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EEOC Issues New Guidelines on Religious Garb in
the Workplace

The U.S. Equal Employment Opportunity Commission recently issued a **question-and-answer guide** (link to: http://www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm) and accompanying **fact sheet** (link to: http://www.eeoc.gov/eeoc/publications/fs_religious_garb_grooming.cfm) addressing workplace rights and responsibilities with respect to religious dress and grooming under Title VII of the Civil Rights Act of 1964. As with other Title VII-protected classes, employers are prohibited from discriminating, harassing or retaliating against applicants and employees based on religious beliefs and practices. The guidelines do not create any new obligations for employers, but they attempt to bring clarity to some complex workplace issues. The guidelines are detailed and contain many examples, which should provide a helpful resource for employers when they want to know the EEOC's position in this emotionally-charged area of employment discrimination law. The following is a summary of the EEOC's guidance:

- Title VII requires employers to accommodate an employee's religious dress or grooming custom and permit applicants and employees to follow religiously-mandated dress and grooming practices. These practices include, for example: (1) wearing religious clothing or articles, such as a Muslim hijab or a Sikh turban; (2) observing a religious prohibition against wearing certain

garments; or (3) adhering to shaving or hair length observances. Employers must make such accommodations *unless the employer can establish that doing so would pose an undue hardship to the operation of the employer's business.*

- "Undue hardship" is defined as a "more than de minimis cost or burden" on the operation of the employer's business. An employer's belief that the accommodation would jeopardize workplace safety, security or health is not of itself enough to prove undue hardship. Rather, such concerns must be substantiated. An employer's reliance on its "image" or marketing strategy to deny a requested religious accommodation in its dress code may be insufficient to establish undue hardship. Preferences of customers or co-workers are also generally invalid reasons to refuse a religious accommodation request.
- Title VII protects all aspects of religious observance, practice, and belief, and defines religion very broadly to include not only traditional, organized religions, but also religious beliefs that are new, uncommon, not part of a formal church or sect, are only subscribed to by a small number of people, or that may seem illogical or unreasonable to others. Title VII applies to any practice motivated by religious belief, even if other people may engage in the same practice for secular reasons.

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- An applicant or employee is not required to use any specific words to initiate an accommodation request. Even absent an express request for an accommodation, where it is obvious that an employee's religious practice conflicts with a work policy, and no undue hardship is imposed, an employer must still fashion an accommodation. For example, if an employee is told he must shave to comply with his employer's "clean-shaven" policy, and explains that he wears his beard for religious reasons, that is sufficient to request accommodation.
- The accommodation requirement only applies to religious beliefs that are "sincerely held." If an employer has a legitimate reason to question the sincerity of an applicant's or an employee's religious beliefs or the religious nature of a particular practice for which an accommodation has been requested, the employer may ask for information reasonably needed to evaluate the request and determine whether it is tied to a bona fide religious cause. However, an employer should not assume that an employee's religious beliefs are not sincere just because they deviate from commonly followed tenets of the religion or because the "religious" nature of an employee's practice changes over time.
- Requiring an employee to cover his or her religious garb, marking, or article of faith as a result of an accommodation request by another employee who holds different beliefs is not generally deemed a reasonable accommodation, and could even violate the former employee's religious beliefs.
- It is unlawful to retaliate against any employee who has made a request for an accommodation or because of the employee's religion. Employers can be held liable for both retaliation and religious-based harassment or discrimination under Title VII. Unlawful harassment may occur if an applicant is required to abandon, alter or adopt a religious practice as a condition of employment, or if an employee is subjected to unwelcome statements or conduct based on religion, such as denigrating slurs or epithets, resulting in a hostile work environment.

Employers should promptly review their policies on grooming and dress, and on accommodating religious beliefs, to ensure that these new EEOC guidelines are taken into consideration, and most importantly, to ensure that managers and supervisors are properly trained on this topic. Keep in mind that while the guidelines do not carry the force of law, they provide an outline of what the EEOC's position will be on these issues when it investigates allegations of religious discrimination.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.