

QUARTERLY HR



EEOC Issues New Guidelines on Religious Discrimination

As America's workforce has become increasingly diverse, the rise of religious discrimination and harassment claims have more than doubled over the past 15 years, increasing 13.34% in 2007 alone. In response, the Equal Employment Opportunity Commission (EEOC) released new guidelines regarding workplace discrimination on the basis of religion under Title VII of the Civil Rights Act of 1964. This new Compliance Manual Section does not set new law, but clarifies and gives additional guidance as to what constitutes "religion" within the meaning of Title VII; disparate treatment based on religion; the requirement to reasonably accommodate religious beliefs and practices; religion-based harassment; and retaliation. The new Section also provides guidance on the sometimes complex workplace issues involved in balancing employees' rights regarding religious expression with employers' need to maintain efficient, productive workplaces.

Religious Discrimination and harassment claims are generally assessed under the same principles as other protected characteristics such as race, gender, national origin, but with a significant difference... typically, treating all employees consistently will protect employers from suits based on other protected statuses; however, Title VII imposes upon employers the duty to "reasonably accommodate employees' sincerely held religious beliefs or practices". A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his religion. Flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers and modifying workplace practices, policies and/or procedures are examples of how an employer might accommodate an employee's religious beliefs. For example:

some commonly requested accommodations might include: enabling a Jewish employee early departure to attend Friday evening Shabbat services, or exception to dress code and grooming rules such as to allow a Muslim woman to wear head or face coverings, to allow a Jehovah's Witness not to participate in office celebrations and for the display of religious symbols such as a copy of the new Testament on a Christian employee's desk.

An employer may refuse a reasonable accommodation, if doing so would impose an "undue hardship" on the employer. Undue hardship is defined as placing more than "de minimis cost or burden" on the employer. Some states, for example New York, impose a greater burden on employers to accommodate religious beliefs of applicants and employees so you should check applicable state laws.

The EEOC has also released a "Best Practices" booklet, of which the following is an excerpt:

Reasonable Accommodation – Generally Employers should:

- inform employees that they will make reasonable efforts to accommodate the employees' religious practices.
- train managers and supervisors on how to recognize religious accommodation requests from employees; and consider alternative available accommodations if the particular accommodation requested would pose an undue hardship.
- consider developing internal procedures for processing religious accommodation requests.
- individually assess each request and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate.

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Undue Hardship – Generally The *de minimis* undue hardship standard refers to the legal requirement. As with all aspects of employee relations, employers can go beyond the requirements of the law and should be flexible in evaluating whether or not an accommodation is feasible.

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HR Question of the Quarter

Question - I have an exempt employee who would like to earn additional money by working a second, part-time non-exempt job at our company. How do I avoid overtime issues?

Answer - While employees can perform more than one job for an employer, each employee may only have one Fair Labor Standards Act (FLSA) designation—either exempt or nonexempt, but not both. If an employee wishes to work two different jobs for an employer, the exemption status must be based upon the combination of the two jobs' duties as if the employee were performing one job. When looking at all of the duties of the combined positions, if the "job" still meets the exemption criteria under the FLSA, then the employee may retain his or her exempt status; if not, the employee would lose the exemption status for both jobs and would have to be reclassified as nonexempt for both jobs. If the combined duties would still qualify the employee to remain in an exempt status, the FLSA would not require the employer to pay the employee any additional salary above the normal weekly salary, and it would not prohibit an employer from paying more for the additional work, in any increment or method chosen (e.g., hourly, day rate, piece rate). The only requirement would be to pay the employee his or her current, regular salary, which meets the salary basis test under the FLSA, and nothing more. Clearly, not many employees would voluntarily take on a second job without additional compensation, so it is customary that employers that allow such an arrangement would pay an additional hourly rate for the hours worked at the second job, but they would not be required to pay any overtime. If the combined duties of the two jobs would no longer allow the employee to remain in an exempt status, the employee would become nonexempt for both jobs, and overtime would need to be paid on all hours worked over 40 in a week (some state laws may have daily overtime requirements). The basic rate on which to compute the overtime would be either the weighted average of the two wages or the rate of the job in which the overtime was earned (some states may have more stringent laws for calculating basic rates for two or more jobs). This could get quite expensive for an employer and would certainly pose an additional administrative burden. Employers are not required to allow employees to work more than one job for them; employers may choose to allow or prohibit this arrangement and can set their own criteria for doing so, as long as they do not do so in a manner that discriminates against a protected class. Either way, a well written policy would be advisable to clearly communicate the employer's policy on the issue and to ward off any unintended discrimination.

Best Practices Tip– Voluntary Separation Guidelines/Unemployment Benefits

To collect unemployment benefits the employee (now claimant) must establish they had "good cause" to quit. A common misconception is that a voluntary quit automatically disqualifies claimants from unemployment benefits. While most quits, especially for non-compelling personal reasons, are disqualifying, there are significant exceptions.

For example, all states may allow benefits for a quit with "good cause" attributable to employment. Other states consider broader circumstances to establish "good cause" that include quits for certain compelling personal reasons leaving the claimant with no reasonable alternative. **Careful reporting and documentation of voluntary quits is vital to effectively control unwarranted claims.**

Examples of Quit – Without "Good Cause":

- Job abandonment ~ No call, no show for three or more days

- Looking for other work, i.e., career change
- Deciding to stay at home with children
- Getting married
- Attending school

To establish good cause in voluntary separations, the claimant must be able to show they attempted to retain their position prior to quitting by following company policy and procedures, and voicing complaints. Employers should be prepared to explain what actions the company took to resolve the issue.

Examples of Quit – With "Good Cause"

- Evidence of harassment or discrimination
- Working conditions detrimental to health or safety
- Substantial or adverse change in terms of hire (i.e. reduction in hours, pay, change in duties or worksite)
- Health or physical limitations

- Medical care for a dependent parent or child
- Quit for medical reasons
- Personality conflicts

Since laws, rules and exceptions vary greatly, you should take care to obtain, if possible, a letter of resignation and/or conduct an exit interview documenting reasons for a quit. If an employee is leaving because of an alleged problem on the job, document the background and attempts to find a solution, i.e., offer of a transfer or leave of absence. Note: A quit in lieu of discharge is not a voluntary quit since continuing work was not available. Please contact your Service Team or Human Resources for documents that may assist you in these circumstances.

Sample Policy of the Quarter

Emergency Closings

EMPLOYER realizes that emergency conditions such as storms may develop which, for the safety of our employees, might require the temporary closing of the company's facilities. Should that situation occur, a representative of management will announce that emergency conditions exist and that the company will close. When an emergency closing occurs during the workday, full time exempt and non-exempt

employees present for work will be paid for the entire day and part time employees present for work will be paid for the number of hours normally worked. Emergency closing during the workday will be announced to the various supervisors, who will be responsible for communicating the information to their employees. If emergency conditions develop during non-working hours, it is your responsibility to make every effort to be in contact with your supervisor during these emergency situations to

determine what the work schedule may be. Non-exempt employees who are required to report to work will be paid for all hours worked. Non-exempt employees who do not report to work when required will not receive pay for this time. Employees who are not required to report to work may use accrued PTO time.

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The following is a calendar of some commonly observed religious holidays through year end 2008.

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| Beginning of Ramadan | Islamic | Aug. 31– Sept 1* | Sun.-Mon. |
| Autumn Equinox (EST) | | Sept. 22 | Monday |
| Eid al-Fitr (Eid-ul-Fitr), (first day of Shawwal) | Islamic | Sept 29-30* | Mon.-Tues. |
| Rosh Hashanah (New Year) | Jewish | Sept 29-Oct 1* | Mon.-Wed. |
| Yom Kippur (Day of Atonement) | Jewish | Oct 8-9* | Wed.-Thurs. |
| Sukkot (Feast of Tabernacles) | Jewish | Oct 13-15* | Mon.-Wed. |
| Birth of the Bab | Baha'i | Oct 19-20* | Sun.-Mon. |
| Shemini Atzeret & Simchat Torah | Jewish | Oct 20-22* | Mon.-Wed. |
| Birth of Baha'u'llah | Baha'i | Nov 11-12* | Tue.-Wed. |
| Eid al-Adha | Islamic | Dec 7-8* | Sun.-Mon. |
| Bodhi Day (Rohatsu) | Buddhist | Dec 8 | Monday |
| Winter Solstice (EST) | | Dec 21 | Sunday |
| Hanukkah (Chanukah), (8 day Feast) | Jewish | Dec 21-29* | Sun.-Mon. |
| Christmas | Western Christian | Dec 25 | Thursday |
| Kwanzaa | Interfaith/African-American | Dec 26-Jan 1 | Fri.-Thurs. |
| Al-Hijra (Muharram) (New Year) | Islamic | Dec 28-29* | Sun.-Mon. |

*Holy Days start at sundown of beginning date and end at sundown or nightfall of concluding date.

For more information on Religious Discrimination, Harassment or Accommodation, please contact Human Resources at CoAdvantage.

E-Verify Program Update

The E-Verify program (formerly known as Basic Pilot) is administered by the U.S. Department of Homeland Security's Citizenship and Immigration Services (USCIS) and the Social Security Administration (SSA). E-Verify is a web-based program administered by DHS and SSA to verify SSN's for employment authorization for all newly hired employees. (E-verify cannot be used for current or past employees.) DHS

created this online verification system that allows registered employers to verify employment eligibility.

State Legislation - Across the country, states continue to enact their own employment-related immigration legislation, including legislation requiring certain employers to use E-Verify to electronically verify the employment eligibility of their newly hired employees. Currently, seven states have implemented laws requiring certain

employers, and state contractors to use E-Verify. The seven states mandating the use of E-Verify are Arizona, Arkansas, Colorado, Georgia, Mississippi, Oklahoma, and Rhode Island.

While there are only seven states that currently mandate E-Verify, as shown by the chart below, there are numerous states with legislation or pending legislation relating to E-Verify.

| State E-Verify Legislation | |
|---|--|
| Mandates the use of E-Verify | AZ, AR, MS, GA, CO, OK, RI |
| Encourages the use of E-Verify | TN, MO |
| Requires state agencies to use E-Verify | ID, NC, PA, MN, UT, RI |
| Legislation is still pending | CA, MN, PA, SC, TN, WV, IL, IN, IA, MO, RI, KS, NJ, CO, FL |

Federal Contract Employers - As of June 9, 2008, President George W. Bush has amended [Executive Order 12989](#). This now directs all federal departments and agencies to require contractors, as a condition of each future federal contract, to agree to use an electronic system to verify workers' employment eligibility. In response to this Executive Order, Secretary Michael Chertoff designated E-Verify as the system of choice.

On June 12, 2008, agencies responsible for federal acquisition regulations (FAR) sent a [Notice of Proposed Rulemaking](#) (NPRM) to the Federal Register soliciting public comment on proposed changes to these regulations. Comments will be accepted for 60 days. For more information for federal contractors, you may go to <http://www.uscis.gov/files/nativedocuments/MOU.pdf>.

CoAdvantage is currently participating in E-Verify for the State of Arizona only, based on the requirements which impact compliance for our organization. Depending on your business type and/or operating state, you may be required to participate in E-Verify. CoAdvantage's Client HR is available to provide guidance or to assess your current situation to better determine your need to comply with E-Verify requirements now or in the future.

New! SSN Web Logins— Enhanced Security Applied

Effective September 15, 2008 the CoAdvantage Web User Name ID's have been changed as part of our enhanced security and privacy initiative.

The login ID's to access the CoAdvantage HRMS online system are no longer based on social security number. The web User Name ID is now based on a combination of Last

Name plus Last 5 digits of the user's social security number. Listed below are several examples of how this format change should be applied based on varying Last Name formats.

If last name = Smith
User Name Login ID = SmithXXXXXX

Example for Historical Database Login: SmithXXXXX1

If last name = Smith-Jones
User Name Login ID = Smith-JonesXXXXXX

In resetting the User Name ID's, all passwords have also been reset to the default password format which is based on DOB (date of birth).

If last name = Smith Jones Kennedy
User Name Login ID = SmithJonesKennedyXXXXXX

Password Reset Default = DOB in MMDDYYYY format (example: 01011950)

If accessing the CoAdvantage historical database, a '1' will still need to be added to the end of the User Name Login ID.

If you or your employees experience any difficulties with this enhancement, please contact your Payroll Service Team for additional support.

U.S. Passport Cards Now Acceptable as I-9 Document

U.S. Citizenship and Immigration Services (USCIS) has announced that the new U.S. passport card may be used as a valid "List A" document to complete Form I-9 during the employment eligibility verification process to prove both identity and work authorization, including for E-Verify participants. The U.S. Department of State began producing passport cards on July 14, 2008, and has already received more than 350,000 applications.

The passport card carries the same rights and privileges of the U.S. passport book and legally attests to the U.S. citizenship and identity of the holder. The passport card is a significantly cheaper,

faster and more portable alternative to the traditional passport book. It can be used to enter the U.S. at all land and sea ports when arriving from Canada, Mexico, the Caribbean and Bermuda. The card may not be used to travel by air. First-time applicants can apply for a passport card at any of the 9,300 Passport Application Acceptance Facilities throughout the country. The cost is \$45 for adults and \$35 for children under 16. Adults with fully valid passport books issued within the last 15 years can apply for the card by mail using Form DS-82, at a cost of only \$20. Additional passport card information can be found on the Department of State website at <http://travel.state.gov/passport>.

New York State WARN Act Becomes Law

New York joins a growing number of other states, including California, Illinois and New Jersey who have adopted their own WARN legislation to supplement the federal law. On August 5, 2008 New York State Governor, David Paterson, signed into law the New York State Worker Adjustment and Retraining Notification Act ("NY WARN Act"). Because the NY WARN Act requires a substantially longer notice period and covers relocations, the Federal WARN Act will not preempt it.

Employers are advised to carefully plan any future workforce restructurings and reductions. **The law takes effect in February 2009.** Look for more details to come.

Improved Privacy & Security Measures Coming Soon

CoAdvantage continues to work toward the privacy and security of personal information. In the coming weeks ahead you will see additional email communication and postings regarding a critical change to the use of social security numbers within our HRMS system. Our goal is to eliminate the use of social security numbers on reports and documentation, unless otherwise required. You will notice a randomly generated and unique "Employee Number" replacing the use of Social Security Number on your standard reports and information. This number will also be displayed for each employee within our online HRMS system. More details will be coming soon, so please check your email and be sure to look for additional postings online. This change will only affect CoAdvantage clients.

Performance and Conduct Issues Under ADA

The U.S. Equal Employment Opportunity Commission (EEOC) has issued a comprehensive question-and-answer guide addressing how the Americans with Disabilities Act (ADA) applies to a wide variety of performance and conduct issues. The document is available on the agency's web site at www.eeoc.gov/facts/performance-conduct.html.

The new guide makes clear that employers can apply the same performance standards to all employees, including those with disabilities, and emphasizes that the ADA does not affect an employer's right to hold all employees to basic conduct standards. At the same time, however, employers must make reasonable accommodations that enable individuals with disabilities to meet performance and conduct standards.

COADVANTAGE®
Resources for Humans. Solutions for Business.®

CoAdvantage
111 West Jefferson Street
Orlando, FL 32801-1820

M: 407.422.8448
F: 321.281.1430

www.coadvantage.com