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Seventh Circuit Emphasizes Importance of Employers Grasping Religious Nature of Time-Off Requests and Properly Communicating With Employees in Order To Appropriately Accommodate

By Jane Ann Himsel

The Seventh Circuit Court of Appeal's decision in *Adeyeye v. Heartland Sweeteners, Inc.*,¹ reminds employers that a very broad definition of "religion" applies in Title VII religious discrimination cases. Given this broad definition, employers must be sufficiently alert to perceive, or at least to inquire about, the possible religious nature of employees' accommodation requests—even when those requests do not contain the word religion. The *Adeyeye* decision also cautions employers to make careful, case-by-case determinations as to whether granting a religious accommodation would impose an undue hardship. The decision also makes it clear that an employer will not be reasonably accommodating an employee if all the employer offers is the opportunity to resign, fulfill a religious obligation, and then reapply if there happens to be an open position available.

Adeyeye, a Nigerian-born material handler, sought leave to attend his father's funeral in Nigeria through the following letter to his employer:

I hereby request for five weeks leave in order to attend funeral ceremony of my father. This is very important for me to be there in order to participate in the funeral rite according to our custom and tradition. The ceremony usually cover from three to four weeks and is two weeks after the burial, there is certain rite[s] that all of the children must participate. And after the third week, my mother will not come out until after one month when I have to be there to encourage her, and I have to [k]ill five goats, then she can now come out. This is done compulsory for the children so that the death will not come or take away any of the children's life. I will appreciate if this request is approved.²

Adeyeye's employer denied the request without discussion. Adeyeye made a second written request, stating that as the oldest child and only son he had to be "involved totally in [the] burial ceremony."³ Again the employer denied the request without discussion, informing Adeyeye that he

1 2013 U.S. App. LEXIS 15610 (7th Cir. July 31, 2013).

2 *Id.* at *10.

3 *Id.* at *11.

could voluntarily quit his job, make the trip, and then reapply for any existing open positions when he returned. Adeyeye made the trip without resigning. When he returned to work, his employer told him it had terminated his employment via letter while he was gone and refused to rehire him. Adeyeye filed a charge of discrimination and then sued, claiming his employer had failed to accommodate his religion.

The employer argued Adeyeye could not establish a *prima facie* case of religious discrimination based on a failure to accommodate theory because Adeyeye's two letters, which only mentioned "custom and tradition," were insufficient to give the employer reasonable notice that the leave he requested was religious in nature. The district court agreed and granted the employer's summary judgment motion.

The Seventh Circuit reversed. The court focused first on the fact that, when used in the Title VII context, "religion" is a very broad concept. The court cited the oft-quoted language from the United States Supreme Court decision in *United States v. Seeger*: "the test [for whether a belief qualifies as religious] is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God."⁴ It then quoted language from a previous Seventh Circuit decision in *Kaufman v. McCaughtry*: "[w]hen a person sincerely holds beliefs dealing with issues of ultimate concern that for her occupy a place parallel to that filled by God in traditionally religious persons, those beliefs represent her religion."⁵ Finally, the court took a consistent but more granular approach to defining religion saying, "a genuinely held belief that involves matters of the afterlife, spirituality, or the soul, among other possibilities, qualifies as religion under Title VII."⁶

With this very broad concept of religion in mind, the court then examined the respective duties of an employee seeking a workplace religious accommodation and those of the employer from whom the accommodation is sought. Under *Adeyeye*, an employee seeking religious accommodation need not explicitly use the words "religion" or "religious." Instead, the employee's obligation is to make the request "reasonably clear so as to alert the employer to the fact that the request is motivated by a religious belief."⁷ The employer's corresponding obligation is to "be alert enough to grasp that the request is religious in nature. If the employer is not certain [whether or not the request has a religious basis], managers are entitled to ask the employee to clarify the nature of the request."⁸

After clarifying the respective duties of the employer and the employee, the Seventh Circuit considered the case before it. In his letters, Adeyeye used the terms "funeral ceremony" and "funeral rite." He also discussed animal sacrifice. Adeyeye explained his participation in the ceremony was "compulsory," and his absence could lead to the death of his family members. According to the Seventh Circuit, these "multiple references to spiritual activities and the potential consequences in the afterlife" were sufficient to allow a jury to find that Adeyeye had provided reasonable notice to the employer of the religious nature of his request.⁹ The court observed that while the beliefs and practices Adeyeye described in his letters might not be "as familiar as beliefs and practices closer to the modern American mainstream . . . the protections of Title VII are not limited to familiar religions."¹⁰ The court found that Adeyeye had said enough to at least raise a question in management's mind. "If the managers who considered the request had questions about whether the request was religious, nothing would have prevented them from asking Adeyeye to explain a little more about the nature of his request. . . . The law leaves ample room for dialogue on these matters."¹¹ Because questions of fact clearly existed as to the adequacy of notice, the Seventh Circuit found that the district court had erred in granting summary judgment.

The court also rejected the employer's challenge to the sincerity of Adeyeye's beliefs, specifically that the practices in question did not merit accommodation because they arose from the beliefs of Adeyeye's father rather than Adeyeye's own beliefs. The Seventh Circuit viewed the funeral rites as part of an "inter-generational form of faith and practice where part of the belief system is that the head of each household had the privilege and responsibility of determining the family's exact practices."¹² There was no "bright line" between Adeyeye's faith and

4 *Id.* at *3-*4 (quoting *United States v. Seeger*, 380 U.S. 163, 165-66; 85 S. Ct. 850; 13 L. Ed. 2d 733 (1965)).

5 *Id.* at *5 (quoting *Kaufman v. McCaughtry*, 419 F.3d 678, 681 (7th Cir. 2005)).

6 *Id.* at *5.

7 *Id.* at *9-*10.

8 *Id.* at *10.

9 *Id.* at *12.

10 *Id.*

11 *Id.* at *12-*13.

12 *Id.* at *19.

his father's faith.¹³ The court advised that when addressing a challenge to the sincerity of an individual's beliefs, it would neither probe the individual's "reasons or motives" for holding the beliefs, nor "require perfect consistency in observance, practice, and interpretation."¹⁴

Finally, the court found the employer had failed either to offer a reasonable accommodation, or to produce evidence that it would have suffered undue hardship by allowing the leave. The court emphasized that undue hardship must be evaluated on a case-by-case basis, allowing each set of circumstances to dictate whether granting an unpaid leave (or presumably any other accommodation) would impose more than *de minimis* cost on an employer.¹⁵ Adeyeye's work environment, with its "high turnover, frequent use of temporary workers, and a ready supply of substitutes," did not compel a finding that his employer would have suffered an undue hardship if it granted him a leave.¹⁶ On the question of whether the employer had offered a reasonable accommodation, the court found that "[t]he option of voluntary termination with the right to ask for one's old job back later is not a reasonable accommodation."¹⁷

Recommendations for Employers

- For Title VII purposes, religion is an extremely broad concept which can include any sincerely held belief about matters such as the afterlife, spirituality, and the soul. It reaches beyond those religions that may be most familiar to Americans.
- When an employee expresses a need to be absent from work to participate in rituals, ceremonies, or rites, or suggests he or she is compelled to engage in a certain practice or behavior for spiritual reasons or to save the employee's or others' souls or lives, the employee is likely talking about religious activity—even if the word "religion" is not mentioned.
- Employers should closely examine all requests for time off. If a manager has *any* doubt about whether a request is religious in nature, he or she needs to put aside his or her own biases and any fear of offending the employee and seek more information.
- Respectful dialogue is the key to the religious accommodation process. Employers who reject accommodation requests without talking to employees about the nature of the requests and possible alternative accommodations will find it far more difficult to defend failure to accommodate claims.
- Whether an employer will suffer undue hardship by granting a religious accommodation must be considered on a case-by-case basis, carefully considering the factual context in which the employee makes the request.
- Offering an employee the opportunity to resign, fulfill his or her religious obligations, and then reapply will not fulfill an employer's duty to reasonably accommodate a religious belief or practice.

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13 *Id.* at *13.

14 *Id.* at *16-*18.

15 *Id.* at *25-*27.

16 *Id.* at *26.

17 *Id.* at *28.