TITLE VII CONSTRUCTIVE DISCHARGE CLAIM

To: Toy Company CEO

From: Aaron Camacho, Elementary Division Manager

Subject: Title VII Constructive Discharge Claim

Date: October 23th 2013

Constructive Discharge

Constructive discharge is objectively determined. It requires objectiveness because the question is "whether a reasonable person faced with allegedly intolerable employer actions or conditions of employment would have no reasonable alternative except to quit" (Court of Appeals of California, 1993). Therefore, constructive discharge is used to show that though the employee quit the resignation was provoked by the employer. Thus, it was as if the employee was fired.

Example: Bob's employer makes a few offensive comments about Bob being Jewish then changes Bob's work schedule so he must work on the Jewish Sabbath. Bob respectively requests to have his schedule changed so he may practice his sincerely held religious beliefs, but the request is denied. At this point Bob's employer has violated Title VII. Bob shortly quits there after. "In order (for Bob) to establish a constructive discharge (claim), (he) must plead and prove, by the usual preponderance of the evidence standard, that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign" (Taggart, 1994).

Though the example above is a clear violation of Title VII of the Civil Rights Act of 1964 and could constitute as a constructive discharge, our real life EEOC Constructive discharge claim is not so clear. Here are four reasons the employee cannot assert constructive discharge with the given claim:

1. The employee has not materially proven that he/she was knowingly or intentionally selected as a target for the schedule change.
2. The employee has shown no evidence to the claim that the company was religiously discriminatory under the laws of Title VII of the Civil Rights Act of 1964.

3. There is **"NO"** evidence to support that a reasonable request was made to accommodate the employee's sincerely held religious beliefs or practices. By reasonable I mean: causing no undue hardship for the company that would result in "significant difficulty or expense" (EEOC, 2011).
4. There is **"NO"** known previous EEOC or human resource complaint. Therefore, retaliation by the employer is not applicable to this situation. Retaliation as defined by the EEOC states: "all laws we (the EEOC) enforce make it illegal to fire, demote, or otherwise 'retaliate' against people (applicants or employees) because they filed a charge of discrimination" (EEOC, 2013).

If the employee can establish that even one of these claims are true the company could be liable for back pay and religious harassment charges. Often these types of claims can be costly to defend and settlement is advised, as it is typically cheaper.

Title VII & Religious Harassment or Discrimination

Title VII of the Civil Rights Act of 1964 protects workers, in a business of at least 15 employees, from religious, race, color, sex or national origin discrimination or harassment. It also disallows retaliation against employees or applicants that complain about discrimination or participate in an EEOC investigation. Figure 1 shows four areas that are covered by Title VII with respect to religion:

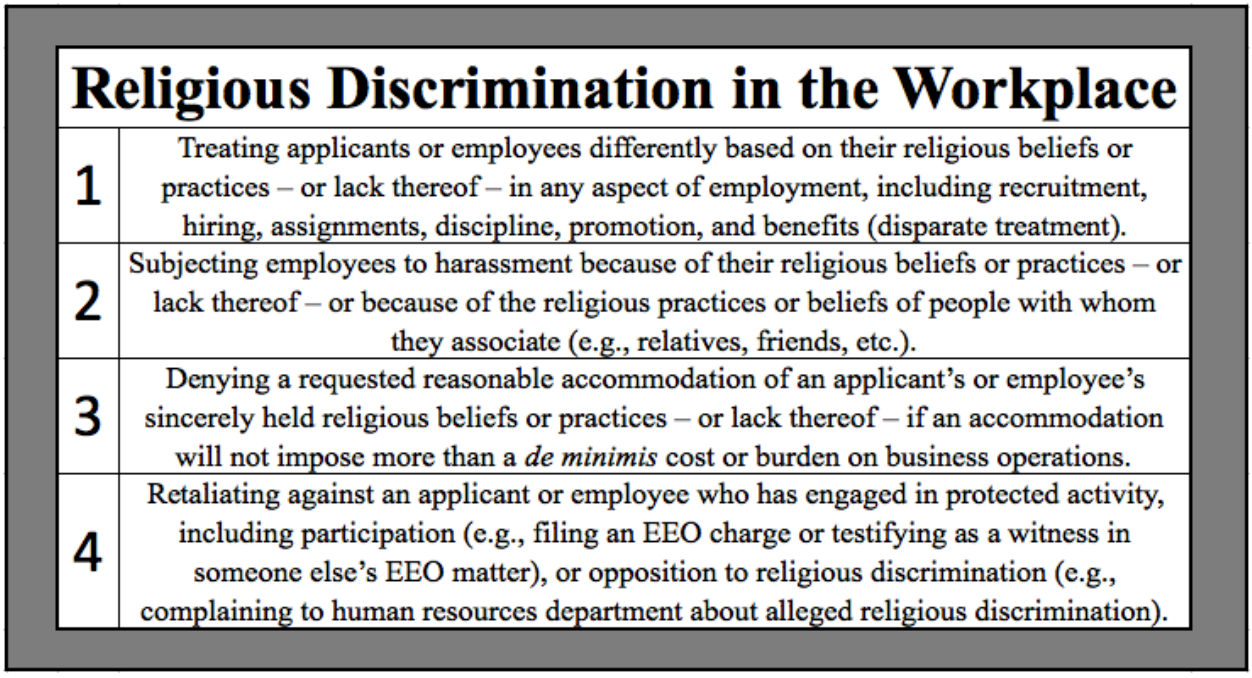

Figure 1: Religious Discrimination in the Workplace (EEOC, 2011).

Once again there is no evidence to support that Title VII laws were breached in reference to religious discrimination. For example, there is no indication that the employee was treated any differently because of his religion. In fact, the evidence does not even support if the company knew that he/she had such specially held religious convictions. Therefore, unless evidence can be acquired to the contrary the employee has no legal claim to religious discrimination or constructive discharge. However, this does not mean that it has not occurred. All we can assume is that it has not been recorded or brought to our attention until this time if such a claim is true.

Recommended Course of Action

When sending a claim of discrimination the EEOC does not, at that point, assume guilt or innocence. It is not a legal action in the court of law, but a notice from the EEOC alerting you to an employee's claim. Such a claim should not be ignored. Upon receipt of the claim the company has the obligation and opportunity to research and examine the facts, events and information leading up to the claim. After due diligence is done the company should decide on its plea: guilty, not guilty, reasonable excuse.

There are two ways that the employer can avoid liability or limit damages from religious harassment claims: "(a) the employer exercised reasonable care to prevent and correct promptly any harassing behavior, and (b) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise" (EEOC, 2011). Based solely on the second point the company is not guilty of religious discrimination and should opt for litigating the charge (i.e. you want your day in court to establish your innocence). Of course, the plea of not guilty is based upon the assumption that an anti-discrimination policy was present at the company and sufficient training was given to educate all employees about the requirements of Title VII. Also, the plea is based on the assumption that no supervisor, coworker or employer acted with malice or indifference towards the employee making the discrimination claim.

As to avoid future religious discrimination EEOC claims every care should be taken to promptly prevent and correct any discriminatory or harassment behavior or actions. Common methods of religious accommodation are: Scheduling changes, voluntary substitutes, shift swaps; changing an employee's job tasks or providing lateral transfer; making an exception to dress and grooming rules; accommodation relating to payment of union dues or agency fees; and, accommodating prayer, proselyting, and other forms of religious expression (EEOC, 2011). Whether employee beliefs are "theistic" or "non-theistic" they should always be accommodated "unless doing so would pose an undue hardship" (EEOC, 2011).

Though the assumed facts point to the company not being guilty this should also be taken as an opportunity to evaluate the companies ability to avoid any and all Title VII discrimination claims

of liability. Title VII, as mentioned above, does not only protect against religious discrimination in the work place, but also protects against race, color, sex and national origin.

In the early 90's the "U.S. Supreme Court issued three decisions that emphasized the need for employers to take preventative steps to avoid Title VII liability and punitive damages" (McLaughlin & Merchasin, 2001). Those three decisions were: (a) employers must create and implement polices to prevent, deter and rectify complaints of discrimination and harassment; (b) punitive damages can be awarded if the employer has acted 'with malice or indifference' to federally protected rights; (c) and, simply drafting a policy is not sufficient. Employers must adopt anti-discrimination policies and educate its employees about the requirements of Title VII (McLaughlin & Merchasin, 2001).

Therefore, two of the best steps to avoid Title VII liability and future punitive damages are: (1) have anti-discrimination policies at the company, and (2) train all employees about the requirements of Title VII. Reasonable care and good faith efforts should always be taken to prevent harassment and discrimination. It is important to note that no matter how good the company trains its employees on Title VII requirements it can still be found liable. However, a well-written policy coupled with a quality training will "likely translate into successfully meeting the good-faith defense" found in the Kolstad v. American Dental Association case (McLaughlin & Merchasin, 2001).

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