

**EMPLOYMENT DISCRIMINATION  
PROTECTION UNDER  
TITLE VII OF THE CIVIL RIGHTS ACT  
NEW YORK STATE LAWS AND  
NEW YORK CITY LAWS**

# Introduction

- Discrimination in employment refers generally to:
  - Adverse employment action (e.g. refusal to hire or termination B/C of an individual's statutorily protected status or characteristics (e.g. national origin) or because of an individual protected activity (e.g. complaining about discrimination/Retaliation)).
- Laws prohibiting discrimination in employment have been enacted at the federal, state and local levels. Most of the time these laws overlap. However, they are not uniform.

# Federal State and Local Laws

- Federal Law Under Title VII of the Civil Rights Act of 1964 as Amended under The Equal Opportunity Act of 1972
- The New York City Human Rights Law Under Section 8
- The New York State Executive Law Under Article 15

# Applicable Laws

- A frequently asked question is which law takes precedence when the Federal, State or Local Laws are relevant:
- Answer: the law that is the strictest
- To ensure full protection of client Use all causes of action under the federal, state, and local laws and seek to enforce the law that is most favorable to your situation.

# Religious Accommodation : Undue Hardship and Balance of Interest

- §8-107(3) requires that employer accommodates its employer's religious needs unless the accommodation causes undue hardship. Burden of proof is on the employer
- §2000e(i) Requires employer to accommodate an employee's sincere religious belief unless it is an undue hardship. Under Federal Law bearing more than a minimal cost in not undue hardship.
- Tip: your client should document date and time when they ask for religious accommodation. If the request is denied he or she should insist on an explanation

# Religious Discrimination Exception under Religious Discrimination Exception

- 2000e-(1) permits religious organization to give preference to persons of same religion to promote organization's religious principles.

# Disparate Treatment

- Under Federal Law prima facie case on basis of “disparate treatment” theory the Plaintiff has to show that he or she:
  - Belongs to a protected class
  - Suffered and adverse employment consequence (denial of position or benefit or discharge)
  - The circumstance of employer’s action occurred in circumstances giving rise to an inference of discrimination

# Disparate Impact

- Under 20002- 2(k) employer's practice appearing neutral in its face may have an adverse and disparate impact upon protected class of persons.
- The impact does not have to be foreseeable and the subjective intent to discriminate is not a prerequisite.

# Retaliation

- 2000e-3(a) prohibits discrimination based on an individual's opposition to an unlawful employment practice
- Employees who assert discrimination rights by filing charges or complaint about discrimination (their or other coworker behalf) are protected from retaliation
- TIP: employers who have valid defense under discrimination are not exonerated from retaliation if they took action as a result of the employee's complaint.

# Statute of Limitations

## ■ DUAL FILING:

In order to preserve complaints' right to proceed in federal court, complaints alleging violations of Title VII and/or the ADA , must be filed within

- Within 180 days with the EEOC if there is no state or local law or forum
- within 300 days with any agency of the date of the last alleged discriminatory act if a state or local law and forum exist.

# Remedies

- Compensatory (including emotional distress) and punitive damages
- Back Pay
- Front Pay (when not in the position of reinstating the employee)
- Attorneys fees

# Remedies-cont'd

- Federal Law under Title VII provide for compensatory and punitive damages subject to a cap based on the size of the employer intentional discrimination.
- For intentional discrimination compensatory and punitive damages are capped as follows:
  - 15-100 employees- \$50,000
  - 101-200 employees-\$100,000
  - 201-500 employees-\$200,000
  - over 500 employees-\$300,000

# Attorneys' Fees

- §2000e-5(k) (Title VII), 29 U.S.C. §§206(d), 42 U.S.C. §1988(LL1981 and 1983) provide for the award of attorneys fees to the prevailing plaintiff.

# Discrimination Against Arabs, Muslims and South Asians

- Since September 11th, harassment, hostile environment and dismissal of Muslims and Arabs have become an accepted practice.
- Women have especially experienced outrageous acts of discrimination, harassment and biased because of their appearance.

# Discrimination Report by The NYC Commission on Human Rights

The Commission released a report in 2003, entitled *Discrimination Against Muslims, Arabs, and South Asians in New York City Since 9/11.*

- Muslims, Arabs, and South Asians believed that discrimination against them intensified following the attacks on the World Trade Center.
- 69% of the respondents believed they were the victim of one or more incidents of discrimination or bias related harassment;
- 83% of the respondents did not ask for help because they were afraid, believed that nothing would be done, did not know who to contact, or thought the incident did not warrant reporting.

# Uniform Issues and Religious Accommodation in Public Agencies

- Two New York Police Department (“NYPD”) workers, followers of the Sikh religion, were dismissed b/c the NYPD dress code did not permit the turbans and uncut beards required by their religion. The Judge determined that the NYPD had committed a civil rights violation and recommended reinstatement. Based on this decision, the NYPD ultimately rehired both individuals.
- Metropolitan Transportation Authority (“MTA”) reassigned four Muslim women bus drivers because they refused to remove their religious-mandated hijabs. The MTA’s action in reassigning the four Muslim women is currently the subject of federal lawsuits filed by the Muslim women and the United States Department of Justice.

# Draft City Council Anti-Discrimination Bill

- § 8-107 of the New York City Administrative Code sets forth
- No city agency shall impose upon a person as a condition of obtaining or retaining employment any terms or conditions that would require such person to violate, or forego a practice of, his or her creed or religion.
- § 12-140. It shall be unlawful for any agency of the city of New York, which by its own rules and regulations mandates that its employees wear specialized attire or uniforms, to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of, his or her creed or religion, including, but not limited to, adorning traditional religious headwear or maintaining customarily distinctive facial hair.

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