ListServ *Cont'd from page 22*

The old power centers of brick and mortar are being torn down again, but this time it's not the vandal hordes at the walls of Rome. In the midst of the chaos, a consensus in the land that the individual can still receive equal justice under law would be as effective a stabilizing element as any I can conceive.

The pursuit of happiness ain't what it used to be, and it is going to take some very dedicated, socially-conscious, diligent lawyers, particularly in the public sector, to continue the world's greatest experiment in government of the people, by the people and for the people, as we all go where no one has gone before. ML

Religious Workplace *Cont'd from page 19*

gious harassment, but requiring a religious employee to cease proselytizing may result in liability for failure to reasonably accommodate the employee's beliefs.

What kind of guidance is available to deal with workplace proselytizing? Although the law is developing in this area, some guidance is available. An employee has a right to engage in religious conduct to the extent that it is not an undue hardship on the employer. Harassing another employee is likely to be an undue hardship. Recall, however, that harassment is a fairly high - but not impossible - standard.

So, while the line between permissible proselytizing and workplace harassment is blurry, important factors that bear on the analysis include:

- the pervasiveness of the proselytizing;
- its impact on coworkers and work performance (including profitability) and;
- the capacity and willingness of the employer to take steps to accommodate the aggrieved parties, such as by moving the proselytizing employee and the offended employee to different work stations.

May a company hire a "corporate chaplain?" Some companies hire corporate chaplains to serve their workplace. This practice is not inherently unlawful and may even prove beneficial. Although the courts have not weighed in on this subject, all of the above employment law rules likely apply to such a situation:

- An employer cannot lawfully require an employee to engage in religious activity, and so employers must take care that no employee is required or coerced into engaging in religious activity as a term or condition of employment.
- Evangelism (especially sustained evangelism) by a minister may constitute or serve as evidence of- a hostile work environment.
- An employee is likely to be entitled to opt out of meeting with the minister if her religious beliefs prohibit it.

May a company allow prayer groups? Yes, so long as participation in the prayer group is voluntary and that there are no employment-related consequences to participating or not participating. For example, if access to a supervisor who is involved in a prayer group leads to preferred assignments for an employee, other employees may have a claim for discrimination. If an employer insists on an employee's participation, that company may be liable for quid pro quo discrimination, as well. Finally, if pressure to attend is applied by supervisors or co-workers, an employer may be liable for a hostile work environment.

May an employee post posters, bible quotes, or other religious slogans? Employees do have certain rights to express their religious views in the workplace. For example, most employers will not be able to show that it would be an undue hardship to permit one employee to wear a yarmulke or another to display a cross in his or her private office. Title VII does not compel employers to accommodate employees' religious expression that could reasonably be perceived by patrons as an expression of the employer's views.[22] An employer can also restrict expression that disrupts operations or that is hostile or demeaning to customers or colleagues. [23]

Sample Scenarios

Scenario: A shipping company refused to hire a Jewish man as a driver because of his beard, which he wears for religious purposes. The company required him to either shave his beard or apply for an "inside," lower paying position that would not have contact with the public.

Answer: Title VII of the Civil Rights Act of 1964 requires employers to make reasonable accommodations to employees' and applicants' sincerely held religious beliefs as long as this does not pose an undue hardship. If the company cannot show why a beard is a hardship, it must hire the man as a driver. Notably, the company may not argue that its customers would prefer non-bearded drivers as "customer preference" is not a valid basis for a hardship.

Scenario: A restaurant chain fires a server because he has small, quarter-inch wide ring of tattoos on his wrist. He wears these tattoos as a part of his sincerely held belief that his faith, the Kemetic religion, requires them. Once he explained his religion to management, he was fired. At a corporate meeting, management stated that the company has "Christian" values and that the company seeks out "that all-American kid" from the suburbs for its server positions. The restaurant maintained that any change to its dress code – including prohibitions on tattoos -- would detract from its "wholesome image," and would thus be an undue hardship.

Answer: An employer is required to support its claims of undue hardship with more than hypothetical hardships based on unproven assumptions about image. Moreover, as noted above, customer preference is not a legitimate reason for not accommodating a religious need.

Scenario: An employer of a particular faith requires her employees to read passages from her preferred religious text out loud at company meetings, offers paid days off to attend religious gatherings, and works closely to help advance the careers those employees who adopt her faith.

Answer: An employee who refuses to participate in such activity must not be penalized An employer is not permitted to treat acceptance of religion or participation in religious rituals as a