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Proselytizing in the Workplace: A Balancing Act

Section 703(a) of the Civil Rights Act of 1964 (“Title VII”)¹ which, *inter alia*, makes it unlawful for an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s religion, imposes parallel duties on employers to reasonably accommodate their employees’ religious practices, *including proselytization*,² and at the same time, fulfill their duty to maintain a work environment free of religious harassment.³ This, as we shall see, often requires a neat balancing act.

While there is no “bright line” test to guide employers, over the years judges have fashioned a number of commonsense rules for balancing the competing interests of religious proselytizing *and* maintaining a workplace free of religious harassment,⁴ among them:

- Engaging co-workers in one-on-one discussions of religious beliefs, or even proselytizing them, is permissible,⁵ providing it is not abusive (*i.e.*, demeaning people of other religions),⁶ or it persists even though the co-workers

to whom it is directed have made clear that it is unwelcome.⁷

- Writing religious letters to co-workers criticizing them for “ungodly, shameful conduct” is not permissible if it violates the employer’s anti-harassment policy, even where an employee claims that her religious belief requires her to write the letters.⁸
- An employee may not proselytize co-workers by sending unsolicited e-mails to them.⁹
- “It is unlikely that a one-time offering of a public prayer would violate Title VII unless its content denigrated other religious beliefs or attendance was mandatory;”¹⁰ “[o]ccasional public prayers and isolated references to Christian belief,” where there is no “actual imposition on co-workers or disruption of the work routine” are permitted.¹¹
- Religious speech, or proselytizing, that threatens to impede the employer’s provision of effective and efficient services is impermissible.¹²

- While an employer is entitled to integrate its own religious beliefs and practices into the workplace, and run its business according to religious precepts,¹³ if it holds religious services or programs, or includes prayer in business meetings or training sessions, absent a showing of undue hardship, Title VII requires the employer to accommodate employees who ask to be excused for religious reasons.¹⁴



Thomas Carlyle’s observation, more than 150 years ago, that “[m]an is emphatically a proselytizing creature,”¹⁵ has never been truer in the workplace. For employers, maintenance of the balance between accommodation of some employees’ religious beliefs and practices, including stepped-up proselytizing, and their co-workers’ right to be free of any perceived religious harassment, will continue to require a nuanced approach to achieving the correct balance, as well as a number of concrete actions.

Here, the Equal Employment Opportunity Commission’s suggestions are eminently practical. Employers, it recommends, should:

- Train managers to gauge the actual disruption posed by religious expression in the workplace, rather than merely speculating that disruption may result;
- Train managers to identify alternative accommodations that might be offered

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to avoid actual disruption (e.g., designating an unused or private location in the workplace where a prayer session or Bible study meeting can occur if it is disrupting other workers);

- Incorporate a discussion of religious expression, and the need for all employees to be sensitive to the beliefs or non-beliefs of others, into any anti-harassment training provided to managers and employees; and
- Advise their supervisors or managers of the nature of the conflict between their religious needs and the work rules.¹⁶

1 42 U.S.C. § 2000e-2(a)(1).
 2 See, 42 U.S.C. § 2000(e)(j); see also *Ansonia Bd. Of Educ. v. Philbrook*, 479 U.S. 60 (1986). Proselytizing is usually defined as inducing someone to convert to one's faith. <http://www.merriam-webster.com/dictionary/proselytize>
 3 Public employers face an even more daunting challenge. The First Amendment's Free Exercise Clause, which protects an individual's right to practice his or her own religion against restraint or invasion by the government (*Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222-23 [1963]), circumscribes public employers' ability to regulate employee proselytizing. The First Amendment's Establishment Clause, which prohibits governmental entities from compelling an individual to participate in a religion, or its exercise, or otherwise from taking action that has the purpose or effect of promoting or endorsing a particular religious faith or religion in general (*Lee v. Weisman*, 505 U.S. 577, 587 [1992]), requires public employers to bar proselytizing when it may be perceived as official government speech. See, e.g., *Tucker v. California Dep't*

of Educ., 97 F.3d 1204, 1213 (9th Cir. 1995), quoting *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994), cert. denied 515 U.S. 1173 (1995) ("[a] teacher appears to speak for the state when he or she teaches; therefore, the department [of education] may permissibly restrict such religious advocacy").
 4 The Title VII test for determining religious harassment parallels the test for sexual harassment. See, e.g., *Bodett v. Coxcom, Inc.*, 366 F.3d 736, 744 (9th Cir. 2004).
 5 See, e.g., *Tucker v. California Dep't of Educ.*, 97 F.3d at 1213.
 6 "[D]isparag[ing] the religion or beliefs of others" in the workplace may be illegal," according to the U.S. Equal Employment Opportunity Commission ("EEOC"). *EEOC Fact Sheet on Proposed Guidelines on Harassment Based on Race, Color, Religion, Sex*.
 7 See, *Powell v. Yellow Book USA, Inc.*, 445 F.3d 1074 (8th Cir. 2006) (Recent convert to evangelical Christianity felt obliged to expound her religious beliefs to co-workers. When co-worker complained, she stopped talking to the employee about her religious beliefs. Rejecting the co-worker's hostile work environment claim, the court held that the communications did not rise to requisite level of being severe and pervasive).
 8 *Chalmers v. Tulon Co.*, 101 F.3d 1012, 1020-21 (4th Cir. 1996) (employee, an Evangelical Christian, claimed she was "led by the Lord" to write to a subordinate at his home, and tell him that "there were things he needed to get right with God ...").
 9 See, *Ng v. Jacobs Eng'r Grp.*, 2006 WL 2942739 (Cal. Ct. App. Oct. 16, 2006) (Unpublished) (an evangelical Christian's religious beliefs compelled her to share her beliefs with co-workers in order to "save" them; she handed out religious pamphlets and sent myriad unsolicited and unauthorized internal E-mails inviting them to "call out to God for all needs," and inviting them to her unauthorized weekly prayer meetings. When co-workers complained, employer warned employee that she was violating its E-mail privacy and anti-harassment policies, and could be terminated; employee replied that she would take the risk in order to "preach the gospel." She was subsequently discharged, and her Title VII lawsuit was summarily dismissed).

10 *Carlson v. Dalton*, EEOC Request No. 05930480, 1994 WL 735488 (Apr. 26, 1994).
 11 See, e.g., *Brown v. Polk Cnty., Iowa*, 61 F.3d 650 (8th Cir. 1995).
 12 See, *Knight v. Connecticut Dep't of Pub. Health*, 275 F.3d 156 (2d Cir. 2001) (State employee prohibited from proselytizing clients she counseled); *Quental v. Connecticut Comm'n on the Deaf & Hearing Impaired*, 122 F.Supp.2d 133, 136 (D.Conn. 2000) (public employee's interest in evangelizing a client while she was on interpreting assignment outweighed by employer's interest in avoiding workplace disruption and avoiding violation of Establishment Clause in dealings with public); see also, *Asselin v. Santa Clara Cnty.*, 185 F.3d 865 (9th Cir. 1999)(Unpublished) (Public employer not required to accommodate juvenile probation officer's "religious practice" requiring him to "share the message and principles of Christianity" with minor wards).
 13 See, *EEOC v. Townley Eng'r & Mfg. Co.*, 859 F.2d 610 (9th Cir. 1988). When the Townleys, "born again believers in the Lord Jesus Christ," founded their company, they made a covenant with God that their business would be a "Christian, faith-operated business." *Id.* at 612, 625. They enclosed a Gospel tract in all outgoing mail; printed Biblical verses on all invoices, purchase orders and other commercial documents; and held a weekly devotional service during work hours. *Id.* at 612.
 14 *Id.* at 620-21 *Young v. Sw. Sav. & Loan Assn.*, 509 F.2d 140 (5th Cir. 1975) (weekly staff meetings that included Christian prayers and mixed with business were deemed impermissible, where attendance was mandatory, even for atheists).
 15 Thomas Carlyle, *THE BEST KNOWN WORKS OF THOMAS CARLYLE: INCLUDING SARTOR RESARTUS, HEROES, HERO WORSHIP, AND CHARACTERISTICS* (2010).
 16 *EEOC Compliance Manual*, 12-IV Reasonable Accommodation, (July 22, 2008) (www.eeoc.gov/policy/docs/religion.html#_ftnref206)