

# FAITH IN THE workplace

LEGAL PROTECTIONS FOR CHRISTIANS  
WHO OWN OR LEAD A BUSINESS





**W**HATEVER YOU DO, WORK AT  
IT WITH ALL YOUR HEART, AS  
WORKING FOR THE LORD.

**COLOSSIANS 3:23**

Running our business based on Christian principles is not negotiable for us. *Faith in the Workplace* is immeasurably valuable and applicable in a time when the government is trying to force Christian employers to provide benefits or participate in events that violate their faith. This resource not only helps Christian employers understand their legal rights to apply their faith to their work, but it also encourages them to do so and to stand strong in their convictions.

**STEVE GREEN**

PRESIDENT, HOBBY LOBBY STORES, INC.

*Faith in the Workplace* is yet another way that Alliance Defending Freedom is serving Christians in essential ways. Every business leader committed to living by conscience needs the cultural clarity and practical wisdom this helpful guide provides. Even better, businesses can have confidence that the ADF team stands behind this guide, ready to step in and help people of faith who are committed to living out their deeply held beliefs.

**JOHN STONESTREET**

PRESIDENT, THE COLSON CENTER FOR CHRISTIAN WORLDVIEW AND  
*BREAKPOINT* RADIO CO-HOST

The legal team at Alliance Defending Freedom has created this extremely valuable resource for all of us faith-driven leaders. *Faith in the Workplace* illustrates with clarity the most important legal guidelines for Christian CEOs, business owners, and senior leaders. This remarkable resource is an excellent employer's guide that will assist you in what types of Christian policies are legal, and it shares the much-needed policy statements that employers can easily incorporate into their organizations. ADF continues to be a strong ally for all faith-based organizations, protecting our rights where the Gospel can continue to be part of our everyday lives, including the marketplace. This amazing resource is a good example of ADF continuing these vital efforts to support and educate faith-driven leaders.

**MARK WHITACRE, PHD.**

EXECUTIVE DIRECTOR, T-FACTOR (COCA-COLA CONSOLIDATED)



# INTRODUCTION

People of faith have the right to live and work according to their sincerely held religious beliefs. This means that Christians may run their own businesses consistently with their core beliefs. In fact, this right is protected by the U.S. Constitution, as well as in many state and local laws. According to one study, faith-based businesses add about \$437 billion per year to the economy.<sup>1</sup>

With recent significant cultural and legal changes in our society, Alliance Defending Freedom (ADF) recognizes with it is vital for you to know how to navigate potential challenges to your business.

America has a rich history of business leaders running their companies consistently with their core beliefs. For example, Interstate Batteries decided they wanted to run a business that would “glorify God and enrich lives.”<sup>2</sup> In addition to printing Bible verses on their cups and wrappers, In-N-Out Burger operates a foundation that assists victims of child abuse.<sup>3</sup> These corporations have taken stands on issues they believe in and operate their business according to those beliefs. They are seeking to positively impact the world through their work. As a Christian business leader, you can do this too!

That’s why we created this guide – to help you understand what the law says, and how to legally integrate your faith with your business. God has given you a wonderful responsibility, and as you are faithful, He can use you to bless and impact our world in ways you never imagined!

This guide provides best practices and steps you as a business leader can take to carry out your purpose to glorify God. But because each business and situation is unique, we recommend that you contact an attorney for specific advice. If you have legal questions, please contact us at (800) 835-5233 or online at [ADFlegal.org/request-legal-help](https://www.adflegal.org/request-legal-help), so our attorneys can evaluate whether we can provide pro bono legal service or refer you to an ADF Allied Attorney for assistance.

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**“WE ARE COMMITTED TO:**

HONORING THE LORD IN ALL WE DO BY OPERATING  
THE COMPANY IN A MANNER CONSISTENT  
WITH BIBLICAL PRINCIPLES ...”

HOBBY LOBBY STATEMENT OF PURPOSE<sup>4</sup>



# SECTION I

## AN EMPLOYER'S GUIDE TO GENERAL WORKPLACE POLICIES

### Q. CAN I ADOPT A STATEMENT OF RELIGIOUS FAITH AND PURPOSE FOR MY BUSINESS?

**A.** Yes. Courts have held that business leaders may affirm their faith in business objectives.<sup>5</sup> The law “does not, and could not, require individual employers to abandon their religion.”<sup>6</sup> In fact, in one case concerning the HHS contraceptive mandate, which included contraceptives that could function as abortifacients, the United States Supreme Court determined that family-owned corporations can base their health-care policy decisions on the religious convictions of the owners, and that the federal Religious Freedom Restoration Act (RFRA) protects this exercise of religion from interference by federal government officials.<sup>7</sup> The Court even cited the business owners’ written statements of religious faith and purpose in ruling in their favor.<sup>8</sup>

Additionally, some states have adopted state versions of RFRA, which may further protect Christian business leaders. Contact an attorney to advise you on your state’s laws. Christian business leaders may sometimes improve their chances of establishing a religious liberty defense if they include a statement of faith and religious purpose in their bylaws or business policies. Such statements not only express the leaders’ core religious beliefs, but also serve as clear evidence of those beliefs, should they be questioned in a lawsuit. *A model “Statement of Faith and Religious Purpose” is provided in Appendix 1. A model “Statement on the Sanctity of Human Life” is provided in Appendix 2, which may be helpful should future litigation occur.*

Caution: Employers must be careful not to condition employment, benefits, or advancement within the company on an employee’s agreement with or acquiescence to the religious beliefs of the employer (unless religion is a bona fide occupational qualification [BFOQ] for the position. See Section II: “Hiring, Firing and Religious Accommodations,” “Q: If I Own a Christian Service Business, Can I Ever Limit Particular Jobs to Christians?”). Employers can protect against religious discrimination claims in several ways. For instance, employment application forms should state that applicants are considered for all positions without regard to religion. This statement should also be included in orientation materials, employee handbooks, policy manuals, and employee evaluation forms. Of course, employers must then ensure that discrimination does not occur on the basis of religion.

### Q. CAN I SHARE THE GOSPEL WITH MY EMPLOYEES?

**A.** Employers may talk about their religious beliefs with employees as long as employees know that continued employment, benefits, and advancement within the company are not adversely affected by their rejection of the employer’s religious beliefs. For instance, one court upheld a jury instruction explaining that an employer had “a [First Amendment] right to express his religious beliefs and practice his religion, provided he does not discriminate against his employees based on religion....”<sup>9</sup> Another court held that an employer’s optional daily prayer sessions for employees, opening meetings with a brief prayer, and giving a book to an employee advocating conversion to Christianity was not illegal, finding that “(t)he Constitution prohibits Title VII [a federal anti-discrimination law], and other anti-discrimination laws, from restricting an individual’s proselytizing, witnessing, or counseling, whether in the workplace or otherwise.”<sup>10</sup>

Although federal law does not mandate a workplace to be free of religion, an employer may violate federal law and create a hostile work environment if, for example, a workplace is permeated with the employer’s religious beliefs and those who do not share the employer’s religious beliefs are denigrated or required to participate in mandatory Bible studies or religious events after employees have expressed a desire not to participate.<sup>11</sup>

### Q. CAN I GIVE MY EMPLOYEES RELIGIOUS INFORMATION OR POST RELIGIOUS LITERATURE IN THE WORKPLACE?

**A.** As with religious speech, employers can share their religious beliefs with their employees in printed form – such as through pamphlets, books, and newsletters.<sup>12</sup> Employers must be careful, however, not to take any adverse employment action against an employee or give employees the impression that they must agree with the employer’s religious beliefs to keep their job, retain their benefits, or be promoted. In one case, a court ruled that a Jewish employee was wrongfully terminated for complaining about the printing of Bible verses on his paychecks and the religious content of a company newsletter.<sup>13</sup>

If an employer expresses his religious convictions to employees, and an employee disagrees or protests, no adverse action can be taken against the employee for disagreeing.<sup>14</sup> In expressing their own religious beliefs in the workplace, employers must be careful not to create a hostile working environment for employees who do not share the employer’s religious convictions.

Furthermore, employers should be ready to accommodate any employee’s objections to the religious speech contained in publications distributed to employees. It may be a sufficient accommodation to provide the objecting employee with a publication that does not contain the religious content. If an accommodation is requested regarding the posting of religious materials, employers should attempt to post the materials in a place that can be avoided by the employee. However, as outlined above, the employer is not required to make an accommodation that would hinder their right to base legally permissible business goals and objectives on religious principles.

To counter any impression that job security and advancement are contingent upon faith, it is also highly recommended that publications with religious material state that the employer does not discriminate on the basis of religion for purposes of continued employment, employee benefits, or promotion. And, of course, the employer should not, in fact, treat an objecting employee any differently than a non-objecting employee with respect to employment benefits, security, or advancement.

### Q. CAN I HOLD REGULAR PRAYER MEETINGS OR CHAPEL SERVICES FOR MY EMPLOYEES?

**A.** Employers can hold regular devotionals like prayer meetings or chapel services for employees, so long as attendance is voluntary.<sup>15</sup> In fact, businesses may even have chaplains. Moreover, management personnel may actively participate in services.<sup>16</sup> To ensure that employees understand that devotional meetings are voluntary, notice of the meetings should state that they are not mandatory and that an employee’s attendance or non-attendance will not affect any aspect of the employee’s employment in any way. It is best to hold these meetings before the workday begins, during breaks, or after work. And, of course, an employer may not take any adverse employment action against an employee on account of the employee’s decision not to attend or participate in religious activities at work. For example, a court refused to dismiss an employee’s religious discrimination claim where the employee was required to attend mandatory monthly meetings that included a religious discussion and prayer.<sup>17</sup>

## Q. CAN I HAVE CHAPLAINS IN THE WORKPLACE?

A. Yes. Companies like Tyson Foods, Coca-Cola Consolidated, and many others have chaplaincy programs and chaplains in the workplace. Even the United States Senate and the House of Representatives each has a chaplain. It is important that your employees understand that any interaction with the workplace chaplain is voluntary. The employee must also make all decisions about having a conversation and the content of any discussion with the chaplain. Employers need to understand and support the confidentiality of any communications between the employee and chaplain.

Various models exist, and it is beneficial to adapt one that best fits your organization. Some companies contract with third-party chaplain services, such as Corporate Chaplains of America and Marketplace Chaplains; others directly hire a minister for their workplace.

## Q. CAN I REQUIRE EMPLOYEES TO ATTEND TRAINING BASED ON BIBLICAL PRINCIPLES?

A. Employers can use training programs that are based on the Bible. For example, requiring an employee to attend a management seminar put on by the Institute in Basic Life Principles, which used scriptural passages to support lessons, did not violate a Massachusetts civil rights law.<sup>18</sup> However, employees cannot be required to undergo religious training, participate in religious services, or engage in behavior that would violate their sincerely held religious beliefs.

## Q. CAN I REGULATE EMPLOYEE SPEECH AND THE LITERATURE DISPLAYED ON AN EMPLOYEE'S DESK OR IN AN EMPLOYEE'S OFFICE?

A. As a general rule, employers are permitted to control their own business premises, including the business image presented to the public. For example, an employer was not required to accommodate an employee's religious request to wear facial jewelry contrary to the employer's jewelry policy because the employer had a legitimate interest in its public image.<sup>19</sup> There is no constitutional right of free speech for private employees because the First Amendment to the United States Constitution applies only to governmental entities.<sup>20</sup> Accordingly, the employer can determine what literature and other expressive items can be displayed at desks and in offices that are frequented by and visible to customers and other members of the public without violating the U.S. Constitution. For example, a private employer can prohibit the display of a picture of a burning United States flag because the employer might reasonably believe that customers would think the picture represents the employer's views, and that it would reflect poorly on the business. Employers can also prohibit employees from saying things to customers that actually hurt business.<sup>21</sup>

However, under the federal employment anti-discrimination law, known as Title VII of the Civil Rights Act of 1964,<sup>22</sup> an employer may become subject to a religious discrimination claim if he or she discriminates against employees on the basis of religious expression. For example, an employer could probably prohibit employees from displaying any non-work-related items in their workspaces. However, if an employer allows employees to display non-work-related items and expression in their workspaces generally, it may constitute illegal religious discrimination under Title VII to ban religious items or expressions only.

Employers can also restrict the posting of material that will affect the efficiency of the workplace. For example, employers do not have to permit signs disparaging coworkers or management. Also, Title VII has been found to protect an employee's conviction to wear a picture of an unborn child at all times, even at work, but the employer could require her to keep the button covered if it was causing disruption among other employees.<sup>23</sup>

Furthermore, content that constitutes sexual harassment (e.g., pornography)<sup>24</sup> or religious harassment (e.g., a sign saying Jews are "Christ Killers"<sup>25</sup>) can and should be prohibited. For example, an employer's dismissal of an argumentative atheist employee who proselytized on the job and turned off religious music at a Christmas party in favor of secular music did not violate Minnesota's version of Title VII. The court found that the case involved "aggressively offensive behavior exhibited by an outspoken advocate of atheism wholly intolerant of those foolish enough to admit to other views on the existence of a Deity. He was, indeed an argumentative, proselytizing polemicist."<sup>26</sup> Thus, the court determined that the employee was not terminated because of his religious beliefs, but because of "[his] offensive conduct in the office and in the field, his expressed attitude toward other workers, and his unproductive job performance."<sup>27</sup>

Of course, an employer must attempt to accommodate employees' requests to display items in their workspace pursuant to their religious beliefs. Employees should be allowed to display religious items and speak about their religious faith at work to the same extent as employees are allowed to express themselves generally in the workplace, if there is "no 'actual imposition on coworkers or disruption of the work routine.'"<sup>28</sup>

## Q. CAN I SET STANDARDS REGARDING THE MUSIC PLAYED IN THE WORKPLACE?

A. Like the display of literature and religious items, an employer can regulate music that affects the image the company is attempting to convey to the public.<sup>29</sup> An upscale retail clothing establishment targeting women in their fifties and sixties does not have to allow the store manager to play alternative rock music. Music that is disruptive to the work environment can also be restricted, even if the public will not be exposed to it. Employers have no obligation to allow their employees to listen to music on the job.<sup>30</sup> However, if music is allowed, an employer cannot prohibit an employee from listening to religious music if that employee has a sincerely held religious belief to do so and it is not disruptive.<sup>31</sup>

## Q. CAN I SET REASONABLE STANDARDS FOR EMPLOYEE GROOMING AND CLOTHING?

A. In light of *Bostock v. Clayton County*, it is unclear. *Bostock* is a U.S. Supreme Court ruling about employment discrimination. The U.S. Supreme Court ruled that courts and federal agencies can exceed their constitutional boundaries and redefine what "sex" means in federal law. The Court's decision in *Bostock* was disappointing, especially for ADF client Tom Rost, whose case *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission* was included in the decision.

Tom had been fighting in court for years after he was punished for following the law. Tom owns and operates a funeral home business that has been in his family for more than 100 years. In 2012, Tom parted ways with a male employee after that employee expressed the intent to dress and present as a woman at work, in violation of the funeral home's sex-specific dress code.

Sex-specific dress codes are consistent with current employment law, yet the Equal Employment Opportunity Commission, a government agency tasked with enforcing federal employment law, went after Tom and his family business to try to change the law.

Unfortunately, the Supreme Court failed to give Tom justice. The Court's majority opinion determined that an employer can be held liable under federal employment law – which prohibits discrimination based on sex – when the employer terminates an employee based solely on an employee's sexual orientation or transgender status.

But the ruling is much narrower than many have claimed. The Court limited the ruling to the employment context, and the ruling did not weigh in on important issues such as sex-specific showers and locker rooms, sex-specific dress codes, free speech, religious liberty, or women's sports. ADF is already engaged in multiple lawsuits to defend the truth on these matters.

For instance, an employer does not discriminate against an employee by requiring him to shave his long facial hair and refrain from wearing a turban, if both religious practices cause safety hazards by preventing a hardhat and respirator from being worn properly.<sup>32</sup>

However, employers must accommodate the employee's religious beliefs pertaining to dress or grooming, unless the prohibition is justified by a business necessity or undue hardship. For example, the Equal Employment Opportunity Commission (EEOC) has ruled that a nurse whose faith required her to wear a scarf was unlawfully discharged for refusing to come to work without the scarf, because requiring the nurse to wear a cap instead of the scarf was "not so necessary to the operation of [the employer's] business as to justify the effect that this policy has upon the employment opportunities of [plaintiff] and others of similar religious convictions."<sup>33</sup> But generally, reasonable grooming policies do not violate an employer's implied covenant of good faith and fair dealing toward its employee, since an employer has a prerogative to present itself to the public as it sees fit.<sup>34</sup>

Notably, the issue of a sex-specific dress code was not resolved in the *Bostock* decision; the Court specifically reserved that question for another day.<sup>35</sup>

Religious liberty, marriage and family, and life itself  
are too precious not to be spoken for ...

... and your voice needs to be heard.

You can make a difference by sharing life-changing  
truth with your world.





# LORIE SMITH

When Lorie Smith set out to start her own design studio, she likely could not have imagined that simply conducting her business in line with her faith would land her at the U.S. Supreme Court.

Lorie owns **303 Creative** near Denver, Colorado. She left the corporate design world to start her own small business in 2012 so she could promote causes consistent with her beliefs and close to her heart, such as supporting children with disabilities, the beauty of marriage, overseas missions, animal shelters, and veterans. She was excited to expand her portfolio to create websites that celebrate marriage between a man and a woman, but Colorado made it clear she's not welcome in that space.

Lorie works with everyone. Whether she takes on a project always turns on *what* the message is, not *who* is requesting it. Like other designers, Lorie doesn't promote every message requested. For example, she can't create art that promotes certain political messages, atheism, or casinos. She also can't design anything that is un-American, degrades people who identify as LGBT, or disrespects someone's faith.

A Colorado law is censoring what Lorie wants to say and requiring her to create designs that violate her beliefs about marriage. Lorie enjoys working with people from all walks of life, but, like most artists, she can't promote every message. After realizing Colorado was censoring her — and seeing Colorado use this same law to punish Masterpiece Cakeshop owner Jack Phillips — Lorie challenged the law in order to protect her freedom and her design studio.

With ADF's help, Lorie eventually took her case to the U.S. Court of Appeals for the Tenth Circuit, where the majority ruled that the government can force Lorie to create websites promoting messages that contradict her beliefs about marriage. That ruling threatens the free speech rights of not just Lorie but also every American. No one should be forced to say something they don't believe, and Americans do not lose their right to free speech when they earn a living.

Thankfully, the Supreme Court has agreed to hear Lorie's case, and she has received support from those all across the ideological spectrum. Free speech is for everyone, and when the government tramples on one person's freedom of speech, it has trampled on us all.



LEARN MORE!





# SECTION II

## AN EMPLOYER'S GUIDE TO HIRING, FIRING, AND RELIGIOUS ACCOMMODATIONS

### Q. WHAT IS MY OBLIGATION TO EMPLOYEES WHO HAVE RELIGIOUS EXIGENCIES OR OBJECTIONS TO CERTAIN WORK REQUIREMENTS?

**A.** The religious freedom of most employees is protected by Title VII or corresponding state laws.<sup>36</sup> Title VII refers to the Civil Rights Act of 1964, which protects certain classes of individuals from discrimination. Part of the purpose of this law is to protect employees from religious discrimination and harassment as well as to provide reasonable accommodations for their religious beliefs and practices. A specific provision of Title VII "was enacted with the stated purpose to protect Sabbath observers whose employers fail to adjust work schedules to fit their needs."<sup>37</sup> The protection extends to "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate [ ] an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."<sup>38</sup>

To prove a Title VII claim for failure to accommodate religion, an employee must generally prove three things: (1) the observance or practice that conflicts with an employment requirement is religious in nature; (2) the employee called the religious observance or practice to the employer's attention; and (3) the religious observance or practice was the basis for the employer's discharge or other discriminatory treatment.<sup>39</sup>

#### 1. SINCERELY HELD RELIGIOUS BELIEF

Although failure to consistently act on a religious belief may be considered evidence that the belief is not sincerely held,<sup>40</sup> the fact that the belief was only recently acquired does not render it an insincere one.<sup>41</sup>

The sincerity of a person's religious belief is a question of fact unique to each Title VII religious discrimination case. The employee's sincerity in espousing the religious practice is largely a matter of individual credibility.<sup>42</sup> Religion under Title VII is broadly defined as including "all aspects of religious observance and practice, as well as belief ...."<sup>43</sup> The EEOC – which is the federal agency that enforces Title VII – defines religious practice as including:

*"Moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. ... The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employe. ..."*<sup>44</sup>

In other words, the EEOC's test does not require that the employee's religious beliefs coincide with the tenets of his church: "Title VII protects more than the observance of Sabbath or practices specifically mandated by an employee's religion. ..."<sup>45</sup> Religion under Title VII has been held to include the Black Muslim faith, the "old Catholic Religion," a "faith in humanity being," and atheism.<sup>46</sup> However, "religion" does not include membership in the Ku Klux Klan or the United Klans of America, or belief in the power of a certain cat food.<sup>47</sup>

The bottom line is that for purposes of a Title VII religious accommodation claim, an employer should assume that an employee's religious beliefs are sincerely held unless there is significant evidence to the contrary.

#### 2. EMPLOYER WAS AWARE OF THE RELIGIOUS BELIEF

To be entitled to a religious accommodation, an employee must generally show that the employer was aware of the belief and that the employee requested an accommodation. Specifically, an employer must have "enough information about an employee's religious needs to permit the employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirements."<sup>48</sup> Notification in writing is not necessary if the employer is aware of the beliefs.

In *EEOC v. Abercrombie & Fitch*, the Supreme Court clarified that an employer's "actual knowledge" of a job applicant's need for a religious accommodation is not a prerequisite to bringing a successful Title VII claim.<sup>49</sup> Instead, the applicant "need only show that his need for an accommodation was a motivating factor in the employer's decision."<sup>50</sup> In *Abercrombie*, it was sufficient that the company "believed [the applicant] wore her headscarf because of her [Muslim] faith" and declined to hire her to avoid providing such an accommodation, even though the applicant never expressly raised the need for a religious accommodation.<sup>51</sup>

#### 3. DISCRIMINATORY TREATMENT OF EMPLOYEE

If an employee can show that the employer knew about a sincerely held religious belief, Title VII prohibits the employer from discriminating against the employee because of the belief. "Discrimination" includes demotion, layoff, transfer, failure to promote, discharge, harassment, intimidation, or the threat of these adverse employment actions.<sup>52</sup>

The employer is required to reasonably accommodate the employee's religious beliefs unless such accommodation would result in undue hardship to the employer.<sup>53</sup> "An accommodation constitutes an 'undue hardship' if it would impose more than a *de minimis* cost on the employer," and "[b]oth economic and non-economic costs can pose an undue hardship upon employers."<sup>54</sup> An employer cannot hide behind a neutral employment policy to avoid its obligations to provide employees with religious accommodations.<sup>55</sup> In general, an employer is required to accommodate an employee's adherence to the employee's religion unless an accommodation will actually interfere with the operations of the employer. This principle would apply even to an atheist.<sup>56</sup>

### Q. WHAT SHOULD I DO IF FACED WITH A DISCRIMINATION CLAIM?

**A.** All employers should have a written set of procedures for handling discrimination claims. These procedures should be created under the direction of an attorney and made available to all employees. Employers should also require mandatory training for all employees and supervisors on the types of discrimination prohibited. Following is a general checklist of initial steps to take when an employee claims that discrimination has occurred:

1. Contact an attorney who specializes in employment law. No notes or other documentation of the incident should be made until an attorney has been consulted and has advised the employer about the proper documentation of the matter. The employer should then take the steps outlined below under the direction and approval of the attorney retained.
2. If advised by an attorney to conduct the investigation in-house, two supervisors should interview the employee making the claim and obtain all the facts and information surrounding the incident. The supervisors conducting the interview should be individuals who are not implicated in the charge of discrimination.
3. The claim should be investigated immediately (within a matter of days) by interviewing the parties involved. Any investigation and documentation of that investigation should be carefully supervised by an attorney.

4. If the discrimination is ongoing, the employee should be given the option of taking a paid leave of absence during the investigation.

5. If the claim of discrimination is found to have merit, appropriate action should be taken to eliminate the discrimination immediately. This may include placing the parties on administrative leave until the matter is resolved, and/or disciplining the appropriate parties. The employer should also consider, under the advice of an attorney, what training or policies need to be developed to prohibit future discrimination.

If the claim does not have merit, the extent of the investigation should be carefully documented under an attorney's direction, and the complaining employee should be given the option of bringing the matter to the attention of a more senior supervisor.

### **Q. IF I OWN A CHRISTIAN SERVICE BUSINESS, CAN I EVER LIMIT PARTICULAR JOBS TO CHRISTIANS?**

**A.** Christian book distributors, bookstores, editing services, counseling services, and other businesses that primarily serve the Christian community may have a genuine need to employ Christians to serve the public. For example, a Christian bookstore may want employees who interact with customers to be able to give advice on Bible translations, Bible studies, Bible commentaries, authors, performers, and other matters. Business leaders may also want employees to be able to bear a Gospel witness to non-Christian customers. It would be difficult to meet these religious business objectives with non-Christian employees.

The general problem with a for-profit business limiting employment to Christians is that Title VII (with an exemption for religious organizations, described below) prohibits employment discrimination on the basis of religion.<sup>57</sup> That prohibition does not apply, however, "in those certain instances where religion... is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of that particular business or enterprise. ..."<sup>58</sup> To attain this protection, business leaders must demonstrate that Christianity (or a particular sect, denomination, etc.) is a bona fide occupational qualification for all or some of the positions within the organization.

The Supreme Court has emphasized "that in order to qualify as a BFOQ, a job qualification must relate to the 'essence' or to the 'central mission of the employer's business.'"<sup>59</sup> The Christian bookstore may be able to establish that giving customers good counsel on Bibles and other Christian materials, or effectively interacting with its overwhelmingly Christian customer base, or evangelizing non-Christian customers, relates to the essence or central mission of the business. That would be easier to do with a clear statement of religious business objectives and employee responsibility.

If you are considering making a religious classification as part of a bona fide occupational qualification, we recommend that you contact an attorney for specific advice before doing so.

### **Q. WHAT CHARACTERISTICS MAY I CONSIDER WHEN MAKING BUSINESS DECISIONS?**

**A.** Generally, employers may not consider race, color, religion, sex, national origin, ancestry, age, veteran status, marital status, or the existence of a non-job-related disability when making employment or personnel decisions. In *Bostock v. Clayton County* (supra), the Supreme Court ruled that "discrimination...because of...sex" now also includes terminating an employee solely because of their sexual orientation or transgender status. Additionally, some states, cities, and

municipalities have added sexual orientation and gender identity to the list of protected classes.<sup>60</sup> If an employer is uncertain as to whether an anti-discrimination law applies or whether consideration of a particular characteristic is illegal in the jurisdiction(s) in which it conducts business, he or she should contact a local attorney. ADF may be able to offer advice on this matter or recommend a local Christian attorney.

### **Q. MAY I CONSIDER SEXUAL ORIENTATION OR GENDER IDENTITY IN MAKING BUSINESS DECISIONS?**

**A.** In many cases, an employee's sexual orientation or gender identity is irrelevant to the position. However, in *Bostock v. Clayton County*, as detailed above, the Supreme Court changed the scope of Title VII of the 1964 Civil Rights Act. Now, an employer generally cannot make employment decisions based solely on a person's sexual orientation or gender identity. Nevertheless, it is unclear if a company's particular values or mission (that is, a religious liberty claim), or the nature of a particular type of job, may allow sexual orientation or gender identity to be considered in business decisions. But the enactment of certain anti-discrimination laws (more on these types of laws available on p. 18) across the country purport to make an employer's consideration of sexual orientation or gender identity in the employment context illegal unless it is a bona fide occupational qualification.<sup>61</sup> Employers who confront a situation involving an employee's sexual orientation or gender identity should speak with an attorney for guidance.

Beyond federal law, at least 22 states and the District of Columbia also have laws addressing gender identity and/or sexual orientation; they include the following jurisdictions:

California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Washington, Wisconsin.<sup>62</sup>

If your business operates in any of these states, you may be prohibited from making employment decisions based on sexual orientation and/or gender identity. Check the states you operate in and/or where you have employees located, since different states have varying numerical thresholds concerning discrimination.

Hundreds of cities and counties across the country have also enacted similar restrictions applicable to private employers. Employers should check with all municipalities and other governmental authorities where they are located and conduct business to determine whether there is a prohibition on private employers discriminating on the basis of sexual orientation or gender identity.<sup>63</sup> Some of these state statutes and municipal ordinances have exemptions for religious organizations, while others do not. In addition, they may define "religious organization" in different ways.

*Appendix 7 is a resource that lists each state and the number of employees needed to trigger the law. As this information is subject to change, please consult with an attorney before relying upon the information provided.*

**Q. ARE FOR-PROFIT BUSINESSES TREATED DIFFERENTLY FROM NON PROFIT RELIGIOUS ORGANIZATIONS?**

**A.** In some contexts, for-profit businesses are treated differently from non-profit religious organizations, but a proper interpretation of constitutional protections and most religious-freedom laws should not distinguish between the two. Indeed, as mentioned above, the United States Supreme Court has concluded that federal RFRA protects the rights of family-owned corporations to operate consistently with the religious convictions of the owners on issues like abortion, just as it protects the rights of non profit religious organizations.<sup>64</sup>

Moreover, Title VII provides an exemption for “religious corporation[s]” and does not prohibit those entities from discriminating in hiring on the basis of religion.<sup>65</sup> An employer qualifies for this exemption if it “is primarily religious, . . . [taking into account] [a]ll significant religious and secular characteristics.”<sup>66</sup> While this exemption clearly applies to non-profit religious organizations, it is currently unclear whether it will also protect certain for-profit businesses, particularly those with religious services or products.<sup>67</sup>

Most states with non-discrimination statutes also provide an exemption from the prohibition on religious discrimination for religious organizations; however, Michigan and West Virginia do not provide such an exemption. See *Appendix 7*. Local governments like cities and counties may also have anti-discrimination laws, and while some of them exempt religious organizations, others do not.

**Q. ARE ALL EMPLOYERS SUBJECT TO ANTI-DISCRIMINATION LAWS?**

**A.** Most, but not all employers are subject to anti-discrimination laws. Under federal law, employers with 15 or more employees are prohibited from discriminating on the basis of race, color, sex, national origin, and religion.<sup>68</sup> Many states have lowered this number so that even very small businesses are restricted by state anti-discrimination laws. See *Appendix 7*. In addition, many states and municipalities have expanded the prohibition on discrimination to include other categories, such as sexual orientation and/or gender identity.

“

*Freedom is never more than one generation away from extinction. — Ronald Reagan*

Alliance Defending Freedom seeks to mobilize and equip Christians to consistently and fervently pray to preserve freedom for future generations. We believe that prayer is the catalyst for not only preserving freedom’s future but also for seeing the great spiritual awakening and societal transformation that America desperately needs.

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# BLAINE ADAMSON

Blaine Adamson is like most business owners in that he provides for his family and offers steady work for his employees. Blaine owns a promotional print shop called **Hands on Originals** in Lexington, Kentucky.

Blaine is also a Christian, and like many other Americans who have deeply held beliefs — Christian or otherwise — he strives to conduct his business without violating these beliefs.

One day, Blaine's world was turned upside down when he declined to design a shirt promoting a local gay pride festival hosted by the Gay and Lesbian Services Organization (GLSO). He politely declined because the shirt supported a message about marriage that violated his conscience. Even so, he took time to refer the GLSO to another print shop to fulfill the request. But afterward, the GLSO filed a complaint against Hands on Originals, alleging sexual orientation discrimination. The group also wrote a press release about the complaint for the local newspaper.

The government launched an investigation into his business, required him to design custom prints that contradicted his faith, and ordered him to attend "diversity training."

But we stood by Blaine and appealed that order. Eventually, the Kentucky Supreme Court ruled in Blaine's favor and unanimously affirmed that the GLSO did not have a legal right to sue Blaine or his business.

Unfortunately, Blaine's case is not unique. Business owners just like Blaine are facing similar circumstances across the country. But Blaine's case shows that through perseverance and reliance on God's grace, business owners are still effectively standing up for freedom of speech and conscience, a stand that helps to secure freedom for every American.



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## SECTION III

### AN EMPLOYER'S GUIDE TO COMPANY BENEFITS

#### **Q. DO I HAVE TO PROVIDE EMPLOYEES WITH HEALTH INSURANCE THAT COVERS MEDICATION AND PROCEDURES THAT I FIND OBJECTIONABLE?**

**A.** Possibly not, depending on what coverage the employer objects to and what governmental entity is requiring it. The federal government requires many health plans to cover contraceptives, including some that can function as abortifacients. The Supreme Court has already determined that people who own closely held businesses cannot be forced by the federal government to pay for required items when doing so would violate their sincerely held religious beliefs. For example, Conestoga Wood Specialties Corp. and Hobby Lobby Stores are not required to pay for health insurance that covers, among other items, early abortion-causing drugs, such as the "morning after" pill. The Supreme Court found the families that own these businesses are protected by federal RFRA, which ensures the right to freely exercise religion.<sup>69</sup>

There are also federal laws prohibiting certain state law insurance mandates for coverage of activities like abortion or physician-assisted suicide drugs, though some states are attempting to challenge those protections.<sup>70</sup> About half the states require employers to include contraceptives in their health plans. Most of these state laws exempt at least some religious objectors, but the scope of these exemptions varies dramatically from state to state. Some states are also beginning to require employers to include sex reassignment in their health plans. Their power to do this – and the religious liberty limits on them – are in dispute. These matters might require additional litigation and could vary based on different state religious freedom laws. If an employer is uncertain whether the government is violating the employer's religious freedom by requiring the employer to provide health coverage for morally objectionable items, the employer should contact ADF or a local attorney.

#### **Q. CAN I TAKE STEPS TO SUPPORT MARRIAGE AND FAMILY IN MY BUSINESS?**

**A.** Business leaders can support marriage and family, as well as demonstrate allegiance to their statement of faith, by providing family-friendly employee benefits. But after the Supreme Court recognized a constitutional right to same-sex marriage, businesses' benefit plans will be affected.<sup>71</sup> Even so, companies may sometimes distinguish between marriage and cohabitation and decline to provide benefits to cohabiting couples, depending on what state law requires. Business leaders should consult with an attorney to get information on the current status of the law. ADF may also be able to offer guidance on this matter or refer employers to an ADF allied attorney for assistance.

“**C**ONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.”

FIRST AMENDMENT, U.S. CONSTITUTION



# JACK PHILLIPS

Cake artist Jack Phillips is the owner of **Masterpiece Cakeshop**. He serves everyone, but he cannot express every message through his custom cakes. For more than 10 years, activists and Colorado officials have tried to punish him for living out his faith this way.

In 2012, two men asked Jack to create a custom cake to celebrate a same-sex wedding. Jack politely declined because, while he serves all people, that cake would convey a message that he cannot express for anyone. It was a message that contradicted Jack's core beliefs.

Colorado tried to punish Jack for this decision. But in 2018, the U.S. Supreme Court ruled that Colorado had acted with hostility toward his religious beliefs — demeaning his faith and allowing secular cake artists to decline cakes with messages that offend their beliefs while denying this same freedom to Jack. This hostility violated Jack's free exercise rights.

That should have been the end of Jack's legal troubles. But weeks after this Supreme Court ruling, Colorado targeted Jack again.

On the same day the Court announced it would hear Jack's first case, a Denver lawyer called Jack's shop and requested a custom cake that would celebrate a gender transition. The lawyer also called back to request a custom cake depicting Satan smoking marijuana. Phillips declined both requests because those cakes express messages that he cannot express for anyone. The lawyer then filed a charge with the Colorado Civil Rights Commission.

The Colorado Civil Rights Commission decided to prosecute Jack a second time. But after ADF attorneys filed a federal lawsuit to stop this prosecution and uncovered new evidence of the Commission's ongoing hostility toward Jack and his faith, the Commission dismissed its administrative complaint and abandoned its prosecution. Jack had won again.

But more trouble was coming. The Denver lawyer continued to target Jack, filing a civil lawsuit and repeating the claim that Jack had violated Colorado law by declining to create a custom cake celebrating a gender transition. In June 2021, a Denver trial court entered an order punishing Jack for this expressive decision. ADF attorneys appealed this decision, and Jack is still waiting and praying for justice in this third lawsuit.

Free speech is for everyone. Every American deserves the freedom to say what they believe without fear of government punishment. We pray that, because of the faithfulness of artists like Jack, the doors will remain open for the spread of the Gospel — no matter whether the messenger is a cake artist, filmmaker, photographer, writer, or other speaker.



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# SECTION IV

## AN EMPLOYER'S GUIDE TO BUSINESSES WHOSE PRODUCTS OR SERVICES ARE EXPRESSIVE IN NATURE

### Q. WHAT DO YOU MEAN BY “EXPRESSIVE IN NATURE”?

**A.** An expressive product or service would include any type of work in which you create artistic expression, print, or disseminate messages on signs, shirts, or other products, publish a newspaper, or provide any other product or service that is expressive. Should a pro-life graphic designer be forced to create posters promoting Planned Parenthood? A Muslim singer be forced to perform at an Easter service? A Christian cake artist be required to create art that expresses messages against his beliefs? Most likely not. And the First Amendment protects your right to decline to create, promote, and disseminate expression to which you object. This is called “the right to be free from compelled speech. It protects individuals and businesses from being forced to engage in expression that is contrary to their beliefs. (For an explanation of compelled speech protections, see the answer to “Q: What Can I Do to Structure My Expressive Business to Support a Free Speech Defense?” p. 27.)

### Q. WHAT ARE SEXUAL ORIENTATION AND GENDER IDENTITY (SOGI) LAWS?

**A.** You may not meet much resistance if you exercise your freedom of conscience in the above scenarios. But you can expect far more resistance – and maybe even legal challenges – if you decline to create, promote, or disseminate expression that conflicts with your religious beliefs concerning marriage and sexual morality. If your state or local government has adopted a sexual orientation and gender identity (SOGI) law, you could be at risk. Far-left-leaning social activists often use SOGI laws to attempt to compel Christians, under threat of penalties, to communicate ideas and messages celebrating same-sex marriage, gender transitions, and other related messages in violation of their religious beliefs.

SOGI elevate sexual preferences over our cherished fundamental freedoms, especially religious freedom. These ordinances place terms like “sexual orientation” or “gender identity” in the same category as race or religion.

In the *Bostock v. Clayton County* decision, the Supreme Court determined that a federal law barring employment discrimination because of “sex” also extended to bar termination of an employee merely because of their sexual orientation or gender identity.

But, unlike non-discrimination laws generally, many SOGIs are not designed for the purpose of ensuring all people receive basic services. Rather, their primary effect is to legally compel people of faith to accept, endorse, and even promote messages, ideas, and events that violate their faith – and their constitutional rights.

Those promoting SOGI ordinances use public sympathy – gained through misleading rhetoric about “discrimination” – to silence dissenting voices.

A SOGI law may already apply to your business. Twenty-two states currently have some variation of these laws (see chart above on p. 17) and hundreds of cities and counties across the nation have enacted them as well. Furthermore, following the Supreme Court’s same-sex marriage decision in 2015, activists have committed their time, money, and influence to pressure states and localities without SOGI laws to adopt them. So even if no SOGI law currently applies to your business, you could find yourself subject to one in the near future.

### Q. CAN SOGI LAWS FORCE ME TO USE MY BUSINESS TO ENGAGE IN EXPRESSION THAT CONFLICTS WITH MY FAITH?

**A.** Over the past few years, activists have increasingly been trying to use SOGI laws to coerce Christian business leaders to speak or act in ways that conflict with their faith regarding marriage and sexual morality. Even a glance at the stories of ADF clients confirms this. Constitutional protection should be strongest for business activities that indisputably involve speech and should apply broadly to businesses whose products or services are expressive in nature. Such businesses should be protected by the First Amendment from the imposition of SOGI penalties for deciding not to create, promote, or disseminate expression that violates their beliefs. Nevertheless, some courts have declined to recognize the First Amendment as a defense in the SOGI context. Business leaders may also find protection against SOGI enforcement in a federal or state RFRA statute, as well as through state constitutional protections or state judicial decisions. This is still a rapidly evolving area of the law, and currently there are no ironclad protections for businesses. Yet, there are many advisable steps business leaders can take to increase the likelihood of success, several of which are discussed below.

### Q. WHAT CAN I DO TO STRUCTURE MY EXPRESSIVE BUSINESS TO SUPPORT A FREE SPEECH DEFENSE?

**A.** Businesses whose services involve expression should be, by application of proper constitutional principles, protected from being compelled to communicate a message against their will.<sup>72</sup> The constitutional right to free speech, under the First Amendment, “includes both the right to speak freely and the right to refrain from speaking.”<sup>73</sup> The United States Supreme Court has upheld the right not to communicate an objectionable message even in the context of sexual orientation non-discrimination laws.<sup>74</sup> It has repeatedly affirmed that the right against compelled speech is “enjoyed by business corporations generally.”<sup>75</sup>

Given these well-established principles, businesses whose products or services are expressive in nature (such as writers, printers, photographers, painters, floral artists, cake artists, and many more) should need no special policies to defeat a SOGI discrimination claim, assuming that the discrimination claim is based on the business’s refusal to engage in or create objectionable expression. However, as described above, a few wedding-related businesses have fared poorly in SOGI-based lawsuits because courts concluded that they were offering services or merchandise rather than engaging in expression.

For example, the New Mexico Supreme Court ruled that a law could compel a photographer to create photographs promoting an event the photographer disagreed with.<sup>76</sup>

Also, the Washington Supreme Court ruled that a law could compel a floral artist to create flower arrangements that promoted an event with which the artist disagreed.

On the positive side, though, courts are increasingly protecting expressive businesses from weaponized SOGI laws. For example, the Arizona Supreme Court in 2019 affirmed the free-speech and religious-freedom rights of Joanna Duka and Breanna Koski, Christian artists who objected to a City of Phoenix law that required them to create custom wedding invitations celebrating same-sex weddings. The same year, the Eighth Circuit Court of Appeals delivered a ruling in favor of filmmakers Carl and Angel Larsen. And in 2022, a federal court in Kentucky protected the First Amendment rights of wedding photographer and blogger Chelsey Nelson, adding “the government may not force singers or writers or photographers to articulate messages they don’t support. Because speech is categorically different under the federal Constitution, local laws must treat it differently, too. ...”

Similar cases currently continue to be litigated. The U.S. Supreme Court granted ADF client 303 Creative's petition for review.<sup>77</sup> The Court will decide whether the government can force Americans to speak contrary to their core beliefs.

While there is no way to guarantee victory against a SOGI lawsuit if you decline to create, promote, or disseminate expression that violates your beliefs, the following are five steps that may help you assess your risk and may strengthen your ability to invoke your First Amendment rights:

1. Find out if there are SOGI laws in the state, county, or city where your business is located and where you solicit and conduct business.
2. Consider including a statement of faith and religious purpose in your bylaws or corporate policies. This provides clear evidence that you operate your business in accordance with your religious beliefs if that fact is ever questioned in court.
3. Consider adopting a policy statement on company expression that explains how your business engages in its own expression through the services it provides. This policy may state, as appropriate, that your business creates, promotes, or disseminates messages that are consistent with your Christian faith and that you reserve the right to decline to engage in expression and activities that violate your beliefs.
4. If your company provides services that are expressive in nature, you could describe the expressive nature of the services your company provides (e.g., a photographer could refer to her services as "the art of storytelling" and explain that she uses photography to tell her clients' stories).
5. Implement a personnel policy that requires employees to review and understand your statement of faith, religious purpose, and statement on company expression. This policy should require employees to refer to you any request that might involve expressing a message contrary to your faith.

Model policy statements and personnel policies that you can adapt to meet your business's needs are provided in Appendices 1 and 3–6. A model "Statement of Faith and Religious Purpose" is provided in Appendix 1; a model "General Policy Statement on Company Expression" is provided in Appendix 3; a model personnel policy for how to treat all customers is provided in Appendix 4; and a model personnel policy for customer relations in an expressive business is provided in Appendix 5.

**Before relying upon any of these policies, please call ADF at 1-800-835-5233. ADF attorneys may be able to help you determine if these steps would be helpful or refer you to an ADF allied attorney.**

# CONCLUSION

Given the rapidly changing moral climate in our country, God's people are uniquely positioned to make a profound impact as faithful witnesses to His love and truth. The freedom to live out and exercise our faith allows us to engage a hostile social and political culture in ways that offer clear light and enduring hope amid spiritual darkness.

That's what this guide is all about – giving you confidence to safely navigate the law while running your business for the glory of God. Know that Alliance Defending Freedom is here to help if you have any questions or encounter a difficult situation along the way.

Adopting the action steps in this guide cannot perfectly insulate your business from all attacks or guarantee victory in legal challenges that may come. But taking the steps we have outlined will provide stronger support for protecting your constitutional rights, should your business face a lawsuit.

More than that, preparing yourself legally will give your company greater freedom to honor God in your everyday work – and that freedom could make an eternal difference for lost and hurting souls all around you.

# APPENDICES

## APPENDIX 1

### STATEMENT OF FAITH AND RELIGIOUS PURPOSE

1. The owners of \_\_\_\_\_ are [State here the theological belief or church with which you identify. This could be a general reference such as Roman Catholic, a denomination such as Southern Baptist, or if preferred, general language that describes your faith, such as "followers of Jesus Christ."]
2. The owners believe that Jesus Christ requires [or "church teachings" require] that all His followers strive to live their lives in a manner that is consistent with the precepts and doctrines of their faith, [which are grounded solely in the Bible] [as taught by the (applicable church or denomination)].
3. The owners therefore seek to operate \_\_\_\_\_ in accordance with the principles of their faith and strive to make all business decisions according to [biblical principles] [the teaching of the (applicable church or denomination)].
4. In light of the owners' faith, \_\_\_\_\_ exists to bring glory to God and share His truth with its employees, customers, and community by serving them according to principles that honor and glorify Him.
5. To this end, \_\_\_\_\_ seeks always to fulfill Jesus' command to love our neighbors as ourselves and to do unto others as we would have done unto us by serving our customers with love and excellence.
6. \_\_\_\_\_ wants its service to the community to bear witness to its owners' faith in Christ, and to Christ's Lordship over its owners' lives. [For expressive businesses add:

Therefore, as \_\_\_\_\_ engages in expression, it intentionally communicates messages that promote aspects of its owners' beliefs, or at least messages that do not violate those beliefs.

For this reason, \_\_\_\_\_ reserves the right to decline a request for services that would require it to engage in or host expression that violates its owners' religious beliefs.] [For Christian service businesses add:

Therefore, while \_\_\_\_\_'s primary function is to deliver excellent biblical (resources) (counseling) (editing) to the Christian community, it also seeks to evangelize non believers who desire its (products) (services).]

7. The owners of \_\_\_\_\_ will [the board of \_\_\_\_\_ is authorized to] prioritize the above religious, ethical, and moral principles in the management of \_\_\_\_\_'s business.

## APPENDIX 2

### STATEMENT ON THE SANCTITY OF HUMAN LIFE

We believe that all human life is sacred and created by God in His image. Human life is of inestimable worth in all its dimensions, including babies in the womb, the aged, the physically or mentally challenged, and every other stage or condition from conception through natural death. We are therefore called to defend, protect, and value all human life (Psalm 139).

## APPENDIX 3

### GENERAL POLICY STATEMENT ON COMPANY EXPRESSION

\_\_\_\_\_ engages in its own expression through many of the services it provides. In so doing, \_\_\_\_\_ intentionally expresses messages that promote aspects of its owners' Christian faith or views consistent with that faith. For this reason, \_\_\_\_\_ reserves the right to decline requests for services that would require it to express messages [or otherwise celebrate events] that violate its owners' religious beliefs.

## APPENDIX 4

### GENERAL CUSTOMER RELATIONS POLICY

The owners of \_\_\_\_\_ operate the business according to the principles of their faith. In keeping with those principles, employees must treat every person with compassion, kindness, respect, and dignity while at work. Each employee must verify in writing that they have reviewed this policy and agree to follow it.

## APPENDIX 5

### CUSTOMER RELATIONS POLICY FOR EXPRESSIVE BUSINESSES

The owners of \_\_\_\_\_ operate the business according to the principles of their faith. Each employee must review and understand the owners' Statement of Faith and Religious Purpose. In keeping with those principles, employees must treat every person with compassion, kindness, respect, and dignity while at work.

In the event a customer requests a service that would or might involve expressing a message contrary to the owners' statement of faith, the employee must politely defer an answer until he or she has consulted with the owners or their designee. If instructed to decline the service, the employee must explain that the requested service would communicate a message that \_\_\_\_\_ is unwilling to express.

[For owners who do not object to providing a referral: The employee should also offer to refer the customer to one or more businesses that are willing to provide the expressive service.] [For owners who do not object to providing a facilitated referral: The employee should also offer to directly connect the customer to one or more businesses that are willing to provide the expressive service.]

Each employee must verify in writing that they have reviewed this policy and agree to follow it.

## APPENDIX 6

### QUICK REFERENCE GUIDE TO RELIGIOUS EXEMPTIONS FOR RELIGIOUS ORGANIZATIONS, BY STATE

(This area of the law is rapidly changing. This material is provided as a starting point for research only.)

STATE	CODE SECTION	TYPE OF EXCEPTION
<i>Alabama</i>	Ala. Code § 25-1-20	None
<i>Alaska</i>	Alaska Stat. § 18.80.300(5)	Religious org. / nonprofit / social assoc. / fraternal / charitable / corp.
<i>Arizona</i>	Ariz. Rev. Stat. Ann § 41-1462	Religious org. / edu. institution/ corp.
<i>Arkansas</i>	Ark. Code Ann. § 16-123-103(a)	Religious org.
<i>California</i>	Cal. Gov't Code § 12940(j)(4)(A) Cal. Gov't Code § 12926.2	Religious org. / nonprofit / edu. institution
<i>Colorado</i>	Colo. Rev. Stat. § 24-34-401(3)	Religious org.
<i>Connecticut</i>	Conn. Gen. Stat. Ann. § 46a-81p	Religious org. / edu. institution / assoc.
<i>Delaware</i>	Del. Code Ann. tit. 19 § 710(7)	Religious org. / assoc.
<i>Dist. Columbia</i>	D.C. Code Ann. § 2-1401.03	Religious org. / charitable / nonprofit / assoc. / educ. institution
<i>Florida</i>	Fla. Stat. Ann. § 760.10(9)	Religious org. / edu. institution / assoc,
<i>Georgia</i>	Ga. Code Ann. § 45-19-22(5) (only applies to state gov. employers)	Only applies to state gov. employers. GA also outlaws discrimination on the basis of age and disability, as well as unequal pay on the basis of sex for private employers.
<i>Hawaii</i>	Haw. Rev. Stat. § 378-3	Religious org. / edu. institution / charitable
<i>Idaho</i>	Idaho Code § 67-5910	Religious org. / edu. institution / assoc.
<i>Illinois</i>	775 Ill. Comp. Stat. 5/2-101(B)(2)	Religious org. / edu. institution / assoc. / nonprofit
<i>Indiana</i>	Ind. Code Ann. § 22-9-1-3(h)	Religious org. / edu. institution / nonprofit / fraternal / assoc.
<i>Iowa</i>	Iowa Code Ann. § 216.6(6)(d)	Religious org. / edu. institution

STATE	CODE SECTION	TYPE OF EXCEPTION
<i>Kansas</i>	Kan. Stat. Ann. § 44-1002(b) & 44-1002(h)	Nonprofit fraternal / religious org./ social assoc. or corp.
<i>Kentucky</i>	Ky. Rev. Stat. Ann. § 344.090	Religious org. / edu. institution
<i>Louisiana</i>	La. Stat. Ann. § 23:302(2)(b) ) & 23:332(H)(2)	Religious org. / nonprofit / edu. institution
<i>Maine</i>	Me. Rev. Stat. Ann. tit. 5 §§ 4553(4) & 4573-A(2)	Religious org. / edu. institution /
<i>Maryland</i>	Md. Code Ann., State Gov't § 20-604	Religious org. / edu. institution
<i>Massachusetts</i>	Mass. Gen. Laws Ann. ch. 151B §§ 1(5) & 4(18)	Religious org. / edu. institution
<i>Michigan</i>	Mich. Comp. Laws § 37.2208 & 37.2403	May apply for exemption for bona fide occupational qualification; some protections for religious educational institutions
<i>Minnesota</i>	Minn. Stat. Ann. § 363A.20	Religious org. / service org. / fraternal corp.
<i>Mississippi</i>	Miss. Code Ann. § 25-9-149 (only applies to gov. employers) Miss. Code Ann. § 11-62-5	None needed. Prohibits state government from discriminatory action against a religious org.
<i>Missouri</i>	Mo. Stat. Ann. § 213.010(8)	Religious org.
<i>Montana</i>	Mont. Code Ann. § 49-2-101(11)	Religious org. / nonprofit / fraternal org.
<i>Nebraska</i>	Neb. Rev. Stat. Ann. § 48-1103(1) & 48-1108(2)	Religious org. / edu. institution
<i>Nevada</i>	Nev. Rev. Stat. §§ 613.320(1)(b) & 613.350(4)	Religious org. / edu. institution
<i>New Hampshire</i>	N.H. Rev. Stat. Ann. § 354-A:2(VII)	Religious org. / fraternal org. / nonprofit
<i>New Jersey</i>	N.J. Stat. Ann. § 10:5-12(11)(a)	Religious org.
<i>New Mexico</i>	N.M. Stat. Ann. § 28-1-9(B)-(C)	Religious org.
<i>New York</i>	N.Y. Exec. Law § 296(11)	Religious org. / edu. institution
<i>North Carolina</i>	N.C. Gen. Stat. § 143-422.2 (no state remedies apart from Title VII)	Title VII exemption applies

STATE	CODE SECTION	TYPE OF EXCEPTION
<i>North Dakota</i>	N.D. Cent. Code § 14-02.4-08	Exemption for bona fide occupational qualification
<i>Ohio</i>	Ohio Rev. Code Ann. § 4112.02(P)	Religious org. / edu. institution
<i>Oklahoma</i>	Okla. Stat. tit. 25, §§ 1307-1308	Religious org. / edu. institution
<i>Oregon</i>	Or. Rev. Stat. § 659A.006	Religious org. / edu. institution
<i>Pennsylvania</i>	43 Pa. Cons. Stat. Ann. § 954(b) 43 Pa. Cons. Stat. Ann. § 955(a) & (h)(10)	Religious org. / fraternal org.
<i>Rhode Island</i>	28 R.I Gen. Laws § 28-5-6(8)(ii)	Religious org. / edu. institution
<i>South Carolina</i>	S.C. Code Ann. § 1-13-80(l)(5)	Religious org. / edu. institution
<i>South Dakota</i>	S.D. Codified Laws § 20-13-18	Religious org.
<i>Tennessee</i>	Tenn. Code Ann. § 4-21-405	Religious org. / edu. institution
<i>Texas</i>	Tex. Lab. Code Ann. § 21.109	Religious org. / edu. institution
<i>Utah</i>	Utah Code Ann. § 34A-5-102(1)(i)(ii)	Religious org. / edu. institution
<i>Vermont</i>	Vt. Stat. Ann. tit. 21 § 495(e)	Exemption for bona fide occupational qualification
<i>Virginia</i>	Va. Code Ann. § 2.2-3900	Limited religious protection
<i>Washington</i>	Wash. Rev. Code § 49.60.040(11)	Religious org. / nonprofit
<i>West Virginia</i>	W. Va. Code § 5-11-9	Exemption for bona fide occupational qualification
<i>Wisconsin</i>	Wis. Stat. Ann. § 111.337	Religious org. / nonprofit
<i>Wyoming</i>	Wyo. Stat. Ann. § 27-9-102	Religious org.

## APPENDIX 7

### QUICK REFERENCE GUIDE TO STATES WITH LOWERED NUMBER OF EMPLOYEE REQUIREMENTS

*(This area of the law is rapidly changing. This material is provided as a starting point for research only.)*

STATE	NUMBER OF EMPLOYEES	CODE SECTION
<i>Alabama</i>	20	Ala. Code § 25-1-20(2) (age discrimination only)
<i>Alaska</i>	1	Alaska Stat. § 18.80.300(5)
<i>Arizona</i>	15 1 (sex harassment only)	Ariz. Rev. Stat. Ann. § 41-1461(6)(a)
<i>Arkansas</i>	9	Ark. Code Ann. § 16-123-102(5)
<i>California</i>	5 1 (harassment)	Cal. Gov't Code § 12926(d) Cal. Gov't Code § 12940(j)(4)(A)
<i>Colorado</i>	1	Colo. Rev. Stat. § 24-34-401(3)
<i>Connecticut</i>	3	Conn. Gen. Stat. Ann. § 46a-51(10)
<i>Delaware</i>	4	Del. Code Ann. tit. 19 § 710(7)
<i>Dist. Columbia</i>	1	D.C. Code Ann. § 2-1401.02(10)
<i>Florida</i>	15	Fla. Stat. Ann. § 760.02(7)
<i>Georgia</i>	15	Ga. Code Ann. § 45-19-22(5) (applies only to gov. employers)
<i>Hawaii</i>	1	Haw. Rev. Stat. § 378-1
<i>Idaho</i>	5	Idaho Code § 67-5902 (6)
<i>Illinois</i>	1	775 Ill. Comp. Stat. 5/2-101(B)(1)(a) & 2-100(B)(1)(b)
<i>Indiana</i>	6	Ind. Code § 22-9-1-3(h)
<i>Iowa</i>	1	Iowa Code § 216.6(6)(a)
<i>Kansas</i>	4	Kan. Stat. Ann. § 44-1002(b)
<i>Kentucky</i>	8/15 (review for situation)	Ky. Rev. Stat. Ann. § 344.030(2)

STATE	NUMBER OF EMPLOYEES	CODE SECTION
<i>Louisiana</i>	20	La. Rev. Stat. Ann. § 23:302(2)
<i>Maine</i>	1	Me. Rev. Stat. Ann. tit. 5 § 4553(4)
<i>Maryland</i>	15 1 (harassment)	Md. Code Ann., State Gov't § 20-601(d)(1)(i) (2); but see, but see <i>Molesworth v. Brandon</i> , 341 Md. 621, 672 A.2d 608 (1996) (subject to wrongful discharge claim based on public policy only, not enforcement provisions of Md. Ann. Code 49B @ 14, et seq.)
<i>Massachusetts</i>	6	Mass. Gen. Laws ch. 151B, § 1(5)
<i>Michigan</i>	1	Mich. Comp. Laws § 37.2201(a)
<i>Minnesota</i>	1	Minn. Stat. § 363A.03(16)
<i>Mississippi</i>	n/a	Miss. Code Ann. § 25-9-149 (applies only to gov. employers)
<i>Missouri</i>	6	Mo. Stat. Ann. § 213.010(8)
<i>Montana</i>	1	Mont. Code Ann. § 49-2-101(11)
<i>Nebraska</i>	15	Neb. Rev. Stat. Ann. § 48-1102(2)
<i>Nevada</i>	15	Nev. Rev. Stat. § 613.310(2)
<i>New Hampshire</i>	6	N.H. Rev. Stat. Ann. § 354-A:2(VII)
<i>New Jersey</i>	1	N.J. Stat. Ann. § 10:5-5
<i>New Mexico</i>	4	N.M. Stat. Ann. § 28-1-2(B)
<i>New York</i>	4 (1 for sexual harassment)	N.Y. Exec. Law § 292(5)
<i>North Carolina</i>	15	N.C. Gen. Stat. § 143-422.2(a)
<i>North Dakota</i>	1	N.D. Cent. Code § 14-02.4-02(8)
<i>Ohio</i>	4	Ohio Rev. Code Ann. § 4112.01(A)(2)
<i>Oklahoma</i>	1	Okla. Stat. Ann. tit. 25, § 1301(1)

STATE	NUMBER OF EMPLOYEES	CODE SECTION
<i>Oregon</i>	1	Or. Rev. Stat. § 659A.001(4)(a)
<i>Pennsylvania</i>	4	43 Pa. Cons. Stat. § 954(b)
<i>Rhode Island</i>	4	28 R.I. Gen. Laws § 28-5-6(8)
<i>South Carolina</i>	15	S.C. Code Ann. § 1-13-30(e)
<i>South Dakota</i>	1	S.D. Codified Laws § 20-13-1(7)
<i>Tennessee</i>	8	Tenn. Code Ann. § 4-21-102(5)
<i>Texas</i>	15	Tex. Lab. Code Ann. § 21.002(8)(A)
<i>Utah</i>	15	Utah Code Ann. § 34A-5-102(1)(i)(i)(D)
<i>Vermont</i>	1	Vt. Stat. Ann. tit. 21, § 495d(1)
<i>Virginia</i>	1	Va. Code Ann. § 65.2-101
<i>Washington</i>	8	Wash. Rev. Code Ann. § 49.60.040(11)
<i>West Virginia</i>	12	W. Va. Code § 5-11-3(d)
<i>Wisconsin</i>	1	Wis. Stat. § 111.32(6)(a)
<i>Wyoming</i>	2	Wyo. Stat. Ann. § 27-9-102(b)

## APPENDIX 8

### SAMPLE RELIGIOUS ACCOMMODATION POLICY

#### PURPOSE:

To ensure that the company proactively respects religious diversity in the workplace by providing a written policy and process for employees to request religious accommodations.

#### POLICY:

1. Commitment to religious diversity in the workplace: [Insert Name] respects the religious beliefs, practices, and affiliations of its applicants and employees and seeks to foster a workplace environment where all individuals feel welcomed and valued. [Insert Name] provides reasonable accommodations to applicants and employees for their sincerely held religious beliefs unless doing so would be an undue hardship.
2. Definition of “undue hardship”: An “undue hardship” means an accommodation that would require significant difficulty or expense.
3. Specific considerations in determining undue hardship: When determining whether a requested accommodation will require a significant difficulty or expense, [Insert Name] considers:
  - A. the cost of the accommodation, including the costs of loss of productivity and of retraining or hiring employees or transferring employees from one facility to another;
  - B. whether the requested accommodation will obstruct [Insert Name] from providing its customers or clients the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations offered by the company.
4. General types/examples of religious accommodation(s): Applicants and employees may obtain exceptions to work rules or policies that would allow them to adhere to their religious beliefs and practices. Religious accommodations may also include adjustments to the work environment. Examples of accommodations include, but are not limited to, schedule changes, exceptions to the dress code or grooming policy, job modifications, changes to job tasks, breaks, or leaves of absence. [Insert Name] strictly prohibits retaliation of any kind for requesting a religious accommodation.
5. Process for requesting religious accommodation(s): Employees should notify their supervisor or human resources manager if they need to request a religious accommodation because their sincerely held religious belief(s) conflict(s) with their ability to perform a job requirement. Employees should specify the type of accommodation requested. The human resources manager will engage in discussions with the employees in a good faith effort to determine what accommodations may be possible and effective.

#### APPLICATION:

Businesses should specify that accommodation requests will be considered on a case-by-case basis, and reasonable requests will be granted unless they create an undue hardship. In some circumstances, the Company may ask for additional information from employees, if necessary, to assess the requests. For additional information, employees should contact their supervisor or the Human Resources Department. Companies should also ensure that all employees and managers receive training on the process for requesting accommodations, as well as the specific process for reviewing and responding to such requests. Managers responsible for administering the policy should receive specific instruction regarding when undue hardship applies and when it does not, as well as the general types of accommodations that employees may request.

## APPENDIX 9

### VIEWPOINT DIVERSITY POLICY SAMPLE

#### PURPOSE:

To foster a workplace culture where freedom of thought is welcomed, and all people are valued and respected, regardless of their religious or ideological views.

#### MODEL POLICY LANGUAGE:

1. Valuing religious and/or ideological diversity: [Insert Name] seeks to create a diverse work environment where all employees are valued. Accordingly, [Insert Name] encourages and respects viewpoint diversity. We respect each employee’s personal religious, moral, and political beliefs and do not require employees to affirm or accept any religious, moral, or political beliefs.
2. Encouraging mutual understanding and respect: [Insert Name] is committed to actively fostering a workplace culture that values civil disagreement and encourages mutual understanding and respect across ideological and religious differences. We understand and respect that our employees likely hold a wide variety of political, religious, and social perspectives.
3. Recognizing the business value of viewpoint diversity: [Insert Name] believes that respecting different beliefs and perspectives leads to greater creativity, innovation, and engagement that contributes to a healthy workplace culture and a stronger, more competitive company.

#### APPLICATION:

Companies should periodically review all applicable workplace policies and practices to ensure consistency with this commitment. Reviews should:

1. Be comprehensive – consider both formal policies, as well as any training programs or resources used in the workplace.
2. Seek internal feedback from employees with diverse religious and ideological beliefs to identify any specific policies or practices that create barriers to respecting viewpoint diversity in the workplace.

## ENDNOTES

- 1 Brian J. Grim, *1.2 Trillion Religious Economy in U.S.*, Religious Freedom & Business Foundation, <https://religiousfreedomandbusiness.org/1-2-trillion-religious-economy-in-us>
- 2 Interstate, *Our Culture*, <https://www.interstatebatteries.com/about/our-culture>
- 3 In-N-Out Burger, *What We Do*, [ino4kids.org](http://ino4kids.org)
- 4 Hobby Lobby, *Our Story*, <https://www.hobbylobby.com/about-us/our-story>.
- 5 *Masterpiece Cakeshop Ltd. v. Colo. Civil Rts.* Comm'n, 138 S. Ct. 1719 (2018).
- 6 *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 621 (9th Cir. 1988).
- 7 *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).
- 8 *Id.* at 2766.
- 9 *Salemi v. Gloria's Tribeca Inc.*, 115 A.D. 3d 569 (2014).
- 10 *Chemers v. Minar Ford, Inc.*, 2001 WL 951366, at 5\* (D. Minn. 2001). See also *Townley*, 859 F.2d at 621.
- 11 *Garcimonde-Fisher v. Area203 Marketing, LLC*, 105 F. Supp. 3d 825 (E.D. Tenn. 2015); see also *Bodett v. CoxCom, Inc.*, 366 F.3d 736 (9th Cir. 2004) (employer was justified in firing supervisor for telling homosexual subordinate that homosexuality is a sin, praying with her to receive salvation, and inviting her to church).
- 12 *Chemers*, 2001 WL 951366.
- 13 *Brown Transp. Corp. v. Pa. Hum. Rel. Comm'n*, 578 A.2d 555 (Pa. Commw. Ct. 1990).
- 14 *Id.*
- 15 *Young v. Sw. Sav. & Loan Ass'n*, 509 F.2d 140 (5th Cir. 1975).
- 16 *Brown v. Polk County*, 61 F.3d 650, 656-57 (8th Cir. 1995).
- 17 *Yochum v. FJW Inv., Inc.*, 2016 WL1255289 (W.D. Pa. 2016).
- 18 *Kolodziej v. Smith*, 588 N.E.2d 634, 638 (Mass. 1992).
- 19 *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126 (1st Cir. 2004); *EEOC v. Sambo's of Ga., Inc.*, 530 F. Supp. 86 (N.D. Ga. 1981) (restaurant could require all employees to shave beards to protect its public image); *Knight v. Conn. Dep't of Pub. Health*, 275 F.3d 156 (2d Cir. 2001) (employer not required to accommodate employees' religious beliefs that they evangelize clients).
- 20 Private employers should be aware that employee statements regarding illegal activity of employers may be protected under "whistle blower" statutes. See, e.g., Fla. Stat. Ann. § 448.102 (2018).
- 21 See supra note 17. The fact that speech to customers actually adversely affects business is vital. A company could not prevent its employees from saying "God Bless You" and "Praise the Lord" to its foodservice customers, because there was no evidence that it had actually caused business to be affected. *Banks v. Serv. Am. Corp.*, 952 F. Supp. 703 (D. Kan. 1996).
- 22 Title VII is codified at 42 U.S.C §§ 2000e et seq. (2018).
- 23 *Wilson v. U.S. West Commc'ns*, 58 F.3d 1337 (8th Cir. 1995). But see *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599 (9th Cir. 2004)(termination of employee for posting Bible passages in his workspace condemning homosexuality was not religious discrimination under Title VII).
- 24 *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486 (M.D. Fla. 1991).
- 25 *Weiss v. United States*, 595 F. Supp. 1050 (E.D. Va. 1984). See also *Abramson v. William Paterson College of N.J.*, 260 F.3d 265 (3d Cir. 2001) (supervisor's criticism of Orthodox Jewish belief not to work on Sabbath could create hostile work environment); *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012 (4th Cir 1996) (employer did not have to accommodate employee's letter to coworker stating that he needed to repent of his sin).
- 26 *Minn. Dep't of Highways v. Minn. Dep't of Human Rights*, 241 N.W.2d 310, 313 (Minn. 1976), cert. denied, 429 U.S. 863 (1976).
- 27 *Id.*
- 28 *Brown v. Polk County*, 61 F.3d at 657 (quoting *Burns v. S. Pac. Transp. Co.*, 589 F.2d 403, 407 (9th Cir. 1978), cert denied, 439 U.S. 1072 (1979)). See also EEOC Dec. No. 76-98, EEOC Dec. ¶ 6674 (1976) (a prison's decision to terminate an Orthodox Muslim because he "cannot be persuaded to tone down his religious practices on the job and continually gets wrapped up in conversations with the inmates" was unlawful because there was no evidence that the employee's conduct had made him unable to perform his duties or hampered the efficient operation of the workplace).
- 29 See supra note 17.
- 30 *Gunning v. Runyon*, 3 F. Supp. 2d 1423, 1428-29 (S.D. Fla. 1998).
- 31 See *infra* Section II, *Hiring, Firing, and Religious Accommodations*, What Is an Employer's Obligation to Employees Who Have Religious Obligations or Objections to Certain Work Requirements?
- 32 EEOC Dec. No. 82-1, 28 Fair Empl. Prac. Cas. (BNA) 1840 (1982). See also *Bhatia v. Chevron USA, Inc.*, 734 F.2d 1382 (9th Cir. 1984); *Sambo's*, 530 F. Supp. 86 (restaurant could require all employees to shave beards to protect its public image).

- 33 EEOC Dec. No. 71-779, 3 Fair Empl. Prac. Cas. (BNA) 172 (1970). See also EEOC Dec. No. 71-2620, 4 Fair Empl. Prac. Cas. (BNA) 23 (1971) (where an employer could not fire employee for wearing traditional Islam garb because there was no evidence that requiring employees to wear traditional office attire was "necessary to the safe and efficient operation of [the] business"); *Carter v. Bruce Oakley, Inc.*, 849 F. Supp. 673 (E.D. Ark. 1993) (employer could not demonstrate that beard imposed safety risk, so there was no undue burden); EEOC Dec. 81-20, 27 Fair Empl. Prac. Cas. (BNA) 1809 (1981) (employer required to permit employee to wear skirt instead of pants, as required by her religious beliefs).
- 34 See *Miller v. Safeway, Inc.*, 170 P.3d 655 (Alaska 2007) (allowing reasonable grooming policies).
- 35 *Bostock v. Clayton County* 590 U. S.\_\_\_\_\_(2020)
- 36 As previously mentioned, Title VII is codified at 42 U.S.C. §§ 2000e et seq. (2018). It applies to virtually all employers with fifteen or more employees.
- 37 *EEOC v. Ithaca Indus., Inc.*, 849 F.2d 116, 118 (4th Cir. 1988); see also *Tabura v. Kellogg USA*, 880 F. 3d 544 (10th Cir. 2018). Title VII requires that an employer, short of undue hardship, make reasonable accommodations to the religious needs of its employees.
- 38 42 U.S.C. § 2000e(j) (2018).
- 39 *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444 (7th Cir. 2018); *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993); *Turpen v. Mo.-Kan.-Tex. R.R. Co.*, 736 F.2d 1022, 1026 (5th Cir. 1984).
- 40 *EEOC v. Union Independiente De La Autoridad De Acueductos Y Alcantarillados de Puerto Rico*, 279 F.3d 49, 55-56 (1st Cir. 2002). *C.f. Miss. Emp't Sec. Comm'n v. McGlothlin*, 556 So. 2d 324 (Miss. 1990) (employee's belief was sincerely held even though she was not an active member of her religious group and wore her head wrap only occasionally).
- 41 *Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1378-79 (6th Cir. 1994).
- 42 *Davis v. Fort Bend County*, 765 F.3d 480 (5th Cir. 2014).
- 43 42 U.S.C. 2000e(j). The courts and the EEOC have interpreted this provision very liberally. Donald T. Kramer, *Annotation, Validity, Construction, and Application of Provisions of Title VII of Civil Rights Act of 1964* (42 U.S.C.A. § 2000e et seq.) and *Implementing Regulations, Making Religious Discrimination in Employment Unlawful*, 22 A.L.R. Fed. 580 § 4[a] (1975).
- 44 EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.1.
- 45 *Heller*, 8 F.3d at 1438-39 (summarizing authorities); see also *Redmond v. GAF Corp.*, 574 F.2d 897, 900-01 (7th Cir. 1978); 22 A.L.R. Fed. at 601-03.
- 46 EEOC Dec. No. 71-2620, 4 Fair Empl. Prac. Cas. (BNA) 23 (1971); EEOC Dec. No. 71-779, 3 Fair Empl. Prac. Cas. (BNA) 172 (1970); EEOC Dec. No. 72-1301, 4 Fair Empl. Prac. Cas. (BNA) 715 (1972); *Young*, 509 F.2d 140.
- 47 EEOC Dec. No. 79-6, 26 Fair Empl. Prac. Cas. (BNA) 1758 (1978); *Brown v. Pena*, 441 F. Supp. 1382 (S.D. Fla. 1977), aff'd, 589 F.2d 1113 (5th Cir. 1979). But a genuinely held belief that involves matters of the afterlife, spirituality, or the soul, among other possibilities, qualifies as religion under Title VII. See *Adeyeye*, 721 F. 3d at 448.
- 48 *Heller*, 8 F.3d at 1439.
- 49 *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2032 (2015).
- 50 *Id.*
- 51 *Id.* at 2031.
- 52 Ralph Gerstein & Lois Gerstein, *Prosecution or Defense of Action Alleging Employment Discrimination on Basis of Religion*, 135 Am. Jur. Proof of Facts 3d 183 (2013); *Townley*, 859 F.2d at 614 n.5.
- 53 *Harrell v. Donahue*, 638 F.3d, 975 (8th Cir. 2011); *EEOC v. READS, Inc.*, 759 F. Supp. 1150, 1155 (E.D. Pa. 1991); EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.2(c).
- 54 *Webb v. City of Philadelphia*, 562 F. 3d 256 (3rd Cir. 2009).
- 55 *Tabura*, 880 F. 3d at 554.
- 56 *Young*, 509 F.2d 140; *Minn. Dep't of Highways*, 241 N.W.2d at 313.
- 57 42 U.S.C. § 2000e-2(a) (prohibiting discrimination on the basis of race, color, religion, sex, or national origin).
- 58 42 U.S.C. § 2000e-2(e).
- 59 *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 203 (1991) (internal citations omitted).
- 60 See table on page 17 for a list of states that prohibit sexual orientation discrimination by employers.
- 61 See discussion of BFOQs above.
- 62 **Cal.** Gov't Code §§ 12920, 12940; **Colo.** Rev. Stat. Ann. § 24-34-402; **Conn.** Gen. Stat. § 46A-81C; D.C. Code Ann. § 2-1402.11; **Del.** Code Ann. tit. 19, § 711; **Haw.** Rev. Stat. § 378-2; 775 Ill. Comp. Stat. Ann. 5/1-102; **Iowa** Code Ann. § 216.6; **Me.** Rev. Stat. Ann. tit. 5, § 4572; Md. Code Ann., State Gov't § 20-606; **Mass.** Gen. Laws Ch. 151B, §§ 3, 4; **Minn.** Stat. § 363A.08; **Nev.** Rev. Stat. Ann. § 613.330; **N.H.** Rev. Stat. Ann. § 354-A:6, 354-A:7; **N.J.** Stat. Ann. § 10:5-4, 10:5-12; **N.M.** Stat. Ann. § 28-1-7; **N.Y.** Exec. Law § 296; **Or.** Rev. Stat. Ann. § 659A.030; 28 R.I. Gen. Laws § 28-5-7; **Utah** Code Ann. § 34A-5-106; **Vt.** Stat. Ann. tit. 21, § 495; **Wash.** Rev. Code Ann. § 49.60.010, 49.60.030; **Wis.** Stat § 111.36. Eleven other states have executive orders prohibiting government employers from discriminating based on sexual orientation (Alaska, Arizona, Indiana, Kentucky, Michigan, Missouri, Montana, North Carolina, Ohio, Pennsylvania, and Virginia).

63 Some organizations publish online lists of municipalities that prohibit sexual orientation discrimination by private employers. However, mistakes are frequently found in these lists and citations sometimes cannot be confirmed because of the difficulty of obtaining copies of each municipality's code. Employers should always check the code of each municipality and state where they have business operations and rely on published lists (including those in this publication) only as a starting point for research.

64 *Hobby Lobby*, 134 S. Ct. 2751 (2014).

65 42 U.S.C. § 2000e-1.

66 *Spencer v. World Vision, Inc.*, 633 F.3d 723, 729 (9th Cir. 2011) (internal quotation marks omitted).

67 See *Tyndale House Publishers, Inc. v. Sebelius*, 904 F. Supp. 2d 106, 119 n.13 (D.D.C. 2012) (for-profit Bible publishing company that donates its profits to charity might qualify as a "religious corporation" under Title VII); see also Judge Kleinfeld's test in *Spencer*, which does not require an organization to be nonprofit to be a religious corporation. *Spencer*, 633 F.3d at 748 (Kleinfeld, J., concurring).

68 42 U.S.C. § 2000e-2 & 2000e(b).

69 *Hobby Lobby*, 134 S. Ct. 2751.

70 See, e.g., Consolidated Appropriations Act, Pub L. No 113-76, 128 Stat. 5, Div. H, § 507 (Jan. 17, 2014) (states may not receive certain federal funding if they require abortion coverage in health insurance); 42 U.S.C. § 18113(a) (governments may not require assistance in or coverage of doctor-assisted suicide or euthanasia).

71 Government-recognized relationships include marriages, civil unions, and domestic partnerships.

72 *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (government may not require a newspaper to include a third party's writings in its editorial page); *Pac. Gas & Elec. Co. v. Pub. Util. Comm'n of Cal.*, 475 U.S. 1 (1986) (plurality) (government may not require a business to include a third party's expression in its billing envelope); *Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (government may not require citizens to display state motto on license plate).

73 *Wooley*, 430 U.S. at 714; see also *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018).

74 *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 572-73 (1995) (government may not require a public-accommodations parade organization to facilitate the message of a LGBT-advocacy group). See also *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 659 (2000) (government may not apply a public-accommodations law to force the Boy Scouts to accept a scoutmaster who identifies as gay and expresses messages about human sexuality that conflict with the organization's views).

75 *Hurley*, 515 U.S. at 574; see also *Citizens United v. FEC*, 558 U.S. 310, 342 (2010) (collecting cases).

76 *Elane Photography, LLC v. Willock*, 309 P.3d 53, 64-65 (N.M. 2013).

77 *303 Creative, LLC v. Elenis*, 142 S. Ct. 1106 (2021).



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