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Wearing 'Ten Commandments' Badge Violates Title VII

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Special to the Legal

Claims of religious discrimination in violation of Title VII are often difficult for employers to defend against because of the Supreme Court's finding that it is "not within the judicial ken" to determine the validity of an employee's religious belief. This deference was recently applied by the U.S. District Court for the Eastern District of Pennsylvania in *Ambrose v. Gabay Ent & Associates*, No. 12-5453, 2013 U.S. Dist. LEXIS 115353 (E.D. Pa. Aug. 15, 2013).

OFFICE'S 'TEN COMMANDMENTS'

Cynthia Ambrose was a well-regarded receptionist who had worked with Gabay, a medical office, for eight years in the spring of 2011, according to the opinion. At that time, Gabay provided Ambrose with a new name badge. On the backside of the badge, Gabay listed 10 office rules under the heading: "Our Ten Commandments." Ambrose objected to wearing the name badge around her neck because "wearing an altered 10 commandments ... offended her religious beliefs because they were not the Ten Commandments proscribed by her religious Catholic faith." Ambrose specifically stated that she found the name badge "sacrilegious." She also claimed that "there was absolutely no business purpose whatsoever ... to have to wear a badge with itemized commandments on the back, as no client or patient could see the back of [her] badge."

Ambrose was disciplined for "failure to comply with new policy" and threatened with termination if she refused to wear the new badge. As a compromise, Ambrose wore the badge at the bottom of her shirt, rather than around her neck. She claimed, however, that she was treated "very harshly" in the office and less than two months after being given the allegedly offensive badge, Ambrose was terminated in what she asserted was a pretextual manner, according to the opinion.

FAILURE TO ACCOMMODATE CLAIM

After Ambrose twice amended her complaint, she asserted claims for "failure to accommodate" her beliefs and for "retaliation" in violation of Title VII. Gabay moved to dismiss her claim on the grounds that her objection to



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wearing the badge was not a religious belief, but was a "personal preference ... that had absolutely nothing to do with religion." Gabay's brief made clear that it was not questioning the sincerity of Ambrose's belief, but rather, it was questioning the validity of her beliefs.

In order to state a viable claim for failure to accommodate religious beliefs, an employee must establish that: (1) she holds a sincere religious belief that conflicts with a job requirement; (2) she informed her employer of the conflict; and (3) she was disciplined for failing to comply with the conflicting requirement. At the motion to dismiss stage, Gabay challenged only the first element: whether Ambrose plausibly alleged that the name badge requirement conflicted with "a sincere religious belief."

Specifically, Gabay asserted that the badge had "absolutely nothing to do with religion" because the phrase "Our Ten Commandments" was used in the "vernacular sense" — akin to calling a dessert "sinful" or referring to an employee as an "angel," the opinion said. Moreover, Gabay argued that there is no Roman Catholic prohibition against wearing a name badge with secular guidelines referred to as "Our Ten Commandments."

COURT DECLINES TO QUESTION BELIEFS

The court began its consideration by citing the Supreme Court's holding in *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989), that "it is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." As such, courts "are not free to reject beliefs because they consider them 'incomprehensible,'" citing *United States v. Seeger*, 380 U.S. 163, 185 (1965).

In this light, the court found that Gabay's arguments were fatally flawed because they asked the court to measure the religious validity of Ambrose's objection based upon Gabay's "scheme of things." That is, the court found it to be irrelevant that Gabay intended the badge to be secular and did not discuss religion on the badge itself. The court noted that Ambrose did not object to the rules or even referring to them as "Ten Commandments." Rather, her objection was to wearing the badge, which she considered to be "personally identifying" with the statements. Ambrose made it clear that she had no objection to keeping the rules in sight at her work area.

Gabay's argument that most Roman Catholics would not concur with Ambrose's objection to the badge was also rejected. The court found that this argument asked it to be an "arbiter of scriptural interpretation" in order to "determine if [Ambrose] was misreading the tenets of her Roman Catholic faith." Again, this was beyond the court's expertise or ability — particularly when, at the pleading stage, Ambrose had asserted the religious nature of her objection.

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Claims for failure to accommodate religious beliefs are almost strict liability in nature. Assuming that the court will not question the sincerity of the religious nature of an employee's beliefs, employers must consider whether the requested accommodation creates an undue hardship and, if not, they are best served by providing the accommodation. In this particular case, Ambrose's request, although it may seem like an overly strict conviction, would likely have required nothing more than the printing of a new badge. •

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