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Break Time Disputes Put Religious Diversity in the Spotlight

By Bill Leonard, October 2008

A labor dispute between Muslim workers and meat processing plants operated by JBS Swift & Co. over the time allotted for prayer breaks has again raised questions on how employers should accommodate the religious beliefs of their workers.

The dispute involves several hundred Somali workers who wanted time to pray during work hours. The two meat processing plants in Greeley, Colo., and Grand Island, Neb., normally allow for the short breaks. However, problems arose during the 2008 Islamic holy month of Ramadan when Muslim workers requested a break at sunset.

During Ramadan (which ended Oct. 1, 2008), prayers at sunset are considered the most sacred by devout Muslims. Hundreds of workers walked off the job at both plants complaining that the employer did not allow adequate time for the sunset prayers and did not respect their religious beliefs. According to several sources, JBS Swift then fired nearly 200 workers at the Colorado plant and approximately 100 at the Nebraska facility.

Both the United Food and Commercial Workers (UFCW) union and the Council on American Islamic Relations (CAIR) filed religious discrimination complaints with the Equal Employment Opportunity Commission (EEOC). The complaints went immediately into mediation. Attorneys for the employers and the workers declined to comment on cases under mediation.

Swift Meats, which was acquired by Brazil's JBS SA in March 2008, has faced earlier problems with Muslim workers and prayer breaks. In 2007, dozens of workers from Somalia walked off the job over the same issue. Those workers eventually returned to work.

However, workplace issues for Muslims aren't exclusive to JBS Swift and appear to challenge many employers.

Complaints Continue

A **report** released by CAIR (<http://www.cair.com/Portals/0/pdf/civilrights2008.pdf>) on Sept. 24, 2008, shows an increase in 2007 of complaints of workplace bias against Muslims. According to the study, employment discrimination claims involving Muslim workers increased by 18 percent, with 452 cases reported in 2007, compared to 384 in 2006. Researchers for CAIR also found a 34 percent increase in reports of discrimination against Muslims who were seeking employment and an 8 percent rise in religious accommodation complaints.

While accommodations for prayer breaks and time off during Ramadan can affect all businesses, the issues have grabbed the attention of employers in the food and meat processing industry. In September 2008, managers at the Tyson Foods Plant in Shelbyville, Tenn., reached a

compromise with the UCFW and plant workers and will now observe the final day of Ramadan, known as Eid al-Fitr, as a paid holiday.

A tentative agreement allowing Muslim workers with Gold'n Plump Poultry Inc. to take short prayer breaks was announced on Sept. 10, 2008—the same day JBS Swift dismissed the workers in Colorado. The EEOC helped mediate the settlement with Gold'n Plump, which is based in St. Cloud, Minn.

Attorneys for the workers called the case “a landmark settlement” and claimed it could set a precedent for similar cases, a characterization Gold'n Plump's attorneys disagreed with.

“The outcome was based solely on Gold'n Plump's unique set of circumstances and there was nothing precedent-setting about it,” the statement released by Gold'n Plump read. “Many other companies have had prayer accommodation requests at their production facilities, and some have agreed to broader accommodations than Gold'n Plump.”

Accommodation Confusion

Many employers struggle with how to best accommodate employees' religious beliefs. The law protecting employee rights to practice their religious beliefs is fairly clear and sacrosanct, according to employment and diversity rights experts; the regulations are much less so.

“The law is pretty straightforward on what constitutes religious discrimination,” said Michelle Weber, assistant director, communications and religious diversity in the workplace for the Tanenbaum Center for Interreligious Understanding. “However, the standard is fairly low and the regulations are vaguely written on what exactly reasonable accommodations and undue hardships on businesses should be.”

Some employers have claimed that allowing a large number of workers to take a break for prayers would shut down their production lines and disrupt their operations. And some courts have agreed with that argument. In the 2004 case, *Farah v. Whirlpool*, attorneys for the employer persuaded a jury that prayer breaks for 40 employees posed an undue hardship.

Weber believes the issues of religious accommodations will continue to increase and become more complicated for employers.

“If you look at the immigration and employment patterns, we are seeing more workers coming from African and Mid-East countries entering into jobs like food processing which have been held by Latinos,” she said. “So an issue like prayer breaks for Muslims is something employers must understand and be prepared to deal with.”

Other employees who object to what they see as preferential treatment for workers receiving prayer breaks can complicate the problem further. Several workers at the JBS Swift plant in Nebraska stopped work to protest the breaks provided to Muslim workers.

Weber says this type of reaction from co-workers indicates a lack of communication and understanding of the employer's obligations.

"There appears to be a communication breakdown somewhere ... line managers and supervisors are not explaining the situation or [don't] understand what they must do in a situation like this," Weber said.

She suggests that businesses review their policies carefully and have a plan in place for responding to employee requests for religious accommodations. The EEOC provides **guidance** and materials on its web site. Groups like **CAIR** also have guidelines and information for employers.

"I believe one of the best things employers can do is train their managers and supervisors and provide them with the information and tools necessary," she said. "And employers need to communicate how and when religious accommodations can or can't be made."

Weber also says that relaying the information to all employees is critical. Events like town hall meetings where employees can ask questions and discuss the issue openly can work well too.

"But what is really needed are statements that clearly outline the business needs of the company," she said. "It's important to show that religious accommodations like prayer breaks are a business decision and a need of the organization and not preferential treatment."

Bill Leonard is senior writer for SHRM Online.

Religious Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Title VII covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Under Title VII:

Employers may not treat employees or applicants more or less favorably because of their religious beliefs or practices - except to the extent a religious accommodation is warranted. For example, an employer may not refuse to hire individuals of a certain religion, may not impose stricter promotion requirements for persons of a certain religion, and may not impose more or different work requirements on an employee because of that employee's religious beliefs or practices.

Employees cannot be forced to participate -- or not participate -- in a religious activity as a condition of employment.

Employers must reasonably accommodate employees' sincerely held religious practices unless doing so would impose an undue hardship on the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. An employer might accommodate an employee's religious beliefs or practices by allowing: flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers, modification of grooming requirements and other workplace practices, policies and/or procedures.

An employer is not required to accommodate an employee's religious beliefs and practices if doing so would impose an undue hardship on the employers' legitimate business interests. An employer can show undue hardship if accommodating an employee's religious practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation.

Employers must permit employees to engage in religious expression, unless the religious expression would impose an undue hardship on the employer. Generally, an employer may not place more restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency.

Employers must take steps to prevent religious harassment of their employees. An employer can reduce the chance that employees will engage unlawful religious harassment by implementing an anti-harassment policy and having an effective procedure for reporting, investigating and correcting harassing conduct.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on religion or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

Statistics

In Fiscal Year 2006, EEOC received 2,541 charges of religious discrimination. EEOC resolved 2,387 religious discrimination charges and recovered \$5.7 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

Statistics from <http://www.eeoc.gov/stats/religion.html>

Religion-Based Charges FY 1997 - FY 2007

The following chart represents the total number of charge receipts filed and resolved under Title VII alleging religion-based discrimination. The data are compiled by the Office of Research, Information and Planning from data compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Receipts	1,709	1,786	1,811	1,939	2,127	2,572	2,532	2,466	2,340	2,541	2,880
Resolutions	2,137	2,247	2,187	2,230	2,217	2,729	2,690	2,676	2,352	2,387	2,525
Resolutions By Type											
Settlements	89	97	144	156	182	237	221	241	227	244	282
	4.2%	4.3%	6.6%	7.0%	8.2%	8.7%	8.2%	9.0%	9.7%	10.2%	11.2%
Withdrawals w/Benefits	74	81	87	94	77	100	86	101	98	118	133
	3.5%	3.6%	4.0%	4.2%	3.5%	3.7%	3.2%	3.8%	4.2%	4.9%	5.3%
Administrative Closures	614	559	532	429	382	451	434	490	384	364	418
	28.7%	24.9%	24.3%	19.2%	17.2%	16.5%	16.1%	18.3%	16.3%	15.2%	16.6%

No Reasonable Cause	1,265	1,363	1,269	1,343	1,349	1,729	1,744	1,672	1,442	1,524	1,498
	59.2%	60.7%	58.0%	60.2%	60.8%	63.4%	64.8%	62.5%	61.3%	63.8%	59.3%
Reasonable Cause	95	147	155	208	227	212	205	172	201	137	194
	4.4%	6.5%	7.1%	9.3%	10.2%	7.8%	7.6%	6.4%	8.5%	5.7%	7.7%
Successful Conciliations	32	42	42	56	43	54	67	38	36	38	81
	1.5%	1.9%	1.9%	2.5%	1.9%	2.0%	2.5%	1.4%	1.5%	1.6%	3.2%
Unsuccessful Conciliations	63	105	113	152	184	158	138	134	165	99	113
	2.9%	4.7%	5.2%	6.8%	8.3%	5.8%	5.1%	5.0%	7.0%	4.1%	4.5%
Merit Resolutions	258	325	386	458	486	549	512	514	526	499	609
	12.1%	14.5%	17.7%	20.5%	21.9%	20.1%	19.0%	19.2%	22.4%	20.9%	24.1%
Monetary Benefits (Millions)*	\$2.2	\$2.6	\$3.1	\$5.5	\$14.1	\$4.3	\$6.6	\$6.0	\$6.1	\$5.7	\$6.4

* Does not include monetary benefits obtained through litigation.

The total of individual percentages may not always sum to 100% due to rounding.

EEOC total workload includes charges carried over from previous fiscal years, new charge receipts and charges transferred to EEOC from Fair Employment Practice Agencies (FEPAs). Resolution of charges each year may therefore exceed receipts for that year because workload being resolved is drawn from a combination of pending, new receipts and FEPA transfer charges rather than from new charges only.