

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
RELIGIOUS DISCRIMINATION AND REASONABLE ACCOMMODATION GUIDE

pages
2 - 4

INTRODUCTION

WHAT IS "RELIGION" UNDER ALASKA STATE AND FEDERAL LAW?

WHAT ARE EXAMPLES OF RELIGIOUS PRACTICES?

WHAT ARE EXAMPLES OF RELIGIOUS DISCRIMINATION?

WHAT ARE EXAMPLES OF RELIGIOUS ACCOMMODATIONS?

ARE THERE ANY EXCEPTIONS TO WHO IS COVERED BY ALASKA STATE AND FEDERAL RELIGION PROVISIONS?

WHAT IS THE SCOPE OF ALASKA STATE AND FEDERAL LAW'S PROHIBITION ON DISPARATE TREATMENT BASED ON RELIGION?

WHAT CONSTITUTES RELIGIOUS HARASSMENT UNDER ALASKA STATE AND FEDERAL LAW?

HOW TO DETERMINE WHETHER THE STATEMENTS OR CONDUCT ARE HARASSMENT?

WHEN IS AN EMPLOYER LIABLE FOR RELIGIOUS HARASSMENT?

pages
4 - 6

WHEN DOES ALASKA STATE AND FEDERAL LAW REQUIRE AN EMPLOYER TO ACCOMMODATE AN APPLICANT OR EMPLOYEE'S RELIGIOUS BELIEF, PRACTICE, OR OBSERVANCE?

HOW DOES AN EMPLOYER LEARN THAT ACCOMMODATION MAY BE NEEDED?

DOES AN EMPLOYER HAVE TO GRANT EVERY REQUEST FOR ACCOMMODATION OF A RELIGIOUS BELIEF OR PRACTICE?

WHEN DOES AN ACCOMMODATION POSE AN "UNDUE HARDSHIP"?

DOES AN EMPLOYER HAVE TO PROVIDE AN ACCOMMODATION THAT WOULD VIOLATE A SENIORITY SYSTEM OR COLLECTIVE BARGAINING AGREEMENT?

WHAT IF CO-WORKERS COMPLAIN ABOUT AN EMPLOYEE BEING GRANTED AN ACCOMMODATION?

WHAT ARE COMMON METHODS OF RELIGIOUS ACCOMMODATION IN THE WORKPLACE?

page
7

WHAT IF AN EMPLOYEE OBJECTS ON RELIGIOUS GROUNDS TO AN EMPLOYER-SPONSORED PROGRAM?

DO NATIONAL ORIGIN, RACE, COLOR, AND RELIGIOUS DISCRIMINATION INTERSECT IN SOME CASES?

DOES AS 18.80.220 AND TITLE VII PROHIBIT RETALIATION?

HOW MIGHT FIRST AMENDMENT CONSTITUTIONAL ISSUES ARISE IN AS 18.80.220 AND TITLE VII RELIGION CASES?

INTRODUCTION:

A.S. 18.80.220 AND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 PROHIBITS EMPLOYERS (WITH AT LEAST 15 EMPLOYEES UNDER FEDERAL LAW) AS WELL AS EMPLOYMENT AGENCIES AND UNIONS, FROM DISCRIMINATING IN EMPLOYMENT BASED ON RACE, COLOR, RELIGION, SEX, AND NATIONAL ORIGIN. IT ALSO PROHIBITS RETALIATION AGAINST PERSONS WHO COMPLAIN OF DISCRIMINATION OR PARTICIPATE IN AN EEO INVESTIGATION. WITH RESPECT TO RELIGION, THE LAW PROHIBITS:

- ▶ Treating applicants or employees differently based on their religious beliefs or practices – or lack thereof – in any aspect of employment, including recruitment, hiring, assignments, discipline, promotion, and benefits (disparate treatment);
- ▶ Subjecting employees to harassment because of their religious beliefs or practices – or lack thereof – or because of the religious practices or beliefs of people with whom they associate (e.g., relatives, friends, etc.);
- ▶ Denying a requested reasonable accommodation of an applicant’s or employee’s sincerely held religious beliefs or practices – or lack thereof – if an accommodation will not impose more than a de minimis cost or burden on business operations;
- ▶ Retaliating against an applicant or employee who has engaged in protected activity, including participation or opposition to religious discrimination.

This Guide was developed to be a practical resource for employers, and employees, and to provide guidance on how to balance the needs of individuals in a diverse religious climate.

WHAT IS “RELIGION” UNDER ALASKA STATE AND FEDERAL LAW?

State and federal law protects all aspects of religious observance and practice as well as belief and defines religion very broadly for purposes of determining what the law covers. Religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others. An employee’s belief or practice can be “religious” under discrimination law even if the employee is affiliated with a religious group that does not espouse or recognize that individual’s belief or practice, or if few – or no – other people adhere to it. Alaska State and Federal law protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs.

Religious beliefs include theistic beliefs (i.e. those that include a belief in God) as well as non-theistic “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.” Although courts generally resolve doubts about particular beliefs in favor of finding that they are religious, beliefs are not protected merely because they

are strongly held. Rather, religion typically concerns “ultimate ideas” about “life, purpose, and death.” Social, political, or economic philosophies, as well as mere personal preferences, are not “religious” beliefs protected by discrimination laws.

WHAT ARE EXAMPLES OF RELIGIOUS PRACTICES?

Religious observances or practices include attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expression, or refraining from certain activities. Whether a practice is religious depends on the employee’s motivation. The same practice might be engaged in by one person for religious reasons and by another person for purely secular reasons (e.g., dietary restrictions, tattoos, etc.).

WHAT ARE EXAMPLES OF RELIGIOUS DISCRIMINATION?

Not hiring an otherwise qualified applicant because he is a self-described evangelical Christian; a Jewish supervisor denying a promotion to a qualified non-Jewish employee because the supervisor wishes to give a preference based on religion to a fellow Jewish employee; or, terminating an employee because he told the employer that he recently converted to the Baha’i Faith.

WHAT ARE EXAMPLES OF RELIGIOUS ACCOMMODATIONS?

A Catholic employee requesting a schedule change so that he can attend church services on Good Friday; a Muslim employee requesting an exception to the company’s dress and grooming code allowing her to wear her headscarf, or a Hindu employee requesting an exception allowing her to wear her bindi (religious forehead marking); an atheist asking to be excused from the religious invocation offered at the beginning of staff meetings; an adherent to Native American spiritual beliefs seeking unpaid leave to attend a ritual ceremony; or an employee who identifies as Christian but is not affiliated with a particular sect or denomination requests accommodation of his religious belief that working on his Sabbath is prohibited.

ARE THERE ANY EXCEPTIONS TO WHO IS COVERED BY ALASKA STATE AND FEDERAL RELIGION PROVISIONS?

Yes. **Religious Organization Exception:** Under State and Federal Law, religious organizations are permitted to give employment preference to members of their own religion. The exception applies only to those institutions whose “**purpose and character are primarily religious.**” Factors to consider that would indicate whether an entity is religious include: whether its articles of incorporation state a religious purpose; whether its day-to-day operations are religious (e.g., are the services the entity performs, the product it produces, or the educational curriculum it provides directed toward propagation of the religion?); whether it is not-for-profit; and whether it affiliated with, or supported by, a church or other religious organization.

This exception is not limited to religious activities of the organization. However, it only allows religious organizations to prefer to employ individuals who share their religion. The exception does not allow religious organizations otherwise to discriminate in employment on the basis of race, color, national origin, sex, age, or disability. Thus, a religious organization is not permitted to engage in racially discriminatory hiring by asserting that a tenet of its religious beliefs is not associating with people of other races.

Ministerial Exception: Courts have held that clergy members generally cannot bring claims under the federal employment discrimination laws, including Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, and the Americans with Disabilities Act. This “ministerial exception” comes not from the text of the statutes, but from the First Amendment principle that governmental regulation of church administration, including the appointment of clergy, impedes the free exercise of religion and constitutes impermissible government entanglement with church authority. The exception applies only to employees who perform essentially religious functions, namely those whose primary duties consist of engaging in church governance, supervising a religious order, or conducting religious ritual, worship, or instruction. Some courts have made an exception for harassment claims where they concluded that analysis of the case would not implicate these constitutional constraints.

WHAT IS THE SCOPE OF ALASKA STATE AND FEDERAL LAW’S PROHIBITION ON DISPARATE TREATMENT BASED ON RELIGION?

- ▶ Employers may not refuse to recruit, hire, or promote individuals of a certain religion, impose stricter promotion requirements for persons of a certain religion, or impose more or different work requirements on an employee because of that employee’s religious beliefs or practices
- ▶ Employers may not refuse to hire an applicant simply because he does not share the employer’s religious beliefs, and conversely may not select one applicant over another based on a preference for employees of a particular religion
- ▶ Employment agencies may not comply with requests from employers to engage in discriminatory recruitment or referral practices, for example by screening out applicants who have names often associated with a particular religion (e.g., Mohammed)
- ▶ Employers may not exclude an applicant from hire merely because he or she may need a reasonable accommodation that could be provided absent undue hardship.

The prohibition against disparate treatment based on religion also applies to disparate treatment of religious expression in the workplace. For example, if an employer allowed one secretary to display a Bible on her desk at work while telling another secretary in the same workplace to put the Quran on his desk out of view because co-workers “will think you are making a political statement, and with everything going on in the world right now we don’t need that around here,” this would be differential treatment in violation of Alaska State and Federal Law.

WHAT CONSTITUTES RELIGIOUS HARASSMENT UNDER ALASKA STATE AND FEDERAL LAW?

RELIGIOUS HARASSMENT IN VIOLATION OF ALASKA STATE AND FEDERAL LAW OCCURS WHEN EMPLOYEES ARE:

- ▶ Required or coerced to abandon, alter, or adopt a religious practice as a condition of employment (this type of “quid pro quo” harassment may also give rise to a disparate treatment or denial of accommodation claim in some circumstances); or
- ▶ Subjected to unwelcome statements or conduct that is based on religion and is so subjectively and objectively severe or pervasive that the individual being harassed reasonably finds the work environment to be hostile or abusive, and there is a basis for holding the employer liable.

HOW TO DETERMINE WHETHER THE STATEMENTS OR CONDUCT ARE HARASSMENT?

- ▶ Evaluate all of the surrounding circumstances to determine whether or not particular conduct or remarks are **unwelcome**.
- ▶ Exam whether the unwelcome religiously motivated conduct is **subjectively and objectively** perceived to be **abusive or offensive**.
 - Expressing one’s religion by wearing religious garb is not religious harassment.
 - Generally, workplace displays of religious artifacts or posters that do not demean other religious views would not constitute religious harassment.
- ▶ Determine how often or how **pervasive** the unwelcome and offensive comments or conduct occurred.

WHEN IS AN EMPLOYER LIABLE FOR RELIGIOUS HARASSMENT?

AN EMPLOYER IS ALWAYS LIABLE FOR A SUPERVISOR’S HARASSMENT IF IT RESULTS IN A TANGIBLE EMPLOYMENT ACTION. HOWEVER, IF IT DOES NOT, THE EMPLOYER MAY BE ABLE TO AVOID LIABILITY OR LIMIT DAMAGES BY SHOWING THAT:

- ▶ The employer exercised reasonable care to prevent and correct promptly any harassing behavior, and
- ▶ The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

An employer is liable for harassment by **co-workers** where it knew or should have known about the harassment and failed to take prompt and appropriate corrective action. An employer is liable for harassment by **non-employees** where it knew or should have known about the harassment, could control the harasser's conduct or otherwise protect the employee, and failed to take prompt and appropriate corrective action.

WHEN DOES ALASKA STATE AND FEDERAL LAW REQUIRE AN EMPLOYER TO ACCOMMODATE AN APPLICANT OR EMPLOYEE'S RELIGIOUS BELIEF, PRACTICE, OR OBSERVANCE?

State and Federal Law requires an employer, once on notice that a religious accommodation is needed, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship. The undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation in a particular case poses a "more than de minimis" cost or burden. Note that this is a **lower standard** for an employer to meet than undue hardship under the Americans with Disabilities Act (ADA) which is defined in that statute as "significant difficulty or expense."

HOW DOES AN EMPLOYER LEARN THAT ACCOMMODATION MAY BE NEEDED?

An applicant or employee who seeks religious accommodation must make the employer aware both of the need for accommodation and that it is being requested due to a conflict between religion and work.

Employer-employee cooperation and flexibility are key to the search for a reasonable accommodation. If the accommodation solution is not immediately apparent, the employer should discuss the request with the employee to determine what accommodations might be effective. If the employer requests additional information reasonably needed to evaluate the request, the employee should provide it. For example, if an employee has requested a schedule change to accommodate daily prayers, the employer may need to ask for information about the religious observance, such as time and duration of the daily prayers, in order to determine whether accommodation can be granted without posing an undue hardship on the operation of the employer's business. Moreover, even if the employer does not grant the employee's preferred accommodation, but instead provides an alternative accommodation, the employee must cooperate by attempting to meet his religious needs through the employer's proposed accommodation if possible.

DOES AN EMPLOYER HAVE TO GRANT EVERY REQUEST FOR ACCOMMODATION OF A RELIGIOUS BELIEF OR PRACTICE?

No. State and Federal law requires employers to accommodate only those religious beliefs that are religious and "sincerely held," and that can be accommodated without an undue hardship. Although there is usually no reason to question whether the practice at issue is religious or sincerely held, if the employer

has a bona fide doubt about the basis for the accommodation request, it is entitled to make a limited inquiry into the facts and circumstances of the employee's claim that the belief or practice at issue is religious and sincerely held, and gives rise to the need for the accommodation.

FACTORS THAT – EITHER ALONE OR IN COMBINATION – MIGHT UNDERMINE AN EMPLOYEE'S ASSERTION THAT HE SINCERELY HOLDS THE RELIGIOUS BELIEF AT ISSUE INCLUDE:

- ▶ Whether the employee has behaved in a manner markedly inconsistent with the professed belief;
- ▶ Whether the accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons;
- ▶ Whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons);
- ▶ Whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

However, none of these factors is dispositive. For example, although prior inconsistent conduct is relevant to the question of sincerity, an individual's beliefs – or degree of adherence – may change over time, and therefore an employee's newly adopted or inconsistently observed religious practice may nevertheless be sincerely held. An employer also should not assume that an employee is insincere simply because some of his or her practices deviate from the commonly followed tenets of his or her religion.

WHEN DOES AN ACCOMMODATION POSE AN "UNDUE HARDSHIP"?

An accommodation would pose an undue hardship if it would cause more than de minimis cost on the operation of the employer's business. Factors relevant to undue hardship may include:

- ▶ The type of workplace
- ▶ The nature of the employee's duties
- ▶ The identifiable cost of the accommodation in relation to the size and operating costs of the employer
- ▶ The number of employees who will in fact need a particular accommodation.

Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's business. For example, courts have found undue hardship where the accommodation diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work. Whether the proposed accommodation conflicts with another law will also be considered.

To prove undue hardship, the employer will need to demonstrate

how much cost or disruption a proposed accommodation would involve. An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather should rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.

If an employee's proposed accommodation would pose an undue hardship, the employer should explore alternative accommodations.

DOES AN EMPLOYER HAVE TO PROVIDE AN ACCOMMODATION THAT WOULD VIOLATE A SENIORITY SYSTEM OR COLLECTIVE BARGAINING AGREEMENT?

No. A proposed religious accommodation poses an undue hardship if it would deprive another employee of a job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement (CBA). Of course, the mere existence of a seniority system or CBA does not relieve the employer of the duty to attempt reasonable accommodation of its employees' religious practices; the question is whether an accommodation can be provided without violating the seniority system or CBA. Often an employer can allow co-workers to volunteer to substitute or swap shifts as an accommodation to address a scheduling need without violating a seniority system or CBA.

WHAT IF CO-WORKERS COMPLAIN ABOUT AN EMPLOYEE BEING GRANTED AN ACCOMMODATION?

Although religious accommodations that infringe on co-workers' ability to perform their duties or subject co-workers to a hostile work environment will generally constitute undue hardship, general disgruntlement, resentment, or jealousy of co-workers will not. Undue hardship requires more than proof that some co-workers complained; a showing of undue hardship based on co-worker interests generally requires evidence that the accommodation would actually infringe on the rights of co-workers or cause disruption of work.

CAN A REQUESTED ACCOMMODATION BE DENIED DUE TO SECURITY CONSIDERATIONS?

If a religious practice conflicts with a legally mandated security requirement, an employer need not accommodate the practice because doing so would create an undue hardship. If a security requirement has been unilaterally imposed by the employer and is not required by law or regulation, the employer will need to decide whether it would be an undue hardship to modify or eliminate the requirement to accommodate an employee who has a religious conflict.

WHAT ARE COMMON METHODS OF RELIGIOUS ACCOMMODATION IN THE WORKPLACE?

- ▶ Scheduling Changes, Voluntary Substitutes, and Shift Swaps:
 - An employer may be able to reasonably accommodate an employee by allowing flexible arrival and departure times, floating or optional holidays, flexible work breaks, use of lunch time in exchange for early departure, staggered work hours, and other means to enable an employee to make up time lost due to the observance of religious practices. Eliminating only part of the conflict is not sufficient, unless entirely eliminating the conflict will pose an undue hardship by disrupting business operations or impinging on other employees' benefits or settled expectations.
 - It would pose an undue hardship to require employees involuntarily to substitute for one another or swap shifts, the reasonable accommodation requirement can often be satisfied without undue hardship where a volunteer with substantially similar qualifications is available to cover, either for a single absence or for an extended period of time. The employer's obligation is to make a good faith effort to allow voluntary substitutions and shift swaps, and not to discourage employees from substituting for one another or trading shifts to accommodate a religious conflict.
 - If the employer is on notice that the employee's religious beliefs preclude him not only from working on his Sabbath but also from inducing others to do so, reasonable accommodation requires more than merely permitting the employee to swap, absent undue hardship. An employer does not have to permit a substitute or swap if it would pose more than de minimis cost or burden to business operations. If a swap or substitution would result in the employer having to pay premium wages (such as overtime pay), the frequency of the arrangement will be relevant to determining if it poses an undue hardship.
- ▶ Changing an employee's job tasks or providing a lateral transfer
 - When an employee's religious belief or practice conflicts with a particular task, appropriate accommodations may include relieving the employee of the task or transferring the employee to a different position or location that eliminates the conflict. Whether such accommodations pose an undue hardship will depend on factors such as the nature or importance of the duty at issue, the availability of others to perform the function, the availability of other positions, and the applicability of a CBA or seniority system.
 - The employee should be accommodated in his or her current position if doing so does not pose an undue hardship. If no such accommodation is possible, the employer needs to consider whether lateral transfer is a possible accommodation.
- ▶ Making an exception to dress and grooming rules
 - When an employer has a dress or grooming policy that conflicts with an employee's religious beliefs or practices,

the employee may ask for an exception to the policy as a reasonable accommodation. Religious grooming practices may relate, for example, to shaving or hair length. Religious dress may include clothes, head or face coverings, jewelry, or other items. Absent undue hardship, religious discrimination may be found where an employer fails to accommodate the employee's religious dress or grooming practices.

- Some courts have concluded that it would pose an undue hardship if an employer was required to accommodate a religious dress or grooming practice that conflicts with the public image the employer wishes to convey to customers. While there may be circumstances in which allowing a particular exception to an employer's dress and grooming policy would pose an undue hardship, an employer's reliance on the broad rubric of "image" to deny a requested religious accommodation may amount to relying on customer religious bias ("customer preference") in violation of state and federal law. There may be limited situations in which the need for uniformity of appearance is so important that modifying the dress code would pose an undue hardship. However, even in these situations, a case-by-case determination is advisable.

▶ Use of the work facility for a religious observance

- If an employee needs to use a workplace facility as a reasonable accommodation, for example use of a quiet area for prayer during break time, the employer should accommodate the request under Title VII unless it would pose an undue hardship. If the employer allows employees to use the facilities at issue for non-religious activities not related to work, it may be difficult for the employer to demonstrate that allowing the facilities to be used in the same manner for religious activities is not a reasonable accommodation or poses an undue hardship. The employer is not required to give precedence to the use of the facility for religious reasons over use for a business purpose.

▶ Accommodations relating to payment of union dues or agency fees

- Absent undue hardship, state and federal law requires employers and unions to accommodate an employee who holds religious objections to joining or financially supporting a union. Such an employee can be accommodated by allowing the equivalent of her union dues (payments by union members) or agency fees (payments often required from non-union members in a unionized workplace) to be paid to a charity agreeable to the employee, the union, and the employer. Whether a charity-substitute accommodation for payment of union dues would cause an undue hardship is an individualized determination based upon, among other things, the union's size, operational costs, and the number of individuals that need the accommodation.
- If an employee's religious objection is not to joining or financially supporting the union, but rather to the union's support of certain political or social causes, possible accommodations include, for example, reducing the amount owed, allowing the employee to donate to a charitable organization the full amount the employee owes or that portion that is attributable to the union's support of the

cause to which the employee has a religious objection, or diverting the full amount to the national, state, or local union in the event one of those entities does not engage in support of the cause to which the employee has a religious objection.

▶ Accommodating prayer, proselytizing, and other forms of religious expression

- Some employees may seek to display religious icons or messages at their workstations. Others may seek to proselytize by engaging in one-on-one discussions regarding religious beliefs, distributing literature, or using a particular religious phrase when greeting others. Still others may seek to engage in prayer at their workstations or to use other areas of the workplace for either individual or group prayer or study. In some of these situations, an employee might request accommodation in advance to permit such religious expression. In other situations, the employer will not learn of the situation or be called upon to consider any action unless it receives complaints about the religious expression from either other employees or customers.
- Employers should not try to suppress all religious expression in the workplace. The law requires that employers accommodate an employee's sincerely held religious belief in engaging in religious expression in the workplace to the extent that they can do so without undue hardship on the operation of the business. In determining whether permitting an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, relevant considerations may include the effect such expression has on co-workers, customers, or business operations.
 - For example, if an employee's proselytizing interfered with work, the employer would not have to allow it. Similarly, if an employee complained about proselytizing by a co-worker, the employer can require that the proselytizing to the complaining employee cease. Moreover, if an employee was proselytizing an employer's customers or clients in a manner that disrupted business, or that could be mistaken as the employer's own message, the employer would not have to allow it.
 - Where the religiously oriented expression is limited to use of a phrase or greeting, it is more difficult for the employer to demonstrate undue hardship. On the other hand, if the expression is in the manner of individualized, specific proselytizing, an employer is far more likely to be able to demonstrate that it would constitute an undue hardship to accommodate an employee's religious expression, regardless of the length or nature of the business interaction. An employer can restrict religious expression where it would cause customers or co-workers reasonably to perceive the materials to express the employer's own message, or where the item or message in question is harassing or otherwise disruptive.

WHAT IF AN EMPLOYEE OBJECTS ON RELIGIOUS GROUNDS TO AN EMPLOYER-SPONSORED PROGRAM?

Some private employers choose to express their own religious beliefs or practices in the workplace, and they are entitled to do so. However, if an employer holds religious services or programs or includes prayer in business meetings, state and federal law requires that the employer accommodate an employee who asks to be excused for religious reasons, absent a showing of undue hardship. Similarly, an employer is required to excuse an employee from compulsory personal or professional development training that conflicts with the employee's sincerely held religious beliefs or practices, unless doing so would pose an undue hardship. It would be an undue hardship to excuse an employee from training, for example, where the training provides information on how to perform the job, or how to comply with equal employment opportunity obligations, or on other workplace policies, procedures, or legal requirements.

DO NATIONAL ORIGIN, RACE, COLOR, AND RELIGIOUS DISCRIMINATION INTERSECT IN SOME CASES?

Yes. Title VII's prohibition against religious discrimination may overlap with Title VII's prohibitions against discrimination based on national origin, race, and color. Where a given religion is strongly associated – or perceived to be associated – with a certain national origin, the same facts may state a claim of both religious and national origin discrimination. All four bases might be implicated where, for example, co-workers target a dark-skinned Muslim employee from Saudi Arabia for harassment because of his religion, national origin, race, and/or color.

DOES AS 18.80.220 AND TITLE VII PROHIBIT RETALIATION?

Yes. Alaska State and Federal Law prohibits retaliation by an employer, employment agency, or labor organization because an individual has engaged in protected activity. Protected activity consists of opposing a practice the employee reasonably believes is made unlawful by one of the employment discrimination statutes or of filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the statute. ASCHR and the EEOC have taken the position that requesting religious accommodation is protected activity.

HOW MIGHT FIRST AMENDMENT CONSTITUTIONAL ISSUES ARISE IN AS 18.80.220 AND TITLE VII RELIGION CASES?

The First Amendment religion and speech clauses (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech”) protect individuals against restrictions imposed by the government, not by private entities, and therefore do not apply to rules imposed on private sector employees by their employers. The First Amendment, however, does protect

private sector employers from government interference with their free exercise and speech rights. Moreover, government employees' religious expression is protected by both the First Amendment and AS 18.80.220 and Title VII religion cases.



Were you the victim of discrimination? Need to file a complaint? Looking for guidance on a discrimination issue? Contact the Alaska State Commission for Human Rights: (907) 274-4692, or (800) 478-4692, or hrc@alaska.gov, or humanrights.alaska.gov; or the U.S. Equal Employment Opportunity Commission at (800) 669-4000 or www.eeoc.gov.