




## A Toolbox for Handling Employee Expression in Difficult Times: Politics and Religion in the Workplace

**2020 Employment Law Seminar**  
Day 3: Social Justice & Discrimination in the Workplace



## Speaker Introductions



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## It's 2020.

- There's lots to talk about
- Employee expression looks different
- Difficult times make for difficult legal questions:
  - How can you respond?
  - Speech outside of work?
  - Social media?



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## Social Media Catastrophe! (A hypo)

- After work ends
- On social media
- Controversial topic/opinion/comment/thought/decision etc.
- Heated discussion
- At-work consequences



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## What Laws Apply?

- First Amendment
- Title VII
- State nondiscrimination
- Social media

## First Amendment

- Not the hammer employees think it is



## Title VII and State Nondiscrimination

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- Hostile work environment
  - Severe and pervasive conduct that a reasonable person would consider:
    - › Intimidating
    - › Hostile
    - › Abusive
  - **Or quid pro quo**
  - **In our hypo, what do we have?**

## Social Media

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- May contribute to hostile environment
- Employer beware state law protections

## Let's Talk Religion

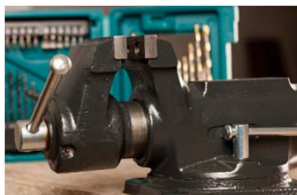
- Discrimination (don't do it)
- Accommodation (please do)



## Videoconference Disaster! (A hypo)

- A religious background
- Another religious background
- A problem?

## What Tool to Use?



Clamp down – no religious backgrounds



Brush it off – it will work itself out



Sander – smooth things out with DEI training



Paint brush – same background for everyone

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## Designing a Non-Hostile Work Environment

- Train managers, supervisors, and HR
- Act fast
- Implement and enforce policies and procedures
  - Clear policies and procedures
  - Designate a person/office for complaints
  - Be consistent
- Create and maintain proper documentation

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## Assembling Religious Accommodations

- Know this:
  - Federal and state laws may differ
  - EEOC guidance
- In general:
  - Duty under federal and state laws to make reasonable accommodations for an employee's religious practices
  - Unless it would create an undue hardship



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## Accommodations – To Do List

- Include religion and accommodations requests in policy
- Listen for (observe) conflict
- Evaluate "religion" (if really necessary)



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## Accommodations – To Do List

- Consult [EEOC Q & A](#) and state resources for these categories and challenges:
  - Religious garb and grooming
  - Schedule conflicts
  - Would the accommodation cause a safety issue?
  - Would the accommodation cause the employer to violate seniority systems, or a collective bargaining agreement?

## Accommodations – To Do List

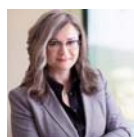
- Is there an undue hardship?
  - Title VII/Washington law – *de minimis*
  - Oregon – undue hardship – leave use/clothing
- Document your decision



## Key Takeaways

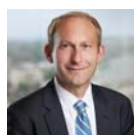
- Avoid the money-pit by proactively eliminating harassment and discrimination
- Be creative in making religious accommodations, and show your work when you can't
- Design clear policies and procedures and implement them consistently, so employees understand your expectations

## Thank You!



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