommodation for his Sabbath observance because the employer's union contract dictated that shift swapping and transfers would be based on seniority and the union was unwilling to waive the contract in this case.

Tepper v. Potter, 505 F.3d 508 (6th Cir. 2007). A Jewish letter carrier was not unlawfully denied accommodation when, due to decreased staffing and other employees' objections, the Postal Service stopped its longstanding practice of not scheduling him to work on Saturdays as a religious accommodation, but allowed him to use annual leave and leave without pay to take off on Saturdays and allowed him to exchange days off with other letter carriers. In response to his argument that his use of unpaid leave reduced his annual pay and future pension, the court held that he "is simply not being paid for time that he has not worked" so there is no materially adverse employment action. "The Supreme Court has stated that 'the direct effect of unpaid leave is merely a loss of income for the period the employee is not at work; such an exclusion has no direct effect upon either employment opportunities or job status.'"

Bush v. Regis Corp., 102 Fair Empl. Prac. Cas. (BNA) 560, 2007 WL 4230693 (11th Cir. Dec. 3, 2007) (unpublished). A hair salon employee, a Jehovah's Witness, attended religious services on Thursday evenings and Sundays. Her faith also required performance of field service, which her family preferred to do as a family on Sunday afternoons. After several years of not being scheduled to work evenings or Sundays, the salon began requiring all employees to work some evening shifts and every other Sunday, but granted the plaintiff's request to be excused as a religious accommodation from working Thursday evenings and offered to start her Sunday shifts after her religious services concluded. In addition, the employer permitted her to take time off to attend religious conferences and to swap shifts to fit her religious activities. Affirming summary judgment for the employer on the denial of accommodation claims, the court observed that "[t]he phrase 'reasonable accommodation' is not defined and turns on the facts and circumstances of the case" and that here the employer's actions did constitute a reasonable accommodation. Rejecting the plaintiff's argument that doing any Sunday shift prevented her from doing field service with her family, the court held that the evidence showed the field service was not required to be performed on Sundays, but rather, that was the day the plaintiff and her family wished to perform field service. Moreover, the court held that "[a]n employee has a duty to make a good faith attempt to accommodate her religious needs through means offered by the employer" and that the plaintiff did not make such an effort.

Morrissette-Brown v. Mobile Infirmary Med. Ctr., 506 F.3d 1317 (11th Cir. 2007). The employer reasonably accommodated religious beliefs that prevented the plaintiff, a unit secretary who was a member of the Seventh-day Adventist Church, from working on Friday afternoons and evenings. The employer used a neutral rotating schedule, allowed the plaintiff to swap her scheduled Friday shifts with other employees, provided her with the master schedule so she could find someone with whom to swap shifts, and encouraged her to transfer to another position which did not require work on Fridays, even though it had a requirement that an employee work at least twelve months in a position before transferring to another. Moreover, her supervisor asked her to review the open-positions list and to him know in which jobs she was interested. He stated that he would do his "best" to process the requests and to secure interviews for the positions, although when she did apply for several, she was not selected because she was either

not qualified or the position was closed and never filled. Because the court noted that the foregoing steps were sufficient to constitute a reasonable accommodation, it stated that it was not reaching the question of whether the employer's alternative offer of a "flex" position, which would have permitted her to work Sundays instead of Fridays but did not include benefits or health insurance or a guaranteed number of hours, would have been a reasonable accommodation.

Baker v. Home Depot, 445 F.3d 541 (2d Cir. 2006). The employer's offer to schedule an employee to work in the afternoon or evenings on Sundays, rather than the mornings, was not a "reasonable accommodation" under Title VII where the employee's religious views required not only attending Sunday church services but also refraining from work on Sundays.

EEOC v. Robert Bosch Corp., 2006 WL 406296 (6th Cir. Feb. 21, 2006) (unpublished). Reversing summary judgment, the court remanded for trial a claim against an automobile parts manufacturer for denial of reasonable accommodation when it terminated a machine shop employee for four unexcused absences on Saturdays, his day of worship. The employer contended that the shop was operating 24 hours a day seven days a week with mandatory overtime for all employees, and that the employee and his union had an obligation to find a substitute in order for him to be excused from work. The court held there were disputed issues of material fact as to what the company was willing to do to let the employee and the union find a replacement to work additional overtime. There was evidence that company officials stated that a shift swap would not be permitted, and that the employer's policy was designed only to identify employees willing to work additional shifts rather than to swap shifts.

Goldmeier v. Allstate Ins. Co., 337 F.3d 629 (6th Cir. 2003). The employer's policy requiring the office to remain open on Saturdays created a conflict with Orthodox Jewish employees' Sabbath observance for purposes of establishing a prima facie case of religious discrimination. The employer's offer to allow the employees to use their own funds or their limited office expense allowance to hire outside staff was not a reasonable accommodation because it would have required the employees to forfeit a benefit available to other employees who do not have a religious conflict. However, the court dismissed the employees' religious discrimination claim because they quit their jobs and accepted new employment before the policy in question went into effect.

George v. Home Depot, 2002 WL 31319124 (5th Cir. Sept. 27, 2002) (unpublished). The plaintiff, a devout Catholic who attended mass daily and frequently participated in prayer vigils and religious services, was employed as the only greeter in the kitchen and bath department of a Home Depot store, which was open 24 hours a day, 7 days a week, and was particularly busy on weekends. In approximately August 1997, she determined that her religious beliefs precluded her from working at all on Sundays, and claimed she was terminated after advising management of her need for an accommodation. Affirming summary judgment for the employer, the court held that accommodating the plaintiff would have required either doing without a department greeter on Sundays or hiring an additional employee to fill that position on Sundays, both of which would have impose an undue hardship, as would the effects on efficiency imposed by the additional burdens on designers from not having a greeter at peak times. To the extent the plaintiff argued that employees in other positions were permitted not to work on Sundays, the

court noted evidence that the greeter position was created to ensure customer contact and to take pressure off designers at peak times, including weekends, and that the greeter role was important to the employer's business. This was sufficient to show that operating without a greeter or having the designers perform the plaintiff's duties would constitute an undue hardship.

Opuku-Boateng v. California, 95 F.3d 1461 (9th Cir. 1996). Hiring the plaintiff, a Seventh-Day Adventist who needed a religious accommodation in scheduling, would not constitute an undue hardship where there was no evidence that other employees would be harmed by allowing plaintiff not to work on his Sabbath, or evidence that permitting voluntary swapping was not feasible. The employer's evidence that it required all employees to work an "equal number of undesirable weekend, holiday, and night shifts" was not sufficient evidence that other employees would be discriminated against if the plaintiff's religious practice was accommodated.

Smith v. Pyro Mining Co., 827 F.2d 1081 (6th Cir. 1987). An employer's requirement that employee who sought not to be scheduled for Sunday work due to his Sabbath observance had to seek his own replacement by asking a co-worker to swap shifts would ordinarily be a reasonable accommodation, but was not in this case because the employer was put on notice not only that the employee had a sincerely held religious belief that he must refrain from work on his Sabbath but also that he believed it was a "sin" to try to induce another to work in his place. Therefore, the employer was obligated to try alternative means of accommodating the employee, such as arranging a swap for him, unless doing so would pose an undue hardship.

EEOC v. Rent-a-Center, Inc., 117 Fair Empl. Prac. Cas. (BNA) 45, 2013 WL 208948 (D.D.C. Jan. 18, 2013). The court granted summary judgment for the employer in an action brought on behalf of a Seventh Day Adventist store manager who sought to be excused from working every Saturday for Sabbath observance. Ruling that the proposed accommodation would pose an undue hardship, the court cited these uncontested facts: (1) the business is closed on Sundays, and Saturday is the busiest day of the week both for the business overall and for the store at issue; (2) store manager is the most important position, with a variety of supervisory responsibilities, including some that are exclusive to that position; and (3) the company's policy requires all managers to work every Saturday, "reflecting its awareness of and focus on the first two facts."

Chukwueze v. New York Emps.' Ret. Sys., 891 F. Supp. 2d 443 (S.D.N.Y. 2012). The plaintiff, an Evangelical Christian, alleged disparate treatment based on religion and denial of accommodation, with respect to his requests for leave to observe religious holidays. In 2007, the employer granted the plaintiff's request to take off on December 26th for religious observance of St. Stephen's Day, but the plaintiff's manager told him that it was not a religious holiday and made him change the reason on his request form from "religious observance" to "vacation." When the plaintiff requested leave for Good Friday in 2008, the manager got very upset and said, "You are giving me this form because you think I can't deny it!" When the plaintiff requested leave for St. Stephen's Day in 2008, the manager confronted him in a hostile manner, stating "in a loud, audacious voice, 'that is not a religious holiday and I do not have to give you that day off.'" After meeting with upper management, the plaintiff was permitted to use annual leave to take the day off. Granting in part the employer's motion to dismiss, the court ruled that the plaintiff was not subjected to an adverse action merely because his requests were met "with

hostility and severe opposition" compared to requests by employees of other religions. Similarly, he failed to state a denial of accommodation claim since his request was granted.

Fields v. Rainbow Rehab. Ctr., Inc., 833 F. Supp. 2d 694 (E.D. Mich. 2011). The plaintiff, a rehabilitation assistant who provided patient care, alleged that he was denied accommodation for his religious observance and subjected to retaliatory termination for his use of an internal grievance process to resolve his religious accommodation dispute. Granting summary judgment for the employer, the court ruled that the plaintiff was terminated not, as he had alleged, for failing to attend a staff meeting scheduled for one of his accommodation days but rather for failing to contact his supervisor, as instructed, to arrange alternative one-on-one training. The court rejected the plaintiff's argument that accommodation would have required not scheduling staff meetings on his accommodation days, holding that the employer reasonably accommodated plaintiff by providing the ability to arrange one-on-one meetings and trainings as an alternative.

Maroko v. Werner Enters., Inc., 778 F. Supp. 2d 993 (D. Minn. 2011). Denying summary judgment for the employer on a truck driver's Title VII claim that he was denied reasonable accommodation for his Seventh Day Adventist Sabbath observance (Friday night and Saturday), the court ruled that there were disputed facts about whether the employer communicated an offer of accommodation. The employer also argued that even assuming the plaintiff never received the offer, no violation occurred because he would not have accepted it, i.e., 30 days of unpaid leave to determine whether an alternative route shared by multiple drivers (and thus with more scheduling flexibility) would become available. The court rejected this argument, holding that an employer may not decide against offering an accommodation merely because it assumes or believes the employee would not accept it. "'Bilateral cooperation' cannot get off the ground if the employer does not offer some accommodation to the employee in the first instance."

Hussein v. UPMC Mercy Hosp., 2011 WL 13751 (W.D. Pa. Jan. 4. 2011), aff'd on other grounds, 2012 WL 593272 (3d Cir. Feb. 24, 2012) (unpublished). The plaintiff, a hospital worker, requested but was denied vacation time to make his second pilgrimage to Mecca. Granting summary judgment for the employer on the plaintiff's denial of accommodation claim, the court held that even though, under the plaintiff's religious beliefs, the second pilgrimage was not required, it was still an exercise of his religious beliefs. However, the timing was a matter of personal preference, rather than a religious observance. The plaintiff was able to make the pilgrimage the following year, and the timing of the trip reflected the plaintiff's desire to benefit from a reduced price by traveling with a larger group. The court also rejected the plaintiff's claim of disparate treatment arising from the denial of vacation time, finding that the fact that Christians were permitted to take off around the Christmas holiday was not evidence of discriminatory motive, since the plaintiff could have done so too but chose not to.

Waltzer v. Triumph Apparel Corp., 2010 WL 565428 (S.D.N.Y. Feb. 18, 2010). Even assuming that the plaintiff had a sincerely held religious belief that she needed to travel to her second home in Pennsylvania by sundown to observe the Sabbath there and that she had notified her employer of such, her proposed accommodation of working only a half day every Friday while maintaining a full-time management position would have posed an undue hardship on the operation of the employer's business given evidence that the plaintiff was not performing as expected and needed to spend more time in the office to improve her job performance. Moreover, the employer

showed that it offered a reasonable accommodation by permitting the plaintiff to leave early enough each Friday (3:00 p.m. rather than 1:00 p.m. as the plaintiff requested) to reach her declared home in New Jersey before sundown or by permitting the plaintiff to work part time if she did not want to work on Fridays. See also summaries at §§ III.E.1.a and III.E.4.b, at pages 3 and 23.

Adelwahab v. Jackson State Univ., 2010 WL 384416 (S.D. Miss. Jan. 27, 2010). The plaintiff, a practicing Muslim who worked as a university residence hall receptionist, alleged he was denied religious accommodation when he was regularly scheduled to work a midnight shift that conflicted with a professed requirement of his faith to study the Koran and pray at certain times, including from 2:00 a.m. to 4:00 a.m. Granting summary judgment to the employer, the court found that the plaintiff could not show that his asserted religious belief was "sincerely held," citing evidence of his inconsistent adherence to the requirement and his differing descriptions of the requirement and of his failure to mention it during his job interview even though he was informed of the midnight shift requirement. Even if the belief was sincerely held, the accommodation would have posed an undue hardship because of the logistical complications involved in arranging for other employees to cover the plaintiff's assigned midnight shifts, the possible overtime expenses, and the disproportionate workload that coworkers would have had to assume.

Haliye v. Celestica Corp., 106 Fair Empl. Prac. Cas. (BNA) 849, 2009 WL 1653528 (D. Minn. June 10, 2009). The court denied class certification in an action by 22 Muslim former employees of an electronics manufacturing plant who alleged denial of accommodation arising out of schedule and break changes sought to accommodate the five daily prayers as well as the breaking of the fast at the time of the sunset prayer during Ramadan. The plaintiffs argued that the commonality requirement was met because the ultimate question was whether it would be a reasonable accommodation to permit the proposed class member to pray according to the Muslim prayer schedule. Disagreeing, the court found that there was a lack of commonality because various plaintiffs and sources identified the proposed prayer times differently and because individual circumstances, such as the nature of each plaintiff's job duties and each plaintiff's own beliefs about the necessity of praying at a particular time, would make the resolution of each accommodation claim different.

EEOC v. Aldi, Inc., 103 Fair Empl. Prac. Cas. (BNA) 79, 2008 WL 859249 (W.D. Pa. Mar. 28, 2008). The EEOC alleged that the employer failed to accommodate the religious belief of Bloom, a Christian cashier who believed that it is a sin to work on the Sabbath or to ask another to do so. Denying the employer's motion for summary judgment, the court ruled that pursuant to EEOC's "Guidelines on Discrimination Because of Religion," 29 C.F.R. Part 1605, an employer may not rely solely on the existence of its neutral rotation system and voluntary shift swap policy and must also take some action in furtherance of its offered accommodation. For example, the court cited other cases in which an employer had satisfied this obligation by allowing an employee to announce his need for shift swaps during roll call and to advertise his need for swaps on the employer's bulletin board or an employer gave an employee the telephone numbers of his coworkers to aid him in obtaining swaps. In this particular case, moreover, the employer was required to do even more to facilitate a swap given that the plaintiff's religious beliefs precluded her from personally asking another to work on Sundays. Because the employer did

not take such actions to facilitate the plaintiff's accommodation request, summary judgment was denied.

EEOC v. Southwestern Bell Tel. L.P., 2007 WL 2891379 (E.D. Ark. Oct. 3, 2007), appeal dismissed, 550 F.3d 704 (8th Cir. 2008). Two customer service technicians alleged denial of religious accommodation when they were denied leave for one day (and terminated when they failed to report to work) to attend a yearly Jehovah's Witness convention as part of their religious practice. The employer contended that the technicians disregarded an order to work that day and that it caused an undue hardship because the company was forced to pay other workers premium wages ($882.88 for sixteen hours of overtime) to fill in and because it was unable to meet its customer service needs on that day. EEOC argued that the total cost was only $220.72 per person, that the facility routinely paid technicians overtime, that the employer failed to contact the union about possible accommodation, that the policy providing for only one technician on leave per day was not always observed, and that there was no evidence that customer service needs actually went unmet on the day at issue. Distinguishing Hardison as well as two Eighth Circuit cases, Mann and Cook, on the grounds that those cases all involved employees whose religious beliefs required them to miss work one day each week, the court held that the accommodation of one day per year at issue in this case did not as a matter of law pose an undue hardship, and denied the employer's motion for summary judgment. (A jury subsequently awarded the two former employees $756,000 in back pay and damages, in a verdict on which judgment was entered on October 23, 2007. The employer ultimately paid $1,307,597 due to interest and front pay.)

Krop v. Nicholson, 506 F. Supp. 2d 1170 (M.D. Fla. 2007). Summary judgment for the employer was denied in part on a claim that by requiring the plaintiff to use annual leave rather than leave without pay (LWOP) for religious holidays, the employer offered an accommodation that could be found to have discriminated against the employee "by negatively affecting a benefit of employment enjoyed by other employees who did not share the same religious beliefs as plaintiff, i.e. vacation time." The court held that given the disputed facts, it was for the jury to decide whether granting plaintiff LWOP for religious observances would have constituted an undue hardship.

Kenner v. Domtar Indus., Inc., 97 Fair Empl. Prac. Cas. (BNA) 1359, 2006 WL 662466 (W.D. Ark. Mar. 13, 2006). See summary above.

Rice v. U.S.F. Holland, Inc., 410 F. Supp. 2d 1301 (N.D. Ga. 2005). The employer's motion for summary judgment was denied on a claim by a Seventh Day Adventist truck driver who was terminated for refusing to work past sunset on Fridays. The driver did not arrange to swap shifts with other drivers or to use vacation or sick time to avoid the need to work after sunset. However, because the driver's supervisor stated that he would "handle" the scheduling conflict, the driver reasonably believed that no further action was needed on his part.

Elmenayer v. ABF Freight Sys., 87 Fair Emp. Prac. Cas. (BNA) 253, 2001 WL 1152815 (E.D.N.Y. Sept. 20, 2001), aff'd on other grounds, 318 F.3d 130 (2d Cir. 2003). An employer did not violate Title VII when it refused to permit a Muslim employee to combine his 15-minute coffee break with his lunch hour in order to attend Friday afternoon prayers at a mosque. The

employee is not entitled to the accommodation of his choice, and the employer offered a reasonable accommodation that would have eliminated the conflict between the employee's religious beliefs and the requirements of his employment when it offered to let employee work a different shift.

Durant v. NYNEX, 101 F. Supp. 2d 227 (S.D.N.Y. 2000). The plaintiff, a Seventh-Day Adventist, alleged that her employer discriminated against her on the basis of religion and refused to accommodate her religious observances. The court held that the employer's warnings regarding the employee's tardiness because of Sabbath observance did not amount to an "adverse employment action," and the employer reasonably accommodated the employee's religious beliefs by telling her that she could swap shifts on an ongoing basis and use vacation days to cover for her shifts that conflicted with the Sabbath.

2. Modified Duties and Transfer

Walden v. Centers for Disease Control & Prevention, 669 F.3d 1277 (11th Cir. 2012). The plaintiff, who was hired by a contractor as an EAP counselor at a federal agency, described herself as "a devout Christian who believes that it is immoral to engage in same-sex sexual relationships." Believing that her religion prohibited her from encouraging or supporting same-sex relationships, the plaintiff told a lesbian employee who had sought counseling about her same-sex relationship that she could not provide counseling based on her "personal values." After the employee filed a complaint stating that she felt "judged and condemned," the plaintiff's supervisor recommended that if such a situation arose in the future, the plaintiff should tell the client she is inexperienced with relationship counseling and therefore needs to refer her to another counselor. The plaintiff refused, stating that she would handle future referrals as she had in this instance. She was subsequently removed from the agency contract because of concern that she would convey in an unacceptable manner the reason for future referrals. Affirming summary judgment for the employer on the plaintiff's Title VII claim for denial of reasonable accommodation, the court held that the employer accommodated the plaintiff by providing her with an opportunity to apply for another position before terminating her.

Noesen v. Medical Staffing Network Inc., 100 Fair Empl. Prac. Cas. (BNA) 926, 2007 WL 1302118 (7th Cir. May 2, 2007) (unpublished). A pharmacist refused on religious grounds to participate in distributing contraceptives or answering any customer inquiries about contraceptives. The employer offered to allow him to signal to a coworker who would take over servicing any customer who telephoned, faxed, or came to the pharmacy regarding contraceptives. He refused to follow the procedure and was disciplined for his non-compliance. The pharmacist claimed denial of accommodation, asserting that he should be excused from even participating in the administrative transfer of a contraceptive prescription to a coworker. The court ruled in favor of the employer, holding that even assuming initial customer contact could be assigned to lower-paid technicians rather than the plaintiff, this proposed accommodation would divert technicians from their assigned data input and insurance verification duties, imposing undue hardship on the pharmacy in terms of uncompleted data work. See also Vandersand v. Wal-Mart Stores, Inc., 101 Fair Empl. Prac. Cas. (BNA) 386, 2007 WL 2385128 (C.D. Ill. July 31, 2007) (denying the employer's motion to dismiss, the court held that despite a state regulation requiring a pharmacy to dispense valid prescriptions for emergency

contraceptives without delay, it was a factual issue to be determined in a given case whether it would pose an undue hardship for a pharmacy to accommodate a pharmacist who refused to dispense emergency contraceptives on religious grounds); Stormans v. Selecky, 2007 WL 3358121 (W.D. Wash. Nov. 8, 2007) (granting a preliminary injunction in a First Amendment Free Exercise clause challenge to state regulations making it sanctionable for a pharmacy to permit a pharmacist-employee to refuse to fill a lawful prescription because of religious or moral objections, the court noted that the accommodation of hiring a second pharmacist to work side-by-side with the objecting pharmacist, at an estimated cost of $80,000/year, would be more than a de minimis expense and therefore would pose an undue hardship on the employer), vacated on other grounds, 586 F.3d 1109 (9th Cir. 2009).

Endres v. Indiana State Police, 349 F.3d 922 (7th Cir. 2003). The police department did not violate Title VII when it terminated an officer who refused, on religious grounds, assignment as a Gaming Commission agent at a casino. It would be unreasonable to require a police or fire department to relieve personnel of those assignments with which they disagree, whether for religious or secular reasons.

Bruff v. North Miss. Health Servs., Inc., 244 F.3d 495 (5th Cir. 2001). The plaintiff, one of three counselors at a health service, requested that she be exempt from counseling clients who were homosexual, involved in extramarital relationships, or engaged in other conduct contrary to her religious beliefs. Accommodating her desire not to engage in such counseling would constitute an undue hardship because it would require the other counselors to assume a disproportionate workload. The employer reasonably accommodated her when it offered to give her 30 days and the assistance of its in-house employment counselor to find another position at the hospital to which she could transfer in which the likelihood of encountering further conflicts with her religious beliefs would be reduced.

Shelton v. Univ. of Med. & Dentistry, 223 F.3d 220 (3d Cir. 2000). A hospital's offer to transfer a labor and delivery nurse to the newborn intensive care unit was a reasonable accommodation of the nurse's religious opposition to abortion. Its offer to meet with the nurse to discuss other available positions also was a reasonable accommodation.

Nobach v. Woodland Vill. Nursing Home Ctr., Inc., 2012 WL 3811748 (S.D. Miss. Sept. 4, 2012). The plaintiff worked as an activities aide at a nursing home, and her duties included performing a non-denominational devotional reading, reading newspapers to residents, playing games with residents, and generally keeping residents entertained. She alleged that she was terminated based on religion because, as a non-Catholic, she refused to pray the rosary with a Catholic resident. The nursing home argued that there was no comparable position to which the plaintiff could have been transferred where this would be less to likely arise, given that there was only one activity aide per hall on duty at a time, and shifting one from a different hall or calling in an additional person when a resident wanted to perform the rosary would result in additional expense and a scheduling issue. The court denied the nursing home's motion for summary judgment, citing disputed facts about whether the plaintiff could be accommodated absent undue hardship since she regularly worked at a different building than the one where the incident occurred.

EEOC v. Dresser-Rand Co., 2006 WL 1994792 (W.D.N.Y. July 14, 2006). The court denied summary judgment for the employer in a case on behalf of a Jehovah's Witness who allegedly was denied transfer to different assignment as an accommodation of his religious objection to working on military projects.

3. Dress and Grooming Code Modifications

EEOC v. GEO Grp, Inc., 616 F.3d 265 (3d Cir. 2010). Affirming summary judgment for the employer, the court rejected EEOC's claim that prison officials should have accommodated female Muslim employees by granting an exception to the dress code that would permit them to wear their khimars. In ruling that the accommodation would have posed an undue hardship, the court agreed with the employer that the religious head coverings could be used to smuggle contraband into and around the prison or to conceal the identity of the wearer and that they could be used against prison employees in an attack. In addition, the court was not "entirely convinced" by the employer's assertion that adopting the proposed accommodations of allowing female Muslim employees to wear khimars but requiring them to be removed at each checkpoint would require locking down the prisoners in each such location. However, such a procedure would "necessarily require some additional time and resources of prison officials." But see United States v. Essex Cnty., 2010 WL 551393 (D.N.J. Feb. 16, 2010) (denying motion to dismiss, court allowed U.S. Department of Justice to proceed with denial of accommodation claim on behalf of Muslim employee of Essex County Department of Corrections who was denied accommodation of wearing her religious headscarf and terminated).

EEOC v. Kelly Servs., Inc., 598 F.3d 1022 (8th Cir. 2010). The court affirmed summary judgment for the defendant, a temporary employment agency, on a claim brought on behalf of a female Muslim temporary worker. The EEOC alleged that she was subjected to disparate treatment or denial of religious accommodation when the agency failed to refer her to a commercial printing company for employment because she refused to remove her khimar (a kind of religious headwear) for work. The printing company had a dress policy prohibiting headwear and loose-fitting clothing, which it said posed a safety hazard around printing machinery. The EEOC argued that the agency had a duty to investigate whether the printing company's generalized rules could have been safely modified to accommodate the worker, such as by assigning her to a job away from moving machinery or allowing her to work by the machinery if she tied back her khimar. The court ruled that it was unnecessary to determine whether the failure to refer constituted an adverse employment action as there was no evidence of an available position that met these requirements, and the printing company's facially neutral, safety-driven dress policy – as well as its facially neutral requirement that temporary workers should be able to perform all jobs – constituted a legitimate, nondiscriminatory reason for the agency's failure to refer her.

EEOC v. United Parcel Serv., 587 F.3d 136 (2d Cir. 2009). The appeals court reversed a lower court decision against the EEOC in a subpoena enforcement action in a Title VII case involving Muslim employees who wore beards for religious reasons, holding that the EEOC was entitled to national information regarding UPS's policy for religious exemptions to its personal appearance guidelines. Rejecting the employer's argument that two charges could not justify nationwide discovery, the court found that national information was relevant because the employer's

appearance guidelines applied nationally. Moreover, the court noted that when UPS changed its policy in 1999, which had barred employees who could not meet the guidelines for religious reasons from working in public-contact positions, it issued a memo establishing a new process to ensure that requests for exemptions would be evaluated in a consistent manner, yet both of EEOC's charging parties were subsequently denied accommodation and information about the exemption request process. In addition, at least one of the charges alleged a pattern or practice of failure to accommodate.

Webb v. City of Philadelphia, 562 F.3d 256 (3d Cir. 2009). Affirming summary judgment to the city, the court ruled that it would pose an undue hardship to accommodate the wearing of a traditional religious headpiece called a khimar by a Muslim police officer while in uniform, in contravention of the police department's dress code directive. The khimar covers the hair, forehead, sides of the head, neck, shoulders, and chest and sometimes extends down to the waist. The plaintiff intended to wear the lower portion of the khimar tucked inside of her police shirt and to wear her police hat. In finding that the accommodation would have posed an undue hardship, the court cited the Police Commissioner's uncontradicted deposition testimony that "it is critically important to promote the image of a disciplined, identifiable and impartial police force by maintaining the Philadelphia Police Department uniform as a symbol of neutral government authority, free from expressions of personal religion, bent or bias." The court noted that "[a]s a para-military entity, the Philadelphia Police Department requires 'a disciplined rank and file for efficient conduct of its affairs.'" The Commissioner's "thorough and uncontradicted reasons for refusing accommodations are sufficient to meet the more than de minimis cost of an undue burden." The court distinguished Fraternal Order of Police v. City of Newark, 170 F.3d 359 (3d Cir. 1999), in which the court held that a no-beard policy that made exceptions for certain medical conditions but not for religious reasons violated the First Amendment. Here, in contrast, the policy at issue bars the wearing of religious dress or symbols under all circumstances when a police officer is in uniform, with no medical or secular exceptions.

Cloutier v. Costco Wholesale Corp., 390 F.3d 126 (1st Cir. 2004). It would constitute an undue hardship to require Costco to modify its no-facial-jewelry policy as an accommodation for an employee who claimed that as part of her religious belief and practice as a member of the Church of Body Modification she had to display her facial piercings. Although Costco had not received any complaints about the employee's appearance, the court found that it would pose "an undue hardship to require Costco to grant an exemption because it would adversely affect the employer's public image," given Costco's determination that facial piercings detract from the "neat, clean and professional image" that it aimed to cultivate. Compare EEOC v. Red Robin Gourmet Burgers, 2005 WL 2090677 (W.D. Wash. Aug. 29, 2005) (in case involving employee's religious belief and practice of not covering Kemetic tattoos on his wrists, the court denied employer's summary judgment motion, finding that it had failed to establish as a matter of law that accommodating the uncovered tattoos would pose an undue hardship; specifically, the court noted: there was no evidence any customers complained about his tattoos, or any other employee's tattoos, during this time; the small size of the tattoos (less than a quarter-inch) and the little-known language in which they are written (Coptic) suggested that few customers would have noticed or understood the tattoos, "in contrast to the employee in Cloutier whose facial piercings were imminently visible"; the employer's "company profile and customer study suggesting that Red Robin seeks to present a family-oriented and kid-friendly image" did not

constitute evidence "that visible tattoos are inconsistent with these goals generally, or that its customers specifically share this perception").

Ali v. Alamo Rent-A-Car, Inc., 2001 WL 218788 (4th Cir. Mar. 6, 2001) (unpublished). The court dismissed a claim by a Muslim employee who claimed her employer violated Title VII when it transferred her to a position with limited customer contact when she refused to stop wearing her religiously mandated head scarf. The plaintiff argued that religious accommodation claims do not require a plaintiff to allege an adverse employment action because Title VII requires an employer to reasonably accommodate all aspects of religious observance and practice absent undue hardship. The court held, however, that the accommodation provision does not eliminate the basic statutory requirement of an adverse employment action. The court did not consider whether the transfer constituted an adverse employment action because the plaintiff conceded that it did not under circuit precedent.

Daniels v. City of Arlington, 246 F.3d 500 (5th Cir. 2001). A police department that had a policy prohibiting all pins on uniforms did not violate Title VII when it terminated an employee who wore a gold cross pin on his uniform in violation of the policy. It offered to accommodate the officer by allowing him to (1) wear a cross ring or bracelet; (2) wear the pin under his uniform shirt or collar; or (3) transfer to a non-uniformed position, where he could continue to wear the pin on his shirt, but the officer rejected those proposed accommodations. The employer was also able to show that allowing the officer to wear the pin would pose an undue hardship because it would give the public the appearance that it endorsed the officer's religious views.

Finnie v. Lee Cnty., Miss., 2012 WL 124587 (N.D. Miss. Jan. 17, 2012). The plaintiff, a Pentecostal female juvenile detention officer, alleged that the county violated Title VII by refusing to accommodate her religious objections to the pants-only uniform policy. Granting summary judgment to the county on this claim, the court ruled that there was deposition testimony, an expert report, and evidence of past incidents demonstrating detailed legitimate safety concerns about detention officers wearing skirts, including the ability of an officer to perform various defense-tactic maneuvers. For example, an assailant could pin the material of the skirt to the floor with his knees, thereby preventing the officer from moving her body as needed to perform a maneuver. "[T]o carry a burden of showing undue hardship, Defendants do not even need to prove that a skirt has – for example, in the past – actually caused such safety and security problems. Instead, [they] must show safety and security risks." Moreover, relying on Webb v. City of Philadelphia, 562 F.3d 256 (3d Cir. 2009), and other law enforcement cases, the court held that it would be an undue hardship to make an exception to the pants-only policy, because the standardized uniform requirement enhanced efficiency by subordinating individuality to the overall group mission.

EEOC v. Abercrombie & Fitch Stores, Inc., 798 F. Supp. 2d 1272 (N.D. Okla. 2011). The district court found a violation of Title VII where the defendant clothing retailer refused to hire an applicant for a customer sales position because her Muslim headscarf was contrary to the company's "Look Policy," which prohibits the wearing of "caps" on the sales floor. In finding liability, the court ruled that the employer failed to show that making an exception to the policy would pose an undue hardship on the operation of its business.

United States v. New York City Transit Auth., 110 Fair Empl. Prac. Cas. (BNA) 856, 2010 WL 3855191 (E.D.N.Y. Sept. 28, 2010). The U.S. Department of Justice could proceed with a pattern-or-practice claim on behalf of Muslim and Sikh bus drivers, train operators, and subway station agents alleging selective enforcement of the city's headwear policies and failure to accommodate Muslims and Sikhs who could not comply with the headwear polices for religious reasons. Rejecting the defendant's contention that pattern-or-practice claims are limited to disparate treatment, the court concluded that the plaintiff could bring a pattern-or-practice claim alleging denial of accommodation. In addition, the fact that the plaintiff had so far only identified 10 potential discrimination victims did not preclude a pattern-or-practice claim. "[I]f there is evidence of systemic discrimination, the fact that plaintiff cannot establish a large number of victims . . . is of no moment." This also was not "the extraordinary case in which the reasonableness of the defendants' proposed accommodations [could] be determined as a matter of law." Although workers transferred to "shifter" positions, which did not involve public contact, would receive $.50 more per hour, the new positions offered fewer overtime opportunities and other job benefits and exposed them to a less desirable work environment, such that the transfers would not necessarily be a reasonable accommodation. Finally, the evidence did not conclusively show that the defendant would incur an undue hardship by providing an accommodation. The employees did not seek an outright exemption from the headwear policies, but rather only to be allowed to affix the defendant's logo to a shirt or jacket pocket or collar rather than to their turbans or headscarves (khimars). There was no proof that this subtle change in the placement of the logo would adversely affect the Transit Authority in any way. Therefore, the defendant was not entitled to summary judgment.

EEOC v. Abercrombie & Fitch Stores, Inc., 107 Fair Empl. Prac. Cas. (BNA) 1006, 2009 WL 3517588 (E.D. Mo. Oct. 26, 2009). The EEOC moved to exclude expert testimony at trial by the defendant retail store in defending a Title VII denial of accommodation claim brought by the EEOC on behalf of a sales person at a Hollister clothing store who sought an exception to the company's "look policy" because her Apostolic faith forbade her from wearing pants or skirts that fell above the knee. The court ruled that it would permit, as relevant to the undue hardship defense, proposed testimony by the defendants' experts that adherence to the look policy was "critically important" to performance of the position and constituted an "essential function" of the position. Such testimony was relevant to the alleged harm that would be caused to the Hollister brand by permitting an employee in the plaintiff's position to deviate from the look policy.

Jenkins v. New York City Transit Auth., 646 F. Supp. 2d 464 (S.D.N.Y. 2009). The court denied the employer's motion to dismiss a Pentecostal American bus driver's disparate impact claim arising out of the denial of her request to wear a skirt as part of her uniform and her subsequent termination when she refused to wear pants. The court held that a disparate impact claim based on religion is permissible under Title VII, which requires an employer to demonstrate that a policy having a disparate impact is job related for the position in question and consistent with business necessity.

EEOC v. Papin Enters., Inc., 105 Fair Empl. Prac. Cas. (BNA) 1804, 2009 WL 961108 (M.D. Fla. Apr. 7, 2009). The court denied summary judgment to the employer in an accommodation claim against a Subway sandwich shop brought by the EEOC on behalf of an employee who

sought a dress code exception in order to wear a nose ring pursuant to Nuwaubian religious beliefs. The court rejected the argument that "as a company operating restaurant outlets," the employer had to "impose strict, uniform food-safety requirements as part of its business model." This contention was undermined by the employer's alternative contention that it provided accommodation by offering to allow her to wear the nose ring while working but to be absent on those dates that the corporate compliance auditor visited. The employer also allowed other employees to wear watches and wedding bands, even though these, like nose rings, were contrary to the "no jewelry" food safety guidelines on which the employer relied for its safety-based undue hardship defense. See also summary at § III.E.1.b, at page 5 (denying EEOC motion for injunctive relief as to employer's verification policy where jury returned verdict for employer).

Potter v. District of Columbia, 101 Fair Empl. Prac. Cas. (BNA) 1302, 2007 WL 2892685 (D.D.C. Sept. 28, 2007), aff'd, 558 F.3d 542 (D.C. Cir. 2009). A new D.C. fire department safety policy forbidding workers who use "tight-fitting face pieces" from having facial hair that comes between the sealing surface of the face piece and the face violated the Religious Freedom Restoration Act (RFRA) where religious objectors were neither exempt nor allowed to take a "face fit test" to determine whether they could obtain an adequate seal between their faces and their masks while wearing their beards. The department conceded that most firefighting work was performed using a self-contained breathing apparatus (SCBA), which bearded firefighters can use safely, and that, for other circumstances, there were less restrictive measures than the no-facial hair policy to ensure the government's safety interest. Thus, the fire department could show neither that there was a compelling governmental interest in applying the policy against religious objectors nor that the policy was the least restrictive means to serve the cited safety interest. (N.B. The court's RFRA analysis only applies to claims brought against the federal government or the District of Columbia.)

EEOC v. Alamo Rent-A-Car, L.L.C., 432 F. Supp. 2d 1006 (D. Ariz. 2006). Granting the EEOC's motion for partial summary judgment, the court determined that the employer violated Title VII when it terminated a Somali-born Muslim customer sales representative for refusing to remove her head scarf during Ramadan. The employer began to prohibit the wearing of a head scarf only after the terrorist attacks on September 11, 2001. The employer proposed to allow the woman to wear her head scarf during Ramadan in the back office while still requiring her to serve clients without the religious garment. The court held that the employer's proposal was not a reasonable accommodation because it would still require the employee to remove her head covering at work. The court also rejected the employer's contention that accommodating the plaintiff would result in undue hardship by opening "the floodgates to others violating the uniform policy," since contrary to the employer's contention, the employer could have allowed the plaintiff to wear her religious headscarf while still enforcing its uniform policy with respect to other employees. (By jury verdict entered June 1, 2007, the employer was ordered to pay $250,000 in punitive damages, $21,640 in compensatory damages, and $16,000 in back pay.)

Brown v. F.L. Roberts & Co., 419 F. Supp. 2d 7 (D. Mass. 2006). The plaintiff, a lube technician at a vehicle oil change facility who serviced vehicles and dealt with customers, did not shave or cut his hair due to his Rastafarian religious beliefs. The employer implemented a new personal appearance policy requiring employees with customer contact to be clean shaven.

When the plaintiff informed the employer he would not shave due to his religious beliefs, his work was restricted to the lower bay, an area of the shop that was cold, had no customer contact, and where he was often assigned to work alone so it was difficult to take breaks. The court held that while this was sufficient to establish a prima facie case of religious discrimination, summary judgment for the employer was appropriate because the sole accommodation plaintiff was seeking, a blanket exemption from the employer's neutral appearance policy, constituted an undue hardship on the employer.

Rivera v. Choice Courier Sys., Inc., 2004 WL 1444852 (S.D.N.Y. June 25, 2004). The plaintiff, a courier, asserted that based on his evangelical Christian beliefs he adhered to a religious practice of always wearing clothing with a religious message. The employer terminated him for refusal to comply with its dress code, citing a concern that some of its customers or their employees were likely to be offended by plaintiff's conspicuous evangelistic message. Denying summary judgment for the employer on the plaintiff's claim of denial of reasonable accommodation, the court found there were disputed issues of material fact with respect to whether plaintiff failed to cooperate in the accommodation process, and if not, whether he could have been accommodated absent undue hardship, including for example by transfer to an open "street courier" position that had a less stringent dress code. See also Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012).

4. Permitting Religious Expression or Proselytizing

Matthews v. Wal-Mart Stores, Inc., 111 Fair Empl. Prac. Cas. (BNA) 1774, 2011 WL 1192945 (7th Cir. Mar. 31, 2011) (unpublished). See summary above.

Schwartzberg v. Mellon Bank, N.A., 2009 WL 162885 (3d Cir. Jan. 26, 2009) (unpublished). The plaintiff, an Orthodox Jew with a religious belief that homosexuality is immoral, sent correspondence to coworkers expressing this belief in strident terms. After the first instance, management issued him a warning and advised him that the conduct violated its harassment policy and would not be tolerated. After the second instance, he was given a "final written warning," informing him that subsequent violations could result in termination. He was subsequently terminated for four instances of sleeping on the job. He brought suit under Title VII, alleging that the termination constituted discrimination based on his religious beliefs. Granting summary judgment to the employer, the district court held that because the plaintiff conceded that there was no conflict between his religious beliefs and the employer's prohibition against denigrating coworkers based on sexual orientation, the employer therefore had no duty to accommodate. The district court also noted that the employer had not required the plaintiff to change his religious beliefs or to participate in any affinity group events to which he objected on religious grounds. On appeal, the Third Circuit found "no basis for disturbing the District Court's rulings" and therefore affirmed the judgment "for substantially the same reasons."

Lizalek v. Invivo Corp., 2009 WL 690020 (7th Cir. Mar. 16, 2009) (unpublished). The employer demonstrated that it would have been an undue hardship to have accommodated a corporate employee's need to alternate among different identities pursuant to his alleged religious belief that he was three separate beings. The evidence showed that the plaintiff's practice of alternating between identities in e-mail correspondence endangered the company's customer relationships

and made it difficult for him to communicate with coworkers and that his religious belief that he was exempt from tax liability risked a conflict with the IRS.

Grossman v. South Shore Pub. Sch. Dist., 507 F.3d 1097 (7th Cir. 2007). Affirming summary judgment for the school district on a terminated guidance counselor's First Amendment free exercise and Title VII claims, the court ruled that the school district was permitted to terminate the counselor for her conduct, even if her actions were motivated by her religious beliefs. On several occasions when students approached her for guidance, she asked them to join her in prayer. She also replaced school materials regarding condoms with pamphlets advocating sexual abstinence. There was insufficient evidence that her termination was based on her religious views alone, as opposed to these actions, which the school district was entitled to prohibit. See also Amekudzi v. Board of City of Richmond Pub. Sch., 2007 WL 4468683 (E.D. Va. Dec. 17, 2007).

Powell v. Yellow Book USA, Inc., 445 F.3d 1074 (8th Cir. 2006). The employer was not liable for religious harassment of plaintiff because upon learning of her complaints about a coworker's proselytizing, the employer had satisfied its Title VII obligation to take effective remedial action when it promptly held a meeting and told the coworker to stop discussing religion matters with plaintiff, and there was evidence that the company continued to monitor the situation to ensure that the coworker did not resume her proselytizing.

Berry v. Department of Soc. Servs., 447 F.3d 642 (9th Cir. 2006). The employer did not subject a county social worker who was an evangelical Christian to disparate treatment or denial of accommodation in violation of Title VII when it prohibited him from discussing his religion with clients, displaying religious messages in his work cubicle, and using the department's conference room for prayer meetings. Permitting the plaintiff to discuss his religion with clients would have posed an undue hardship by putting the department at risk of violating the Establishment Clause. Similarly, allowing the plaintiff to display religious messages in his cubicle would require the department to accept or to rebut the inherent suggestion of state sponsorship of his religion. The court also rejected the plaintiff's claim that the department's refusal to allow him to use the conference room for prayer meetings amounted to disparate treatment based on religion absent any evidence that the department's stated nondiscriminatory reason – to preserve the room as a nonpublic forum – was a pretext.

Knight v. Connecticut Dep't of Pub. Health, 275 F.3d 156 (2d Cir. 2001). Two state employees, one a sign language interpreter and the other a nurse consultant, wanted to use religious speech in their interaction with the employer's clients. The court held that the employees failed to establish a prima facie case of religious discrimination because they were not able to show that the employer was on notice of their religious need to evangelize to clients, but that even if the employer had been on notice, the accommodation that they sought was not reasonable. Permitting employees to evangelize while providing services to clients would jeopardize the state's ability to provide services in a religiously neutral manner.

Anderson v. U.S.F. Logistics (IMC), Inc., 274 F.3d 470 (7th Cir. 2001). A religious practice that arguably could impair an employer's legitimate business interests can be restricted as long as the belief is reasonably accommodated. The employer reasonably accommodated the plaintiff's

religious practice of sporadically using the phrase "have a blessed day" when it permitted her to use the phrase with coworkers and supervisors who did not object, but prohibited her from using the phrase with customers.

Wilson v. U.S. W. Commc'ns, 58 F.3d 1337 (8th Cir. 1995). An employer could discharge an individual who, for religious reasons, insisted on wearing an anti-abortion button depicting a fetus. Title VII does not allow an employee "to impose [her] religious views on others." The photo on the button was offensive to many, and to allow her to wear the pin would result in an undue hardship to the employer.

Hickey v. State Univ. of N.Y. at Stony Brook Hosp., 2012 WL 3064170 (E.D.N.Y. July 27, 2012). The plaintiff, a hospital painter, regularly wore a lanyard around his neck printed with the phrase "I Jesus." Attached to the lanyard was a clear plastic badge holder containing a piece of paper with the handwritten words "Jesus Loves You!" and a drawing of a cross. On the reverse side, vertically aligned, was the handwritten message: "F False E Evidence A Appearing R Real." Discussing whether the hospital might be able to show that it would pose an undue hardship to accommodate the plaintiff's request to continue wearing the badge after being told it violated the uniform policy, the court noted that, to the extent the hospital argued it was "inappropriate because it could upset or confuse patients and guests already in a stressful situation and/or interfere with promoting the efficiency of the public service it performs through its employees," this was a mere assumption that, absent any evidence that it had occurred, would not support a finding of undue hardship.

Shatkin v. Univ. of Tex. at Arlington, 109 Fair Empl. Prac. Cas. (BNA) 1559, 2010 WL 2730585 (N.D. Tex. July 9, 2010). The plaintiffs, two administrative assistants employed in the defendant's development office, were terminated for "conduct unbecoming" a staff member, harassment of a coworker, and "blatant disregard for the property of the university." The plaintiffs had entered a coworker's cubicle after work, rubbed olive oil on the doorway of the cubicle, and prayed for the coworker in an allegedly loud or disruptive manner while chanting, "I command you demons to leave Knight [the coworker], you vicious evil dogs get the hell out of here in the name of Jesus, get the hell out of Knight." The plaintiffs alleged denial of religious accommodation to pray in a non-disruptive manner during a non-work period, as well as retaliation. Acknowledging that an employer is not required to grant an accommodation that would infringe on the rights of fellow employees and that promoting workplace harmony is a laudable goal, the court nevertheless denied the defendant's motion for summary judgment, noting that the coworker who was the target of the alleged harassment was not present when it occurred and only learned of it months later. Moreover, the fact that the discipline was predicated solely on the prayer incident and not the prior inharmonious relationship with Knight undermined the defendant's rationale for the termination as the plaintiffs' conduct did not rise to the level of the conduct displayed by employees in cases cited by the defendant in support of its action. Finally, the head of the plaintiffs' department stated that the defendant's duty to accommodate depended "on the type of prayer" and whether it was "offensive." The court stated that this approach impermissibly focused on the belief itself rather than on whether the accommodation would result in an undue hardship.

Latif v. Locke, 2009 WL 3261562 (W.D. Ariz. Oct. 8, 2009). The plaintiff, who was responsible for recruiting interest in working for the Census Bureau, claimed that the Bureau violated Title VII by requiring him to attend Mass as part of his duties. Granting summary judgment to the employer on the plaintiff's claims of discrimination, harassment, and denial of accommodation, the court found that while recruitment was encouraged at a variety of locations, including houses of worship, there was no requirement to attend Mass, and in fact recruiters could elect not to recruit at any faith-based organizations.

EEOC v. Serranos Mexican Rests., 2007 WL 505342 (D. Ariz. Feb. 14, 2007), aff'd, 2009 WL 20962 (9th Cir. Jan. 5, 2009) (unpublished). The employer adopted a code of conduct prohibiting managers from socializing with staff outside of the workplace, which was intended to prevent sexual harassment and avoid unfair treatment of employees. A general manager who led a Bible study group outside of work, which three of her subordinates attended, was discharged for violating the code's restrictions. The jury found that the employer had offered her an accommodation – transferring to another restaurant – that would have eliminated the conflict but that she declined to accept the offer. The court denied EEOC's motion for a new trial.

Andrews v. Virginia Union Univ., 102 Fair Empl. Prac. Cas. (BNA) 580, 2007 WL 4143080 (E.D. Va. Nov. 19, 2007). Denying a private university's motion to dismiss for failure to state a claim, the court allowed a Title VII claim of religious accommodation to proceed. The plaintiff, an Assistant Professor of Social Work and the Chairperson of the Department of Social Work, alleged that after several years during which she was addressed as "Reverend" by students, faculty, and the administration, the university violated Title VII by requiring that only academic titles be used. The court ruled that if a minister working as a university professor had a sincerely held religious belief, as opposed to a personal preference, that she be called "Reverend," the university had a Title VII obligation to accommodate that belief unless to do so would pose an undue hardship.

Ennis v. Sonitrol Mgmt. Corp., 97 Fair Empl. Prac. Cas. (BNA) 964, 2006 WL 177173 (S.D.N.Y. Jan. 25, 2006). In granting summary judgment for the employer, the court ruled that a Jewish employee was not subjected to a hostile work environment by his evangelical supervisor's "fervent religious proclivities and his 'in-your-face' religious behavior." The plaintiff alleged that the supervisor diverted business to several employees who were members of the supervisor's church, and that these employees sang religious songs and left religious writings and a Bible on the plaintiff's desk. The court noted that "[w]here a hostile work environment claim is grounded in religious hostility, courts have been particularly cautious in adhering to the principle that the hostile or offensive conduct must involve some coercive or abusive behavior," and ruled that in this case the alleged conduct was "simply not the sort of abusive behavior prohibited by Title VII," and was not motivated by the plaintiff's religion. In reaching this conclusion, the court found that the supervisor never tried to proselytize the plaintiff and never disparaged his religion.

Buonanno v. AT&T Broadband, L.L.C., 313 F. Supp. 2d 1069 (D. Colo. 2004). The court concluded that the employer wrongfully terminated the plaintiff after he refused to sign a diversity policy requiring him to "respect and value the differences in all of us," even though he explained that he refused to sign it because he could not value homosexuality as it was contrary

to his Christian religious beliefs. The court found that by terminating the plaintiff for his refusal to sign the diversity policy, the employer failed to accommodate his religious beliefs. The court noted that the plaintiff had agreed to treat all of his coworkers respectfully and not discriminate against them, but had refused to sign the statement as worded by the employer because he reasonably believed that it required him to condone homosexuality in contravention of his religious beliefs.

Grant v. Fairview Hosp. & Healthcare Servs., 2004 WL 326694 (D. Minn. Feb. 17, 2004). A hospital did not violate Title VII when it terminated an ultrasound technician whose religious views required him to attempt to dissuade women from having abortions. The hospital offered the technician a reasonable accommodation when it agreed to excuse him from performing ultrasounds on women who were considering abortion, and to excuse him from remaining in the examination room with such patients. However, the hospital was not required as an accommodation to permit the technician to attempt to dissuade women from having abortions.

Swartzentruber v. Gunite Corp., 99 F. Supp. 2d 976 (N.D. Ind. 2000). An employee challenged as denial of religious accommodation his employer's demand that he cover up a KKK tattoo, which depicted a hooded figure standing in front of a burning cross. The employer asserted that displaying the tattoo violated employer's racial harassment policy and offended other employees, and therefore tolerating it uncovered would pose an undue hardship. The court held that the employer did not violate Title VII because where many would view the employee's tattoo depiction of his asserted religious belief as a racist and violent symbol, the employer did reasonably accommodate him by allowing him to work with the tattoo covered.

5. Excusing Union Dues

United States v. Ohio, No. 2:05-CV-799 (S.D. Ohio consent decree filed Sept. 1, 2006). The consent decree settling this action brought by the U.S. Department of Justice broadened reach of religious objector clause in union contracts covering Ohio state employees to provide, consistent with Title VII, that the charity-substitute accommodation with respect to union dues is available for all sincerely held religious objections, whether or not the employee is a member and or adherent of a particular religion.

EEOC v. Univ. of Detroit, 904 F.2d 331 (6th Cir. 1990). An employee's religious objection was to the union itself, so reasonable accommodation required allowing him to make a charitable donation equivalent to the amount of union dues instead of paying dues.

International Assoc. of Machinists v. Boeing, 833 F.2d 165 (9th Cir. 1987). An employee with sincerely held religious objections to joining a labor union is entitled under Title VII to withhold union dues. An employee's offer to make a charitable contribution in lieu of union dues was a "reasonable accommodation" under Title VII, and a 1980 amendment to the Taft-Hartley Act does not supersede the protection afforded to the employee under Title VII. "Title VII defines religion as 'all aspects of religious observance and practice, as well as belief.' An employee whose sincerely held religious beliefs opposing unions could be relieved from paying dues under Title VII, even if he or she was not a member of an organized religious group that opposes unions."

McDaniel v. Essex Int'l, Inc., 696 F.2d 34 (6th Cir. 1982). The court held that employee's proposal to donate an amount equivalent to dues to a "mutually agreeable" charity was a reasonable accommodation that would not have posed an undue hardship.

Tooley v. Martin Marietta Corp., 648 F.2d 1239 (9th Cir. 1981). A union could not force an employer, under a contractual union security clause, to terminate three Seventh Day Adventists who offered to pay an amount equivalent to dues to a nonreligious charity because the union failed to show that such an accommodation would deprive it of funds needed for its maintenance and operation.

Nottelson v. Smith Steel Workers D.A.L.U. 19806, AFL CIO, 643 F.2d 445 (7th Cir. 1981). A charity-substitute religious accommodation for union dues did not pose an undue hardship to a union where loss of the plaintiff's dues represented only .02% of the union's annual budget, and the union presented no evidence that the loss of receipts from the plaintiff would necessitate an increase in the dues of his coworkers.

Yott v. North Am. Rockwell Corp., 602 F.2d 904 (9th Cir. 1979). A charity-substitute accommodation was reasonable notwithstanding the employee's preference for transfer to non-bargaining unit position instead.

Burns v. South Pac. Transp. Co., 589 F.2d 403 (9th Cir. 1978). The court held that excusing Burns from paying his monthly $19 union dues due to a religious objection did not pose an undue hardship notwithstanding administrative cost to union and "grumblings" by other employees. One union officer testified that the loss "wouldn't affect us at all"; the loss was also de minimis because "even if so necessary to its fiscal well-being that its equivalent would be collected from the Local's 300 members at a rate of 2 cents each per month; an accommodation that would only result in an increase of other union members' dues in amount of 24 cents per year was de minimis; unions asserted fear that many more religious objectors would request similar accommodation, resulting in greater cost, was based on mere speculation.

Reed v. UAW, 523 F. Supp. 2d 592 (E.D. Mich. 2007), aff'd, 569 F.3d 576 (6th Cir. 2009). Granting summary judgment to the union, the court held that while the plaintiff did not establish a prima facie case, even if he had, the union met its accommodation obligation. The plaintiff objected to paying union dues for religious reasons, and the union accommodated him by requiring him to pay to a charity of his choice an amount equal to full union dues. Noting that the accommodation was effective and that the plaintiff was not entitled to his preferred accommodation, the court rejected the plaintiff's argument that he should have had to pay a sum equal to only 78% of union dues – the union security payment required of employees who objected to the use of dues for political purposes. The court noted that this was not a situation where the employer's offered accommodation forced the employee to lose a benefit enjoyed by all other employees without a religious conflict, since under the accommodation provided he would have paid the very same amount as the overwhelming majority of his coworkers who did not have either secular or religious objections to the union. Moreover, as a religious objector, the plaintiff paid nothing to the union, although he received the benefits of representation, and was able to donate to a charity of his choice and possibly receive a tax deduction, whereas a political

objector paid a lower total amount but still paid the union his or her share for representation costs. Under the circumstances, the court ruled that "[i]t is not discriminatory to provide different accommodations to employees who assert different objections." In affirming the district court, the Eighth Circuit held that the plaintiff did not establish a prima facie case and did not reach the reasonable accommodation issue. See also summary at § III.E.4.f, at page 49 (summarizing Eighth Circuit decision).

Madsen v. Associated Chino Teachers, 317 F. Supp. 2d 1175 (C.D. Cal. 2004). The union did not engage in disparate treatment in violation of Title VII by requiring an employee who objected on religious grounds to payment of union dues to make an equivalent charitable contribution instead. See also O'Brien v. Springfield Educ. Ass'n, 319 F. Supp. 2d 90 (D. Mass. 2003) (not a reasonable accommodation to require religious objection to pay full union dues where state statute permitted non-union members to pay a lower amount in form of agency fee).

EEOC v. Am. Fed'n of State, Cnty. & Mun. Emps., 937 F. Supp. 166 (N.D.N.Y. 1996). Donation to a "mutually agreeable" charity is a reasonable accommodation in cases where an employee has a sincerely held religious belief against supporting the causes which a union's dues are used to support.

6. Objections to Social Security Numbers

Sutton v. Providence St. Joseph Med. Ctr., 192 F.3d 826 (9th Cir. 1999). An applicant alleged that the hospital violated Title VII by refusing to hire him after he declined to provide his social security number for religious reasons. The hospital was not liable for religious discrimination under Title VII because federal tax laws required the hospital to obtain all employees' social security numbers, and accommodation of the applicant's religious beliefs would cause "undue hardship."

F. Requirement of an Adverse Action Resulting from Denial of Accommodation

Reed v. UAW, 569 F.3d 576 (6th Cir. 2009). Affirming summary judgment for the defendant union on the plaintiff's Title VII denial of accommodation claim arising out of his religious objection to paying union dues, the panel majority ruled that the plaintiff did not establish a prima facie case because he did not show that he was subjected to an adverse employment action, specifically discharge or discipline. The court held that the plaintiff could not avoid the adverse action requirement "by insisting that the only controversy here concern[ed] the reasonableness – not the necessity – of his accommodation. Unless a plaintiff has suffered some independent harm caused by a conflict between his employment obligation and his religion, a defendant has no duty to make any kind of accommodation." While an employer or union may not dole out accommodations in a discriminatory fashion, the plaintiff had explicitly disavowed any disparate treatment claim. It was unnecessary for the court to determine the precise contours of a prima facie case against a union since other than the reasonableness of the accommodation, the plaintiff did not identify any action by the union that affected his employment. Concurring, one judge stated that although the plaintiff did not establish a prima facie case, even if he had done so, he agreed with the district court that the union satisfied its accommodation obligation. Dissenting, the third judge criticized the majority for requiring a showing of discharge or

discipline as the adverse employment action on which a denial of religious accommodation claim is based, and stated that in any event such a requirement should not apply if the defendant is a union. The dissent also concluded that the union's accommodation was not reasonable since it required the plaintiff to pay a greater amount than workers who had nonreligious objections to the union's activities.

Goldmeier v. Allstate Ins. Co., 337 F.3d 629 (6th Cir. 2003). Employees alleged that the employer's new scheduling policy would conflict with their religious beliefs, but the court dismissed their claim because they quit their jobs and accepted new employment before the policy went into effect.

Lawson v. Washington, 296 F.3d 799 (9th Cir. 2002). A Jehovah's Witness who quit the state patrol rather than salute the flag in violation of his religious beliefs was not constructively discharged and thus was not subjected to an adverse employment action.

Ali v. Alamo Rent-A-Car, Inc., 2001 WL 218788 (4th Cir. Mar. 6, 2001) (unpublished). The transfer of a Muslim employee to non-customer service position because she refused to stop wearing religiously mandated headscarf was not an "adverse employment action" under Title VII.

EEOC v. Townley Eng'g & Mfg. Co., 859 F.2d 610 (9th Cir. 1988). "The threat of discharge (or of other adverse employment practices) is a sufficient penalty" to render the employer's alleged denial of religious accommodation actionable; "[a]n employee does not cease to be discriminated against because he temporarily gives up his religious practice and submits to the employment policy."

Weathers v. FedEx Corporate Servs., Inc., 2011 WL 5184406 (N.D. Ill. Nov. 1, 2011). The plaintiff, a sales manager who described himself as a conservative evangelical Christian, belonged to an internal Christian employee organization and, in that capacity, had been invited to speak at FedEx sales conferences about his faith. The plaintiff was issued a "letter of counseling" after one of his subordinates complained that he had quoted biblical passages to her about the master/slave relationship and analogized it to work. The letter instructed the plaintiff that his discussions of religion with coworkers, even if initiated by others, "must cease." In response, he sent an e-mail asking for "clarity" as to how he was supposed to answer when questioned about his faith, and asking when Title VII would permit him to discuss religion in response to genuine inquiries from coworkers. He never received a reply. Denying summary judgment to the employer on the plaintiff's accommodation claim, the court ruled that the plaintiff's e-mail seeking "clarity" was a request for accommodation, and it memorialized his sincerely held religious belief that he was required to answer questions about his faith. Although the letter of counseling itself was not an adverse action, the ongoing broad instruction not to discuss religion was an adverse action, because it subjected the plaintiff "to [a] humiliating, degrading, . . . or otherwise significant alteration in [his] workplace environment," and as a result of the letter, he was "unable to exercise his religious belief and unable to discuss a subject of broad scope and of great importance to him."

Sraieb v. Am. Airlines, Inc., 735 F. Supp. 2d 837 (N.D. Ill. 2010). Granting the employer's motion for summary judgment on a Muslim Shia flight attendant's claims of denial of religious accommodation (a ground assignment during Ramadan) and discriminatory termination, the court found that the plaintiff was offered a month off without pay as an accommodation for Ramadan but instead resigned, and thus could not establish the "adverse employment action" required for a prima facie case of denial of accommodation, nor could he show constructive discharge.

Stone v. West, 133 F. Supp. 2d 972 (E.D. Mich. 2001). The employee, a Seventh Day Adventist, alleged she was harassed and denied a reasonable accommodation when she requested to be off on Friday evenings and Saturdays to observe the Sabbath. Because the employee had continued to work on those days, however, she "avoided suffering any adverse employment consequences as a result of her religious beliefs; rather, her personal religious observance suffered on account of her adherence to her work schedule."

V. Defenses to Religious Discrimination Liability

A. Religious Organization Exemption

Corp. of the Presiding Bishop v. Amos, 483 U.S. 327 (1987). A nonprofit, church-run business does not violate Title VII if it refuses to hire anyone other than members of its own religion, even for enterprises or jobs that are not religious in nature.

Kennedy v. St. Joseph's Ministries, Inc., 657 F.3d 189 (4th Cir. 2011). The court held that, under the "religious organization" exemption, a religiously based nursing center was exempt from all religious discrimination claims, not just claims of religious discrimination in hiring and firing. The plaintiff, a nursing assistant, was terminated for refusing to stop wearing her religious garb (long dresses/skirts and a cover for her hair), after the Assistant Director of Nursing Services informed her that her attire was inappropriate for a Catholic facility and that it made residents and their family members feel uncomfortable. In holding that the statutory exemption barred not only the plaintiff's discriminatory discharge claim but also her religious harassment and retaliation claims, the court relied on the statutory language of the "religious organization" exemption, which states that Title VII's religious discrimination prohibitions "shall not apply" to religious organizations with respect to the "employment" of individuals "of a particular religion." The court interpreted the term "employment" to encompass all aspects of the employment relationship. In reaching this conclusion, the court rejected the EEOC's interpretation, which limits the exception to decisions by religious organizations to prefer members of their own religion in hiring and firing.

Spencer v. World Vision, Inc., 633 F.3d 723 (9th Cir. 2011), cert. denied, 132 S. Ct. 96 (2011). Three employees brought a Title VII action against a nonprofit faith-based humanitarian organization, alleging that they were terminated based on their religious beliefs. Affirming summary judgment for the defendant, the court found, in a 2-1 decision, that the defendant was a "religious organization" exempt from Title VII's prohibition against religious discrimination. Although the two judges in the majority agreed that the applicability of the exemption depends on "whether the 'general picture' of an organization is 'primarily religious,' taking into account

'[a]ll significant religious and secular characteristics,'" they disagreed as to the proper test for making this determination. Judge Scannlain would consider whether the organization: (1) is organized for a self-identified religious purpose (as evidenced by Articles of Incorporation or similar foundational documents); (2) is engaged in activity consistent with, and in furtherance of, those religious purposes; and (3) holds itself out to the public as religious. Judge Kleinfeld criticized Judge O'Scannlain's test as being too broad, contending that it would allow nonprofit institutions with church affiliations to use their affiliations as a "cover for religious discrimination in secular employment." Judge Kleinfeld would instead apply the exemption to a defendant if it: (1) is organized for a religious purpose; (2) is engaged primarily in carrying out that religious purpose; (3) holds itself out to the public as an entity for carrying out that religious purpose; and (4) does not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts. Because the defendant was exempt even under Judge Kleinfeld's narrower test, it was entitled to summary judgment.

Clark v. Salvation Army, 2009 WL 179614 (11th Cir. Jan. 29, 2009) (unpublished). Affirming summary judgment for the employer as to the plaintiff's claim that he was not hired for a vacant social worker position because he was a Roman Catholic and "not a practicing Christian," the court applied 42 U.S.C. § 2000e(1)(a), which "exempts religious organizations from Title VII's prohibition against discrimination in employment on the basis of religion."

LeBoon v. Lancaster Jewish Cmty. Ctr., 503 F.3d 217 (3d Cir. 2007). To determine whether an organization is religious, courts have looked at the following factors: (1) whether the entity operates for a profit; (2) whether it produces a secular product; (3) whether the entity's articles of incorporation or other pertinent documents state a religious purpose; (4) whether it is owned, affiliated with or financially supported by a formally religious entity such as a church or synagogue; (5) whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees; (6) whether the entity holds itself out to the public as secular or sectarian; (7) whether the entity regularly includes prayer or other forms of worship in its activities; (8) whether it includes religious instruction in its curriculum, to the extent it is an educational institution; and (9) whether its membership is made up of coreligionists. Not all factors will be relevant in all cases, and the weight given each factor may vary from case to case. Applying those criteria, the employer in this case was held to be a religious organization because while it lacked financial or administrative ties with a particular synagogue and many of its activities were cultural, rather than religious, its structure and purpose were primarily religious; its articles of incorporation stated that its mission was to enhance and promote Jewish life, identity, and continuity; it was nonprofit; synagogue clergy played an advisory role in the employer's management; and it hosted Jewish events and observed holy Jewish holidays.

Hall v. Baptist Mem'l Health Care Corp., 215 F.3d 618 (6th Cir. 2000). A student-service specialist alleged that a Southern Baptist-affiliated nursing school terminated her on the basis of religion because she was a lay leader in a gay-friendly church. The court ruled that the employer terminated her because of her leadership position in a gay organization whose values conflicted with the Southern Baptist Church, rather than her religious views per se.

Ziv v. Valley Beth Shalom, 156 F.3d 1242, 1998 WL 482832 (9th Cir. Aug. 11, 1998) (table). Even though a religious organization is permitted to prefer co-religionists, it is still otherwise subject to Title VII and can be held liable for retaliation and national origin discrimination.

Killinger v. Samford Univ., 113 F.3d 196 (11th Cir. 1997). A Baptist university was a "religious educational institution" where the largest single source of funding was the state Baptist Convention; all university trustees were Baptists; the university reported financially to the Convention and to the Baptist State Board of Missions; the university was a member of the Association of Baptist Colleges and Schools; the university charter designated its chief purpose as "the promotion of the Christian Religion throughout the world by maintaining and operating institutions dedicated to the development of Christian character in high scholastic standing"; and both the IRS and Department of Education recognized the university as a religious educational institution.

EEOC v. Kamehameha Sch./Bishop Estate, 990 F.2d 458 (9th Cir. 1993). A nonprofit school was not "religious" for Title VII purposes where ownership and affiliation, purpose, faculty, student body, student activities, and curriculum were either essentially secular or neutral with respect to religion.

EEOC v. Townley Eng'g & Mfg. Co., 859 F.2d 610 (9th Cir. 1988). Title VII does not prohibit a private sector employer from expressing its religious views in the workplace, for example by including Biblical verses on company invoices or other literature, enclosing Gospel tracts in outgoing mail, or holding devotional services during work hours, as long as it does not subject employees to religious harassment or deny requested religious accommodation by requiring them to attend the services or otherwise conform to the employer's religion.

EEOC v. Fremont Christian Sch., 781 F.2d 1362 (9th Cir. 1986). A religious school violated Title VII and the Equal Pay Act when it provided "head of household" health insurance benefits only to single persons and married men.

Braun v. St. Pius X Parish, 827 F. Supp. 2d 1312 (N.D. Okla. 2011), aff'd on other grounds, 2013 WL 410305 (10th Cir. Feb. 4, 2013) (unpublished). The plaintiff, a teacher at a school operated by a Roman Catholic parish, alleged she was terminated because of her age and religion. Granting summary judgment for the employer on the plaintiff's claim of religious discrimination, the court ruled that the claim was barred under the Title VII exemption for religious organizations and religious educational institutions. Applying the list of factors set forth in LeBoon v. Lancaster Jewish Community Center, 503 F.3d 217 (3d Cir. 2007), the court found that the school came under the exemption because it was operated by a Catholic church, it mandated religious instruction for all students, it required students to participate in daily prayer, and it was supervised in part by the parish pastor. See also summary at § III.E.5.d, at page 59 (concluding that ministerial exemption did not apply).

Wechsler v. Orthodox Union, 105 Fair Empl. Prac. Cas. (BNA) 561, 2009 WL 29596 (S.D.N.Y. Jan. 5, 2009). The plaintiff, an Orthodox Jew, alleged that he was not permitted to work on Fridays because of his religion and that he was subjected to retaliation for filing an EEOC charge. The plaintiff was employed as a mashgiach, a kosher food supervisor, by the Orthodox Union, an organization that was devoted to promoting Orthodox Judaism and that operated a

kosher certification agency. If a restaurant decides to keep kosher, it hires a Union rabbi to ensure that it complies with Jewish law. The Union requires all mashgichim to be Orthodox Jews who observe the Jewish Sabbath, keep kosher themselves, and perform their jobs according to the commandments of the Torah. Dismissing the plaintiff's complaint for failure to state a claim, the court ruled that as a religious organization, the Union was immune under section 702 of Title VII from the plaintiff's religious discrimination claim. In addition, because Title VII's antiretaliation provision, section 704, is contained in the same subchapter as section 702, the Union was also immune from the plaintiff's retaliation claim.

Saeemodarae v. Mercy Health Servs., 456 F. Supp. 2d 1021 (N.D. Iowa 2006). A church-affiliated hospital was a religious organization entitled to prefer co-religionists because both the "nature" of the hospital, including its religious founding and purpose, and the "atmosphere" at the hospital, including religious orientation materials and the broadcast of prayers and devotions over the speaker system, were "unequivocally 'religious.'"

Lown v. Salvation Army, 393 F. Supp. 2d 223 (S.D.N.Y. 2005). The religious organization exemption barred a Title VII claim against the Salvation Army by current and former employees who alleged hostile work environment harassment and retaliation.

Hopkins v. Women's Div., Gen'l Bd. of Global Ministries, 238 F. Supp. 2d 174 (D.D.C. 2002). The plaintiff, a Native American who was not a member of the Methodist Church, brought a Title VII action against her former employer, a church affiliate, raising claims that included religious discrimination and harassment based on alleged compulsory attendance at religious services and on discriminatory assignment of tasks. Rejecting the plaintiff's contention that the "religious organization" exemption only applies to hiring decisions, the court dismissed the plaintiff's claims, reasoning that the exemption bars religious discrimination claims "with respect to the entire realm of the employment arena and not just the actual hiring of individuals."

B. Bona Fide Occupational Qualification

EEOC v. Kamehameha Sch./Bishop Estate, 990 F.2d 458 (9th Cir. 1993). A will's requirement that all kindergarten through 12th-grade teachers be Protestants did not come within the bona fide occupational qualification (BFOQ) exception to requirements of Title VII because the school was not run by a church and primarily provided a nonsectarian education.

Abrams v. Baylor Coll. of Med., 805 F.2d 528 (5th Cir. 1986). Being non-Jewish was not a BFOQ because the university presented no evidence that Saudi Arabia would have actually refused an entry visa to the Jewish faculty members.

Pime v. Loyola Univ., 803 F.2d 351 (7th Cir. 1986). Having a Jesuit presence in the philosophy department was a bona fide occupational qualification in a university that was founded by Jesuits, continued to have a Jesuit tradition, and required all of its undergraduates to take philosophy.

Rasul v. District of Columbia, 680 F. Supp. 436 (D.D.C. 1988). The Department of Corrections failed to demonstrate that Protestant religious affiliation was a BFOQ for the prison chaplain

position, because chaplains were recruited and hired on a facility-wide basis and were entrusted with the job of planning, directing, and maintaining a total religious program for all inmates, whatever their respective denominations.

Kern v. Dynalectron Corp., 577 F. Supp. 1196 (D. Tex. 1983). The requirement that a pilot convert to Islam was a BFOQ that warranted the employer's religious discrimination, inasmuch as the requirement was not merely a response to the preference of the contractor performing work in Saudi Arabia, but reflected the fact that non-Muslim employees caught flying into Mecca would be beheaded under Saudi Arabian law.

C. National Security

Tenenbaum v. Caldera, 2002 WL 2026347 (6th Cir. 2002). A Jewish employee who alleged that the Army targeted him for criminal investigation and revoked his security clearance because he was an Orthodox Jew, failed to state a claim for religious discrimination. The decision to revoke the employee's security clearance was not justiciable under Title VII. A Department of Defense newsletter that accused Israel of pursuing American Jews for espionage did not constitute an official policy of discriminatorily targeting American Jews as counter-intelligence risks.

Cherry v. Sunoco, Inc., 2009 WL 2518221 (E.D. Pa. Aug. 17, 2009). The plaintiff, a refinery operator at a facility employing over 1,500 people, brought a denial of religious accommodation claim after he unsuccessfully requested an exemption from the photo identification requirement imposed on the employer by U.S. Coast Guard regulations implementing the Maritime Transportation Safety Act. The plaintiff's proposed accommodations included having a supervisor verify his identity, showing his non-photo driver's license in conjunction with a non-photo employee ID, being escorted to his work location, and using biometric identification. He alternatively suggested providing him with an opportunity to seek a waiver from the Coast Guard, capturing his image using a security or surveillance camera (because his religion does not forbid a picture to be taken of him without his consent), or offering him employment at a non-port facility. Granting summary judgment to the employer, the court found that undue hardship was established because the undisputed evidence showed that the Coast Guard would not waive the regulations and that the plaintiff's proposed alternative accommodations were unreasonable.

D. Ministerial Exception

Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 132 S. Ct. 694 (2012). The Court held that there is a First Amendment "ministerial exception" barring EEO claims by clergy. However, the Court did not adopt a specific test (such as the "primary duties" analysis used by many lower courts) and instead endorsed weighing the totality of the facts on a case-by-case basis to determine whether the exception applies. The Court concluded that the ministerial exception barred the EEOC's ADA retaliation claim on behalf of a parochial school teacher, because she had been required to pursue a rigorous religious course of study to become a "called" teacher, which included being ordained and receiving the title of "minister," she led daily prayers and occasional chapel services, and she provided religious instruction. Compare Dias v. Archdiocese of Cincinnati, 2012 WL 1068165 (S.D. Ohio Mar. 29, 2012) (summarized

below; ministerial exception did not bar claim against Catholic school by technology coordinator, who had no responsibility for religious instruction).

Cannata v. Catholic Diocese of Austin, 700 F.3d 169 (5th Cir. 2012). Applying Hosanna-Tabor, the court held that the "ministerial exception" barred EEO claims by a church music director, even though he was not ordained and did not conduct Mass, deliver a sermon, or write music or lyrics for service, because, notwithstanding his various secular duties, his piano playing during Mass was done in furtherance of the mission and message of the church.

Alcazar v. Corp. of the Catholic Archbishop of Seattle, 627 F.3d 1288 (9th Cir. 2010) (en banc). The First Amendment's ministerial exception barred a Catholic seminarian's overtime compensation claim under a state minimum wage law. Affirming dismissal of the plaintiff's complaint, the court rejected the plaintiff's argument that because he performed mostly maintenance work for the church, rather than clergy duties, the ministerial exception did not necessarily apply even though he assisted with Mass. The court stated that analyzing the ministerial exception using this type of "functional" approach would result in government entanglement in church-minister relationships in violation of the First Amendment.

Skrzypczak v. Roman Catholic Diocese of Tulsa, 611 F.3d 1238 (10th Cir. 2010), cert. denied, 132 S. Ct. 1088 (2011). Affirming summary judgment for the defendant, the court held that the plaintiff, a former director of the Department of Religious Formation, was barred by the ministerial exception from bringing her age and sex discrimination claims, including sexual harassment claims. The plaintiff alleged that, despite having 10 years of good performance reviews, she was removed from her position because of her age and sex. The court held that while the ministerial exception normally is applied to clergy, it is applicable to any staff with a religious function. Rejecting the plaintiff's argument that her job was merely administrative in nature and therefore not covered by the ministerial exception, the court concluded that her job supervising the diocese's Pastoral Studies Institute had religious aspects, including teaching multiple religious courses.

Hankins v. New York Annual Conference of the United Methodist Church, 2009 WL 3497753 (2d Cir. Oct. 30, 2009) (unpublished). The plaintiff, an ordained United Methodist minister, challenged as age discrimination his church's rule requiring mandatory retirement at age 70. In its prior decision in the same case, Hankins v. Lyght, 441 F.3d 96 (2d Cir. 2006), the court held that the Religious Freedom Restoration Act (RFRA) applies to suits on federal claims between private individuals, and remanded for further consideration. On remand, the district court ruled that RFRA had displaced the ministerial exception but that the ADEA suit should still be dismissed under RFRA. Affirming the dismissal on other grounds, the court of appeals held that RFRA cannot displace the constitutionally mandated ministerial exception, which bars employment discrimination claims by clergy members, and that the ministerial exception required dismissal of the plaintiff's claim. Compare Redhead v. Conference of Seventh Day Adventists, 440 F. Supp. 2d 211 (E.D.N.Y. 2006) (discussed below).

Rweyemamu v. Cote, 520 F.3d 198 (2d Cir. 2008). The ministerial exception barred an ordained priest from bringing a race discrimination claim against the Roman Catholic Diocese. In so ruling, the court stated that it was "affirm[ing] the vitality" of the ministerial exception in the

Second Circuit, which is "constitutionally required by various doctrinal underpinnings of the First Amendment." Noting that circuit courts have "consistently struggled to decide whether or not a particular employee is functionally a 'minister,'" the court held that "this approach is too rigid because it fails to consider the nature of the dispute," because even a "lay employee's relationship to his employer may be 'so pervasively religious' that judicial interference in the form of a discrimination inquiry could run afoul of the Constitution." By contrast, the court also noted that "however high in the church hierarchy he may be, a plaintiff alleging particular wrongs by the church that are wholly non-religious in character is surely not forbidden his day in court." In this case, because the plaintiff was an ordained priest of the church whose duties were determined by Catholic doctrine, analyzing his discrimination claim would cause the court to be drawn into doctrinal questions, and therefore, his Title VII claim fell easily within the boundaries of the ministerial exception.

Hollins v. Methodist Healthcare, Inc., 474 F.3d 223 (6th Cir. 2007). The court applied the First Amendment-based ministerial exception to bar a claim by a resident in a church-affiliated hospital's clinical pastoral education program who alleged disability discrimination when she was terminated following a psychiatric evaluation.

Petruska v. Gannon Univ., 462 F.3d 294 (3d Cir. 2006). The plaintiff, a female Catholic chaplain, alleged sex discrimination in violation of Title VII when she was forced out of her position as university chaplain after she advocated on behalf of alleged victims of sexual harassment and spoke out against the school's president regarding alleged sexual harassment and discrimination against female employees. The court held that the ministerial exception barred the Title VII claim.

Tomic v. Catholic Diocese of Peoria, 442 F.3d 1036 (7th Cir. 2006). The court applied the ministerial exception to bar an age discrimination claim brought by a Catholic Diocese music director.

Elvig v. Calvin Presbyterian Church, 375 F.3d 951 (9th Cir. 2004). While the ministerial exception barred a female Presbyterian associate pastor's claims that the church discriminatorily fired her and prevented her from sending her resume to any other church, it did not bar her sexual harassment and retaliation claims. Adjudication of the sexual harassment claim was a purely secular inquiry which would not require excessive government entanglement with religion unless the church claimed to have a doctrinal basis for the harassment or its decision not to take corrective measures after the associate pastor complained. Similarly, the retaliation claim could succeed if she proved that she suffered verbal abuse and intimidation because of her complaints to the church and the EEOC.

Werft v. Desert S.W. Annual Conference of the United Methodist Church, 377 F.3d 1099 (9th Cir. 2004). Affirming dismissal of a minister's claim for damages against his church for failure to accommodate his disabilities, the court held that the ministerial exception applies not only to hiring and firing, but to all claims related to the working conditions of ministers, since adjudication of such claims would require a court to inquire into the religious justification for personnel decisions. The panel (this was not the same panel that decided Elvig, summarized above) distinguished cases that have allowed claims of sexual harassment of or by ministers,

stating that while sexual harassment is not part of the relationship between a religious institution and its clergy, "a minister's working conditions and the church's decision regarding whether or not to accommodate a minister's disability, are a part of the minister's employment relationship with the church."

Alicea-Hernandez v. Archdiocese of Chicago, 320 F.3d 698 (3d Cir. 2003). The "ministerial exception" to Title VII barred a claim against the church that alleged national origin and sex discrimination with respect to working conditions, provision of office resources, and constructive discharge. The court held that the plaintiff's position, Hispanic Communications Manager, was outside the court's purview because it essentially involved spreading the church's message to the Hispanic community and was therefore important to the spiritual and pastoral mission of the church.

Bryce v. Episcopal Church in the Diocese of Colo., 289 F.3d 648 (10th Cir. 2002) Although "employment decisions may be subject to Title VII scrutiny, where the decision does not involve the church's spiritual functions," a minister's Title VII harassment claim was subject to dismissal because it was based on communications protected by the First Amendment under the "church autonomy" doctrine; the doctrine is broader than the ministerial exception and bars civil court review of internal church disputes involving matters of doctrine and church governance.

EEOC v. Roman Catholic Diocese, 213 F.3d 795 (4th Cir. 2000). The ministerial exception does not insulate wholesale the religious employer from the operation of federal antidiscrimination statutes. A court's inquiry focuses on the function of the position at issue and not on categorical notions of who is or is not a minister. The charging party was the Director of Music Ministry and a part-time music teacher at a Diocese elementary school. Because her primary duties for the Diocese consisted of the selection, presentation, and teaching of music, which is integral to the spiritual and pastoral mission of the church and religious traditions, the court dismissed the case.

Young v. N. Ill. Conference of United Methodist Church, 21 F.3d 184 (7th Cir. 1994). The defendant denied employment to a black, female minister following the end of her probationary period. The plaintiff argued that the defendant's actions were based on race and sex and on retaliation. Following dismissal of her complaint, the plaintiff appealed, arguing that the ministerial exception did not apply in this case. The court held to the contrary, finding that it applied directly: the Free Exercise Clause of the First Amendment forbids a review of a church's procedures when it makes employment decisions affecting its clergy.

Dias v. Archdiocese of Cincinnati, 2012 WL 1068165 (S.D. Ohio Mar. 29, 2012). The plaintiff, who was employed by two private Catholic schools, sued under Title VII for alleged sex discrimination when she was terminated because she was pregnant and unmarried. Applying the Supreme Court's decision in Hosanna-Tabor, the court concluded that the ministerial exception did not bar the plaintiff's claim and therefore denied the schools' motion to dismiss. In allowing the case to proceed, the court relied on the fact that the plaintiff, who was not Catholic, had no responsibility for religious instruction at the schools. As the technology coordinator, the plaintiff oversaw the computer systems at the schools and instructed students on computer usage. "The Court finds dispositive that as a non-Catholic, Plaintiff was not even permitted to teach Catholic

doctrine. Plaintiff had received no religious training or title and had no religious duties. The authorities cited by Plaintiff show that it is not enough to generally call her a 'role model,' or find that she is a 'minister' by virtue of her affiliation with a religious school."

Braun v. St. Pius X Parish, 2011 WL 5086362 (N.D. Okla. Oct. 25, 2011), aff'd on other grounds, 2013 WL 410305 (10th Cir. Feb. 4, 2013) (unpublished). The plaintiff, a teacher of secular subjects at a school operated by a Roman Catholic parish, alleged that she was terminated because of her age and religion. The court ruled that the religious discrimination claim was barred by the Title VII exemption for religious organizations, but rejected the school's argument that the age discrimination claim was barred by the judicially created ministerial exception. Although the plaintiff's teaching contract required her to "teach and act in accordance with the precepts of the Catholic Church" and to "aid in the Christian formation of students," the school failed to articulate specific responsibilities or actions that might be considered ministerial. Denying summary judgment to the employer on the plaintiff's age discrimination claim, the court further noted that the plaintiff was not Catholic and did not teach religion or lead students in prayer.

Redhead v. Conference of Seventh Day Adventists, 440 F. Supp. 2d 211 (E.D.N.Y. 2006). The court expressed "strong reservations" about whether RFRA applied as a defense to a Title VII claim between private parties, but held that even assuming it does, enforcement of Title VII constitutes a "compelling government interest" under RFRA. Moreover, RFRA and the First Amendment-based ministerial exception are not mutually exclusive, and consideration of "the ministerial exception is necessary for a case-specific application of the compelling interest test." Here, the plaintiff, a teacher at a Seventh Day Adventist school, could proceed with her claim that she was subjected to sex discrimination in violation of Title VII when she was terminated for being pregnant and unmarried. The ministerial exception did not apply because the plaintiff's duties were primarily secular; she spent only one hour of each day teaching Bible study and attended religious ceremonies with students only one day per year.

Dolquist v. Heartland Presbytery, 342 F. Supp. 2d 996 (D. Kan. 2004). The court held that the plaintiff could proceed with her claim that she was sexually harassed by a music director and church elder and then retaliated against after complaining because adjudication of the claim would not unnecessarily entangle the courts in the religious mission of the church or denomination. Finding that the disputed issues were the nature and severity of the alleged harassment, whether the church knew of the harassment, and whether it adequately responded, the court held that the ministerial exception did not apply because adjudication of those issues would not involve the church's right to select clergy or decide matters of church government, faith and doctrine. See also Tran v. New Orleans Baptist Theological Seminary, 2004 WL 253459 (E.D. La. Feb. 10, 2004) (unpublished) (while Title VII allows religious organizations to prefer to employ individuals who share their religion, that exception is limited and does not permit religious organizations to harass those whom it has hired).