



UPS Faces Unlawful Religious Discrimination Charges for Violating Title VII

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On July 15, 2015, the Equal Employment Opportunity Commission (“EEOC” or the “Commission”) filed a complaint, *EEOC v. United Parcel Service*; Civil Action No. 1:15-cv-04141, in the Eastern District of New York against United Parcel Service, Inc. (“UPS”), the country’s leading package delivery service, for purportedly violating its employees’ religious rights.

In the recently filed lawsuit, UPS is being charged for violating Sections 701(j) and 703 of Title VII, 42 U.S.C. § 2000e(j) and e(2), and may be ordered to provide appropriate back pay with interest to the aggrieved employees in addition to compensation for past and future pecuniary and non-pecuniary losses resulting from its alleged unlawful employment practices. The Commission also seeks punitive damages for UPS’s “malicious and reckless conduct” and an injunction, enjoining UPS and its agents from engaging in the claimed discrimination.

For those who followed the Abercrombie and Fitch “headscarf case,” decided by the Supreme Court of the United States on June 1, 2015, you may recall that Title VII prohibits employers from discriminating against individuals based on their religion and requires employers to accommodate an employee’s religious beliefs and customs unless doing so would cause an undue hardship on the employer. The factual circumstances and the claims against UPS closely track those discussed in the “headscarf case,” as both Abercrombie and Fitch and UPS had “look policies” in place, which were the sources of the alleged discrimination.

More specifically, according to the EEOC’s complaint, since approximately 2004, UPS has engaged in, and continues to engage in, nationwide religious discrimination by its repeated refusal to hire, promote, and accommodate individuals whose religion conflicts with its “Uniform and Appearance Policy” (the “Policy” or “Appearance Policy”). The company’s Appearance Policy is applicable to all employees in positions that require customer contact, including drivers and drivers’ helpers, and to all employees with supervisory responsibility. It prohibits covered male employees from wearing facial hair below the lip, e.g., beards, or from growing their hair below collar length. Though, the Policy does not apply to “back” of the facility positions which do not involve customer contact.

In the complaint, the EEOC describes various alleged instances where employees had requested religious accommodations and were either denied or postponed, and where qualified applicants had interviewed for positions, but were refused employment due to their religious customs. The complaint also alleges that the company segregates individuals on the basis of their religion, by placing those individuals whose religious beliefs conflict with the Appearance Policy into “back”-of the facility positions, which involve no customer contact. For

example, the Commission described a situation where a Rastafarian package handler in Long Island sought a driver position in 2006 but was required to request accommodation based on his religious practices. He was then segregated into a back of the facility position during the two years it took for UPS to grant his accommodation request. Similarly, though his request was eventually granted, in Illinois, a Rastafarian package sorter applied for a promotion to a supervisor position and also requested an accommodation to wear his hair long due to his religious beliefs, but UPS allegedly refused the accommodations and segregated him to the back of the facility as a sorter.

In another example provided in the complaint, the EEOC alleges that UPS supervisors and agents explicitly stated to employees and applicants that exceptions to the Policy did not exist. As alleged in the complaint, after a part-time lead supervisor and practicing Rastafarian requested a religious accommodation to permit him to wear dreadlocks and refrain from cutting his hair, his manager allegedly ignored his request and told the employee that he “didn’t want any employees looking like women on his management team.” The manager then repeatedly asked the employee when he was going to cut his hair. Eventually, the employee contacted the human resources department and was allegedly questioned as to why he practiced the Rastafarian religion at all since he is not Jamaican.

In light of these recent events, employers who employ more than 15 employees need to be aware of Title VII and the protection it affords to employees and applicants, including the right to practice religious beliefs through dress and appearance. An employer can find itself subject to an EEOC complaint if it engages in any sort of disparate treatment based on religion in recruiting, hiring, promoting, or firing employees, or if it denies an employee a reasonable accommodation for his or her sincerely held religious belief, unless that accommodation would cause an undue hardship for the employer. It is also important for employers to understand their rights as well. Employers may legally refuse to accommodate a religious practice based on workplace safety if the accommodation would actually pose an undue hardship on the employer’s business operations.

In an effort to mitigate the risk of litigation, employers should engage in active employee training, as it is vital that all company agents and supervisors understand the nature of Title VII and the protections it affords. Employers should also remain up to date on the recent court rulings and administrative guidance to best adapt their employment practices and guidelines to avoid inadvertent discrimination.

If you or your institution has any questions or concerns regarding employment related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

Thank you to Ashley Zangara a law clerk at Cullen and Dykman, for her assistance with this blog post.