

Legal Alert

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QUESTION: When Must Employers Accommodate the Religious Beliefs, Observances, and Practices of Employees?

ANSWER: Employers Must Reasonably Accommodate the Religious Practices of Employees Whenever Feasible Unless it Would Cause Undue Hardship to the Business.

\$586,000 in damages for not accommodating fear of the Antichrist!

Beverly R. Butcher, Jr. (“Mr. Butcher”) was a coal miner at the Robinson Run Mine owned by Consol Energy, Inc. (“Consol”). Mr. Butcher is a devout evangelical Christian. When the employer started using a biometric hand-scanner to track the attendance and work hours of the employees, Mr. Butcher informed his supervisors that his religious beliefs prevented him from using the scanner. *EEOC v. Consol Energy, Inc.* (U.S.Ct.App. 4th Cir., 6/12/17).

The Court said Mr. Butcher was placed in an intolerable situation when the employer refused to accommodate the religious objection and forced him to use a scanner system that he “sincerely believed would render him a follower of the Antichrist,” tormented with fire and brimstone. Talk about intolerable! The employer let two injured employees use a keypad for attendance, but not Mr. Butcher. The jury awarded \$150,000 and the court added \$436,860.74!

Mark of the Beast.

Mr. Butcher testified that his religious beliefs are based on the “authenticity... [and] authority of the scriptures.” He “believes in an Antichrist that ‘stands for evil,’...and that the Antichrist’s followers are condemned to everlasting punishment.”

Butcher’s understanding of the biblical Book of Revelation is that the Mark of the Beast brands followers of the Antichrist, allowing the Antichrist to manipulate them. And use of Consol’s hand scanning system, Butcher feared, would result in being so “marked,” for even without any physical or visible sign, his willingness to undergo the scan—whether with his right hand or his left—could lead to his identification with the Antichrist.

The human resources department told Mr. Butcher to explain why he needed a religious accommodation. Mr. Butcher wrote a letter, citing verses from the Book of Revelation and explaining his view that the hand-scanner would associate him with the Mark of the Beast, causing him through his will and actions to serve the Antichrist. He ended the letter with the statement:

As a Christian I believe it would not be in the best interest of a Christian believer to participate in the use of hand scanner. Even though this hand scanner is not giving a number or mark, it is a device leading up to that time when it will come to fruition, and in good faith and a strong belief in my religion, I would not want to participate in this program.

Consol gave Mr. Butcher a letter from the manufacturer of the scanner assuring that the scanner can't detect or place a mark “—including the Mark of the Beast—on the body of a person.” The manufacturer of the scanner offered its own interpretation of the Scriptures explaining that the Mark of the Beast is associated only with the right hand or the forehead. Therefore, use of the left hand in the scanner would not violate anyone's religious beliefs.

Consol's internal email said: “[L]et's make our religious objector use his left hand.” Consol told Mr. Butcher he could scan his left hand. Mr. Butcher went “back to the scriptures again” and prayed. He then told the supervisors that “in good conscience [he] could not go along with this system of scanning [his] hand in and out.” So the human relations department handed Mr. Butcher a copy of the disciplinary procedures and promised it would be enforced against him if he refused to scan his left hand. The fourth missed scan “would result in suspension with intent to discharge.”

Mr. Butcher got the message: “If I didn't go along with the hand scan system, their intent... was to fire me.” He responded to the ultimatum by tendering his retirement. He said he didn't want to retire “and, well, almost practically just begged them to keep my job.”

The Equal Employment Opportunity Commission (“EEOC”) provided the employer with Revelation!

The EEOC sued, alleging that Consol violated Title VII of the Civil Rights Act of 1964 by failing to accommodate Butcher's religious beliefs and constructively discharging him. The jury found all three elements of a Title VII “reasonable accommodation claim.” First, Mr. Butcher had sincere religious beliefs conflicting with the requirement that he use a hand scanner. Second, Mr. Butcher had told the employer of the conflict. Third, the employer “constructively discharged” Mr. Butcher for refusing to cooperate with the hand scanning. The jury awarded \$150,000.

The judge then held a further evidentiary hearing. “The court awarded Butcher \$436,860.74 in front and back pay and lost benefits, and issued a permanent injunction against Consol, requiring Consol to refrain from future violations of Title VII's reasonable accommodation provision and to provide management training on religious accommodations.”

The Fourth Circuit Court of Appeals said it was not for it “to question the correctness or even the plausibility of Butcher's religious understandings.” The Court said that the employer's evidence that the Book of Revelation indicates that the Mark of the Beast must be a physical mark, placed either upon the right hand or the forehead, didn't matter. It also didn't matter that Mr. Butcher's pastor disagreed with the interpretation of scripture by Mr. Butcher. It didn't matter whether Mr. Butcher “may have misunderstood the Book of Revelation or the significance of the Mark of the Beast....” The Court stated: “[I]t is not for us to say that the line [the religious objector] drew was an unreasonable one.” All that is required is “sufficient evidence” that the “beliefs are sincerely held.”

Lessons learned.

Try to accommodate the religious beliefs and practices of employees whether you think they are correct or even plausible. The only times that an employer should deny reasonable religious accommodations to employees is when the requested accommodations would not be feasible or when the requested accommodations would impose “undue hardships” on company operations. Even in such situations, check with your employment lawyer first.