Litigation

August 30, 2011

New York City Strengthens Ban on Workplace Religious Discrimination

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On August 30, 2011, New York City Mayor Michael Bloomberg signed a new law intended to make it more difficult for New York City employers to reject proposed accommodations of employees' religious practices as an "undue hardship."

The amendments to Sections 8-102 and 8-107 of the New York City Human Rights Law now make it clear that a potential accommodation of an employee's religious practice is not an "undue hardship" for the employer unless it requires "significant expense or difficulty." In determining whether a proposed accommodation requires a significant expense or difficulty, employers must now consider:

- The identifiable cost of the accommodation in relation to the size and operating costs of the employer. This includes the cost of lost productivity and of retaining or hiring employees or transferring employees from one facility to another.
- The number of individuals who will need the particular accommodation.
- For employers with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

Under the pre-existing New York City Human Rights Law (as well as the New York State Human Rights Law and the federal Title VII), employers have long been required to provide reasonable accommodations to employees for their sincerely held religious beliefs and their observance and practice of those beliefs – unless the employer could show that an accommodation would impose an undue hardship on the employer. But, in religious discrimination cases under Title VII, the U.S. Supreme Court determined that an accommodation was an undue hardship if it created anything more than a *de minimis* cost or burden to the employer.

The New York City Human Rights Law had not previously defined "undue hardship." Now, it does, and that new definition ups the ante significantly. Under the new amendments to the New York City law, the *de minimis* standard has been rejected, and the City is adopting the far more stringent requirement that

an employer show a “significant expense or difficulty” in the proposed accommodation – the same rigorous standard employers already face for accommodations requested under the Americans with Disabilities Act.

Of course, this does not mean that New York City employers now must grant all employee requests for religious accommodation. First, the “significant expense or difficulty” standard has long existed under the ADA, and courts interpreting it have sometimes found that an employee’s proposed accommodation would indeed impose an undue hardship. Second, the amendments specify that any accommodation that significantly interferes with the safe or efficient operation of the workplace, or violates a bona fide seniority system is, by definition, a “significant expense or difficulty.” Finally, the amendments make it clear that any accommodation that will result in the employee being unable to perform the essential functions of his or her position will always be an undue hardship.

But there can be no denying that, with respect to religious accommodations in New York City, the rules of the road have now changed. This new law should prompt all New York City employers to engage employees requesting religious accommodations in a dialogue aimed at finding mutually acceptable accommodations, and requests for religious accommodations should be rejected only when the requested accommodation would clearly impose a significant expense or difficulty.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the author below.

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