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Reporter

Employment Law

by Kelly O. Scott

California Enacts Law to Further Protect Religious Expression in the Workplace

Governor Jerry Brown recently signed into law Assembly Bill 1964, the Workplace Religious Freedom Act of 2012. Set to take effect on January 1, 2012, AB 1964 clarifies existing law pertaining to religious discrimination and serves to underscore the marked difference between federal and state law. Indeed, for those California employers who have adhered to federal law (usually at the direction of a corporate headquarters located outside of California), this new legislation could have a significant impact.

Similar to federal law embodied by Title VII or the Civil Rights Act of 1964, California's Fair Employment Housing Act (FEHA) has long prohibited employers from discriminating or retaliating against employees

and job applicants based on the number of factors, including religious creed. Indeed, with respect to religion, FEHA defines "religious belief or observance" as including, but not limited to, observance on a Sabbath or other religious holy day and reasonable time necessary to travel. Other religious beliefs or observances, such as religious clothing and grooming, were implicitly protected.

FEHA also requires employers to reasonably accommodate the religious needs of its employees unless doing so would constitute an "undue hardship" on the employer. At this point, however, federal and state law part company. Federal law holds that an accommodation causes undue hardship whenever that

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accommodation results in more than a “de minimus”, or minimal, cost to the employer. FEHA, on the other hand, includes language which defines “undue hardship” as requiring “significant difficulty or expense” when considered in light of several factors, including the overall financial resources of the facilities involved and the number of employees. However, this language has been inconsistently applied and had not been applied to the religious discrimination section by California courts. Moreover, under federal law, one court sitting in Illinois had held that an employer could reasonably accommodate an employee whose religious clothing did not comply with the company dress code by banning him from having face-to-face contact with the public. It was in response to this case, in part, which concerned a Sikh employee, that the Sikh Coalition sponsored AB 1964.

The new law makes clear that the undue hardship definition of “significant difficulty or expense”

in FEHA will apply to religious discrimination. Further, the law specifies that segregation is not a reasonable accommodation. The law also expands the definition of religious belief or observance to include religious dress practices and religious grooming practices.

AB 1964 serves as an opportunity for California employers to take a close look at their dress code and religious accommodation practices. Strict enforcement of a dress code in a manner that constricts the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts or any other item that is part of religious observance, including all forms of grooming, could violate the statute. Moreover, employers should expect the same level of scrutiny from plaintiffs’ lawyers as the new law will serve as a spotlight on employer religious accommodation practices, a spotlight that will undoubtedly result in an increase in religious discrimination claims at least in the near future.

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If you have any questions regarding this bulletin, please contact Kelly O. Scott, Esq., Editor of this publication and Head of ECJ’s Employment Law Department, at (310) 281-6348 or kscott@ecjlaw.com. If one of your colleagues would like to be a part of the Employment Law Reporter mailing list, or if you would like to receive copies electronically, please contact Brandi Franzman at (310) 281-6328 or bfranzman@ecjlaw.com.