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Company Practices "Onionhead" – Employees Cry Reverse Religious Discrimination

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A New York federal court recently sided with the Equal Employment Opportunity Commission ("EEOC") as to whether a company's internal conflict-resolution program was religious in nature.¹ Because the program—called "Onionhead," or occasionally, "Harnessing Happiness"—was deemed religious, the company was held potentially liable under Title VII of the Civil Rights Act of 1964 ("Title VII") for seeking to impose its own religious beliefs on employees.

More specifically, while Title VII protects employees from discrimination on the basis of their personal religious beliefs, it also prevents an employer from imposing its own religious beliefs on its employees. As a result, just as employees can bring garden-variety religious discrimination claims, they also can bring claims against employers when the employer attempts to impose its religious preferences. These latter claims are often referred to as "reverse-religious discrimination" actions.

Previously, we analyzed whether members of the "Church of the Flying Spaghetti Monster" ("FSMism") could assert religious rights to wear pirate garb, take extra days off, and wear a colander on their heads.² In that case, the Nebraska federal district court held that FSMism was not a religion. In the context of Onionhead, however, the New York district court took a broader view of what constitutes a "religion."

What is Onionhead?

In a purported effort to improve its corporate culture, the chief executive officer of Cost Containment Group ("CGC") instituted a program, developed by his aunt, called "Onionhead." While the CEO's aunt initially developed Onionhead for children, she adjusted the program and placed

¹ *Equal Opportunity Empl. Comm'n v. United Health Programs of Am., Inc.*, 2016 U.S. Dist. LEXIS 136625 (E.D.N.Y. Sept. 30, 2016).

² Darren E. Nadel and William E. Trachman, [Claims to Accommodate Flying Spaghetti Monster-ism Hit the Wall in Nebraska Court](#), Littler Insight (Apr. 25, 2016).

it under the umbrella of her “Harnessing Happiness” programs. The CEO and CGC’s chief operating officer invited Onionhead’s developer to utilize the programs within the CGC workplace.

CGC’s position was that Onionhead is merely a multi-purpose conflict resolution tool to help employees interact better with one another. The program includes cards, pins, dictionaries, workshop materials, magnets, journals, and a Declaration of Virtues of Empowerment.³ And yes, onions are involved. As the district court noted, “Onionhead materials often include images of an anthropomorphic Onion.”

The claimants argued that they were forced to subscribe to Onionhead despite its religious nature. In support of their claims, the claimants presented the aunt’s e-mails, which included references to God, spirituality, demons, Satan, divine destinies, purity, blessings, and miracles. Separately, while the “Declaration of Virtues of Empowerment” referenced above was not introduced to CGC’s workplace, another document entitled “Onionhead Keys and Codes to Living Good” was distributed. That document contained the following statements:

- “Keys and codes have been a part of the Divine Plan from the beginning of time. Every sacred tribe and religion have codes hidden within their scripts, books and scrolls. It was, and still is, a way to integrate our heavenly nature into our human nature.”
- “The Onionhead program is designed to transform negative thoughts and behaviors into positive thoughts and behaviors. . . . Choice, not chance, determines human destiny and only moral code determines the state of Heaven on Earth.”
- “Our soul is our constant reminder of our higher self. It stays with us in order to keep us on the track of what is right and righteous.”

Going further, some claimants described being told to burn candles and incense to cleanse the workplace. Others stated that they were told not to use overhead lighting in order to “prevent demons from entering the workplace through the lights.” Several others described occasions where they were told to chant or pray in the workplace.

Each of the claimants was terminated by CGC and subsequently filed a charge with the EEOC. The EEOC pursued both traditional discrimination claims—arguing that because claimants subscribed to other religions, they could not adhere to Onionhead—as well as reverse religious discrimination claims. Both the EEOC and the company moved for summary judgment.

Is Onionhead a Religion?

Courts are loathe to wade into deep religious questions. But Title VII requires them to do so in these circumstances. Title VII defines a religion vaguely to include “all aspects of religious observance and practice.”⁴ Putting a gloss on that language, the EEOC has issued guidelines stating that religious practices include “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”⁵

Courts have confronted these guideposts differently. In our prior piece on FSMism, we noted that the District Court of Nebraska relied on a common three-part test that focuses on whether a belief (1) addresses fundamental and ultimate questions; (2) functions as a comprehensive belief system; and (3) has any formal

³ *EEOC v. United Health Programs*, 2016 U.S. Dist. LEXIS 136625, at *8.

⁴ See 42 U.S.C. § 2000e(j).

⁵ See 29 C.F.R. § 16051. Arguably, this definition is broader than another federal statute, the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb. That statute does not define “religion,” but rather, “religious exercise.” RFRA itself refers to another statute, the Religious Land Use and Institutionalized Persons Act (RLUIPA), for its definition of that phrase: “The term ‘religious exercise’ includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” See 42 U.S.C. § 2000cc-5(7)(a).

or external signs of religion. The Second Circuit, however, has rejected this test as excessively narrow, holding that a more expansive view of religion is appropriate.⁶

Instead, the important questions in the Second Circuit's analysis are simply whether (1) a belief is sincere; and (2) whether the belief is, in "the believer's own scheme of things, religious."⁷ In the context of the second factor, courts may weigh, like the first part of the three-part test noted above, whether the belief involves "ultimate concerns."⁸ A concern counts as "ultimate" when "it is more than intellectual." And a concern is more than intellectual when the believer would "categorically disregard elementary self-interest in preference to transgressing its tenets."⁹ Of course, these factors provide little on which we can rely.

Indeed, Second Circuit cases have held that common programs such as Alcoholics Anonymous are religious in nature, such that a convict could not be required to attend as part of his probation.¹⁰ Similarly, the New York district court noted that a transcendental meditation class offered by a public school was held to be religious by the Third Circuit, and thus barred by the Constitution's Establishment Clause.¹¹

Notably, the court in this case did cite two cases in which sincerely held beliefs could appropriately be determined to be non-religious.¹² In one case, the Second Circuit rejected an argument that an Earth Day celebration—which even included school-sponsored prayers worshipping the Earth—was religious.¹³ In the other, the Second Circuit rejected an Establishment Clause claim brought by nuclear protestors arguing that the U.S. government's "worship" of nuclear weapons was itself a religion.¹⁴ The latter claim, the Second Circuit held, was more appropriately classified as a political, rather than religious, belief.

Against this backdrop, the district court had little trouble concluding that Onionhead was religious in nature. The founder's comments, as well as the frequent invocation of God or other-wordly beings (like demons and spirits) in the materials, led the court to conclude that Onionhead was "more than intellectual." Moreover, CGC's argument that Onionhead was just a conflict resolution tool was belied by the claimants' documented evidence.

Interestingly, the district court did not expressly hold that CGC was sincere in its belief when it invited the CEO's aunt to promote Onionhead in the workplace. Instead, it simply stated that a reasonable trier of fact could conclude that CGC was sincere because it invited, authorized, and paid to use Onionhead within CGC.¹⁵ This, combined with the more clearly established religious elements of Onionhead, was sufficient for the district court to conclude that Onionhead was a religion as a matter of law.

Practical Considerations

Employers continue to face hot-button issues on several fronts regarding religion. Most cases involve exclusively traditional religious discrimination claims by employees, but, as the present case indicates, an

6 See *EEOC v. United Health Programs*, 2016 U.S. Dist. LEXIS 136625, at **31-32.

7 *Id.* at **28-29. The district court was skeptical as to whether the first factor was relevant in reverse religious discrimination cases, since plaintiffs in Establishment Clause cases do not have to prove that a state actor sincerely believes in a forbidden religious practice in order to win a constitutional challenge. See *id.* at *27-28, n. 13. This is another data point in the ongoing debate over whether entities, as opposed to individuals, can have religious beliefs.

8 *Id.* at **28-29.

9 *Id.* at *29.

10 *Warner v. Orange Cty. Dep't of Prob.*, 115 F.3d 1068, 1075 (2d Cir. 1996).

11 *Malnak v. Yogi*, 592 F.2d 197, 214 (3d Cir. 1979).

12 *EEOC v. United Health Programs*, 2016 U.S. Dist. LEXIS 136625, at *35.

13 *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 79 (2d Cir. 2001).

14 *United States v. Allen*, 760 F.2d 447 (2d Cir. 1985).

15 *EEOC v. United Health Programs*, 2016 U.S. Dist. LEXIS 136625, at *40 ("To the extent that establishing an employer's beliefs are sincerely held is a requirement for purposes of a reverse discrimination claim under Title VII ... a reasonable jury could find that Jordan, Hodes, and several of defendants' managers or supervisors held sincere beliefs regarding Onionhead.")

employer may be easily charged with imposing religious preferences on its employees if its internal programs focus on sincerely held beliefs that may be considered, in the whole, religious in nature.

In a typical case, employers should be mindful of Title VII when an employee seeks a religious accommodation. Employers owe a duty to accommodate the religious practices of their employees, unless an accommodation would create an undue burden to the employer's business.¹⁶

Additionally, it is important for employers to consider whether their own practices might implicate religious concerns. Do company materials reference God or some other religious deity? Are there employer-sponsored prayers in the workplace? Generally, employers should avoid pressuring employees—either overtly or in more subtle ways—into participating in these activities. Indeed, these were strong factors in the district court's decision to hold that Onionhead is a religion as a matter of law under Title VII.

Employers should therefore consider:

- Developing a plan for dealing with religious accommodation requests.
- Consulting counsel when an employee asserts a need for a religious accommodation, particularly where the request relates to an unfamiliar religion or practice.
- Assessing, in coordination with counsel, a company's materials and communications if they may relate to spiritual or religious issues.
- Continuing to monitor legal developments, including case law addressing specific factual circumstances.

¹⁶ See 42 U.S.C. § 2000e-2(j) (accommodation not required if it would cause an "undue hardship on the conduct of the employer's business"); see also *TWA v. Hardison*, 432 U.S. 63, 74 (1977) ("The intent and effect of this definition was to make it an unlawful employment practice under § 703(a)(1) for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees.")