

Employer not Required to hire Independent Contractors to Accommodate Employee's Religious Observance

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The Fourth Circuit recently held that an employer did not have to hire independent contractors or take other action which would have been detrimental to other employees in order to accommodate the religious beliefs of one of its drivers.

A construction company provided grading, paving, and utility services for transportation projects in North Carolina. The employer's normal work week was Monday through Friday, but sometimes, bad weather during the week required the company to perform its services on Saturdays. The employer had approximately eight licensed commercial drivers to operate its five dump trucks, tow flatbed trailers, and one water truck. It was not uncommon for the employer to rent additional trucks for \$100 and hire independent contractors at \$50 to \$100 per hour to help with large hauling operations.

The employee was a dump truck driver. From the time he was hired, the employer was aware of his adherence to the Hebrew Israelite faith and his observance of the Sabbath on Saturdays. The employer requested that he work on Saturdays, but he refused and was written up for his refusals. Ultimately, he was terminated because his "religious schedule conflicts with the company's work schedule."

The U.S. Equal Employment Opportunity Commission (EEOC) filed a Complaint against the employer alleging the company discriminated against the employee by failing to accommodate his religious beliefs and ultimately terminating him because of his religion in violation of Title VII. Later, the district court granted the employer's summary judgment motion, concluding that the employee's termination was performance-based and identified no evidence that the employer had discriminated on the basis of religion. The EEOC appealed and later, the Fourth Circuit Court of Appeals concluded that the EEOC had made a prima facie showing and that the evidence presented a genuine issue of factual dispute on why the employee was terminated. The court also observed that "summary judgment might still be proper if [the employer] shows that it could not reasonably

accommodate the employee's religious needs without undue hardship. The court vacated the judgment and remanded for further proceedings.

Roughly three years later, the district court again granted summary judgment, concluding that the employer satisfied its obligation to provide a reasonable accommodation by offering shift-swapping and paid personal leave, and making personal efforts to personally accommodate the employee. The district court rejected the EEOC's three proposed accommodations for Sabbath observance: (1) that the employee be excused from Saturday work; (2) that the employee create a pool of substitute drivers, and (3) that the employee be transferred to a position of general equipment operator. This time around, the Fourth Circuit Court of Appeals affirmed, holding that the first two options proposed by the EEOC created an undue burden on the employer because the truck driver position was essential to the company and that hiring an independent contractor for Saturdays cost the company \$50 to \$100 per hour. Additionally, the Court concluded that requiring other employees to cover for the employee was not an option and the authorities provide that "an employer is not required to accommodate an employee's religious needs if it would impose personally and directly on fellow employees." The Court rejected the final EEOC proposal because there was not sufficient evidence to create a question of fact because its only evidentiary support was based on conflicting statements made by the employee in deposition and an affidavit as to whether he would accept a transfer to the position of general equipment operator.

Undue hardship is always difficult to demonstrate. Employers should take caution before assuming that defense will apply to their particular circumstances. For more information read *EEOC v. Thompson Contraction*.

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