STATE OF MAINE

Inter-Departmental Memorandum Date February 12, 1979

To Paul D. Pierce Dept.

From John E. Carnes Dept.

Subject

QUESTION: What constitutes "reasonable accommodation" in religious discrimination in employment cases?

ANSWER: As you know, the employee has the initial burden of proving a prima facie case of religious discrimination. Once this has been done, the burden of proof shifts to employer to show that there is no reasonable accommodation the employer can make, or, if there is an accommodation, that it would impose an "undue hardship" on the business.

Section 3.05 of the Employment Guidelines of the Maine Human Rights Commission states, "Resolution of such cases...involves a delicate balancing of an applicant's or employee's religious needs with the degree of disruption imposed on the employer's business operation."

The real question is what is ment by "undue hardship"?

In 1977, the U.S. Supreme Court considered this question in Trans World Airlines v. Hardison, 14 FEP cases 1697, within the context of Title VII requirements. In that case, the employee informed his employer that his religion prevented him from working on Saturdays. The employer: 1. held several meetings with employee to discuss the matter; 2. authorized the union to search for someone who would voluntarily switch shifts with employee; 3. tried itself to find the employee another position which would not require Saturday assignments. An accommodation could not be reached.

The employer was a party to a collective bargaining agreement with the union which included a seniority system which was religiously neutral in that those employees with the most seniority, regardless of religious belief, were given preference in choosing days off.

The Court held that, while neither a collective bargaining agreement nor a seniority system can be used to violate Title VII, "reasonable accommodation" does not require an employer to take steps inconsistent with such agreement if it is otherwise valid. In other words, an employer is not required by Title VII to carve out a special exception to its seniority system in order to help an employee meet his religious obligations, unless it can be shown that the seniority system itself was set up with discriminatory intent.

The Court reasoned that to force a senior employee to work a schedule, not of his choosing, in order to free a junior employee to observe his religious faith, would be penalizing the senior employee for not belonging to the same religion as the junior employee. This type of unequal treatment was not intended by Title VII.

The Court went on the rule that it is an "undue hardship" on the employer if the accommodation would require employer to bear more than a de minimis, cost. For example, it would be "undue hardship" for employer to have to have a supervisor absorb employee's duties or to have to bring in a senior employee to do complainant's job at the senior's higher rate of pay - unless such accommodations have been made for other employees who have requested days off.

What this case seems to mean is that all an employer has to do is try to find another employee, with similar qualifications, seniority level and pay rate as the complainant, who will voluntarily take over complainant's duties for the day. If no such person can be found, employer has met its obligation and may discharge the complainant.

The dissenting Justices in this case argue that this minimal requirement makes the Title VII requirement of "reasonable accommodation" almost meaningless. But their minority opinion is of little help to complainants.

In Maine Human Rights Commission v. Local 1361, United Paperworkers International Union, 383 A. 2d 369 (1978), the Maine Supreme Judicial Court considered the case of a Seventh Day Adventist whose religion prevented her from paying union dues. She offered, instead, to give an equal amount of money to a charity. The employer was contractually obligated to fire any employee who did not pay union dues.

The Court held that an accommodation in which an employee paid to charity an amount equal to her union dues was not, as a matter of law, an "undue hardship" on the union. The Court said there was a question of fact as to the financial burden on the union resulting from the employee's exemption and sent the case back to the lower court for a finding of fact.

The Supreme Court said that if the exemption results in the union bearing more than a de minimis extra cost, it would be an "undue hardship." It also said that the lower court could also consider the impact on the morale of the union members, but that "mere grumbling" does not prove undue hardship.

The dissenting opinion in this case felt that the annual loss to the union of complainant: $72.00 dues was more than a de minimis cost and, therefore, "undue hardship" by law.

OTHER CASES - "UNDUE HARDSHIP"

EEOC v. Blue Bell, Inc., 14 FEP Cases 1013, U.S. District Court, Texas (1976). Seven employees asked for three days off to attend a religious conference. The company offered to allow two or three of them to attend, but fired all seven when they all left work for three days. The employer did not have enough rpelacement workers and, therefore, the accommodation requested, resulted in an undue hardship on employer. Judgment for employer.

Williams v. Southern Union Gas Co., 12 FEP Cases 3, U.S. District Court, New Mexico (1974). An employee who recently converted to the World Wide Church of God, informed employer he could not work the next Saturday even though the job necessitated such a schedule. Other than complainant's supervisor, there was no other employee qualified to do the job on that day, and the supervisor had scheduled his own vacation to begin that Saturday, six months before. For employer to accommodate, it would have had to stop production on a major pipeline or force the supervisor to give up his vacation plans. The Court found these alternatives to be "undue hardship."

Olds v. Tennessee Paper Mills, 11 FEP Cases 350, U.S. District Court, Tennessee (1974). Held: Title VII is not violated when employer terminates a personnel manager who could not work Saturdays and required 12 holidays for religious reasons. There was no other worker qualified to replace complainant and emergency personnel matters were likely to arise on Saturdays. For employer to accommodate would be "undue hardship."

Draper v. U.S. Pipe & Foundry Co., 11 FEP Cases 1106, U. S. Court of Appeals, Sixth Circuit (1975). Held: it is not reasonable accommodation for an employer to offer a different job to employee which would not utilize employee's skills as an electrician and which would also be at a lower pay rate. The Court also ruled that safety considerations which arise when accommodation is requested may result in "undue hardship." Title VII does not require that safety be subordinated to religious beliefs.

Chrysler Corp. v. Mann, 15 FEP Cases 788, U. S. Court of Appeals, Eighth Circuit (1977). Employee who does not attempt to cooperate with employer in its conciliatory efforts to reach reasonable accommodation, may forego his/her rights under Title VII.

CONCLUSION

An employer is required by law to make an attempt to reasonably accommodate the employee's request. Employer cannot simply refuse to discuss it. I would say that employer is obligated to "get the word out" to Complainant's fellow employees in an attempt to find someone who will swap days with Complainant. However, if this attempt is not successful, employer is not obligated to go to any significant expense to accommodate, by, for example, requiring a supervisor to do the job, or using a senior employee to fill in at a premium wage. Employer cannot force another employee to take over Complainant's duties.

On the other hand, employee must attempt to reach accommodation in good faith or run the risk of forfeiting Title VII rights.

The U.S. Supreme Court in Hardison has taken a conservative position. This may change in the future. In any case, the employer will always have to be careful not to infringe upon the rights of other employees when attempting to accommodate the religious beliefs of complainant.