

MODERN MANAGEMENT

Volume 2, Issue 5, May 2008

RELIGION IN THE WORKPLACE

It is a simple and widely known fact that religion can be a touchy and sometimes treacherous subject among co-workers in the office. However, as citizens of the United States, we are given two religious freedoms: the right to a government free from religious imposition, and the right to practice any religion we choose. Private employers are just as much subject to the law as public employers, being that there are federal and state laws that make religious discrimination illegal. With such great religious and cultural diversity in the workplace these days, it can be hard to avoid certain topics.

What many do not realize is that there are three different types of religious discrimination that can occur within the workplace. The first is called disparate treatment discrimination, which is the obvious form of discrimination, involving unequal treatment of an employee based on their religion. Any employer hiring, promoting or refusing to hire based on a person's religious affiliation would be committing this form of discrimination. The second type of discrimination is disparate impact discrimination, which can happen if an employer has no explicit policy on religious discrimination. This form of discrimination is more subtle, and tends to refer to employers that give no mention of a particular religion but still inadvertently discriminates against certain religions. The third form of discrimination is called hostile work environment discrimination, and occurs

(Continued on page 2)

FOLLOW UP: H1-B CAP REACHED AFTER 7 DAYS

The United States Citizenship and Immigration Services has announced on April 9 that the cap for H-1B Visas has already been reached after only 7 days. The government limits the number of new H-1B visas for professionals to 65,000 each year. The USCIS did not disclose the total number received this year, but it was predicted that it would cross last year's numbers, which reached 133,000. This is the fifth year in a row that the cap has been reached before the start of the fiscal year. The USCIS will now proceed with a random selection process, where a computer system will first select 20,000 'advanced degree' applicants and then the 65,000 applicants for the general category.

CALIFORNIA COURTS TIP STARBUCKS BARISTAS

Starbucks is being ordered to pay back tips, with interest, to California baristas, which will total more than \$100 million. The San Diego class-action lawsuit states that the tips had been unlawfully turned over to the shift supervisors, when the money really should have been evenly distributed among employees at the Starbucks locations. The procedure was normally that the tip money would be collected and put into the Starbucks safe, and apportioned out to employees (including supervisors) at the end of each week, based on the number of hours each had worked. San Diego County Superior Court Judge Patricia Cowett stated that this is a violation of California state law, which prohibits managers and supervisors from sharing in employee tips. Because of Cowett's ruling, some baristas might receive more than \$10,000.

RELIGION IN THE WORKPLACE, *continued*

when the employer is antagonistic towards or allows hostility towards an employee because of their religious beliefs. The behavior must be aggressive and severe enough to constitute this type of discrimination.

Accommodations for an employee's religious beliefs can not always be done, especially when religious practices cross paths with the policies of a company. For example, most restaurant cooks are required to wear a hair net or hat for sanitation reasons, but this may conflict with the rules of some religions. Religion in the workplace will always be a sensitive subject that will raise a lot of questions. The employer should always try to be aware of each employee's needs so that they may deal with each accordingly as best they can. If your business is faced with a potential religious discrimination claim, contact someone from the Lemle & Kelleher Labor and Employment team.

Your Lemle & Kelleher Employment Lawyer's Contact Information

E. Fredrick Preis, Jr.,

epreis@lemle.com, (504) 585-6371

Eve B. Masinter,

emasinter@lemle.com, (504) 584-9173

David R. Taggart,

dtaggart@lemle.com, (318) 934-4014

David M. Whitaker,

dwhitaker@lemle.com, (504) 584-9404

Louis Colletta, Jr.,

lcolletta@lemle.com. (504) 584-9147

Marc R. Michaud,

mmichaud@lemle.com, (504) 585-6386

Kimberly C. Delk,

kdelk@lemle.com, (504) 584-9149

Bryce G. Murray,

bmurray@lemle.com, (504) 585-6359

Bridget A. Dinvaux,

bdinvaux@lemle.com, (504) 586-1241

Richard P. Voorhies,

rvoorhies@lemle.com, (504) 584-9121

About Lemle & Kelleher, L.L.P.

Lemle & Kelleher is one of the oldest major law firms in Louisiana, tracing its origins to the late 19th century when New Orleans was experiencing a boom as the shipping and commercial center of the South. Building on that genesis, we have diversified and expanded our capabilities for more than 100 years to meet the growing needs of our clients regionally and nationally. Today, Lemle & Kelleher offers responsive, innovative, and experienced legal representation covering a broad range of practice areas. For more information please visit www.lemle.com.

MEMBER

LEX  MUNDI

THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

Lemle & Kelleher, L.L.P. Areas of Practice

[Admiralty & Maritime Law](#)

[Antitrust Law](#)

[Appellate Practice](#)

[Bankruptcy & Loan Restructuring](#)

[Business Litigation](#)

[Casualty Litigation](#)

[Class Actions & Complex Litigation](#)

[Construction Law](#)

[Corporate Criminal Law](#)

[Corporate, Commercial Lending & Real Estate](#)

[Energy, Oil & Gas, and Public Utility Law](#)

[Environmental Law](#)

[Health Care Liability Law](#)

[Insurance Coverage Issues](#)

[Intellectual Property](#)

[Labor & Employment Law](#)

[Oil & Gas Drilling, Completion and Workover](#)

[Contractor Operations](#)

[Products Liability](#)

[Professional Liability](#)

[Securities Litigation](#)

[Tax Law](#)

[Toxic Torts](#)

[Transportation Law](#)

[Trusts, Probate & Estate Planning](#)

To remove your name from our mailing list, please [click here](#).

This electronic newsletter is provided to clients and friends of Lemle & Kelleher, L.L.P. The information described is general in nature, and may not apply to your specific situation. Legal advice should be sought before taking action based on the information discussed. Applicable State Bar or Attorney Regulations May Require This Be Labeled as "Advertising." Except as otherwise noted, areas of practice are not certified by the Texas Board of Legal Specialization or other applicable State Bar or regulatory authority.