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Navigating Employment Law for "Christian Owned and Operated" Businesses

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Abstract

Tens of thousands of individual businesses across the United States fervently profess they are "Christian owned and operated". The law protects these businesses' right to make such a declaration. However, by making a public faith statement, leaders of these businesses fear they are inviting attention from activists who object to their religious stance. Regardless of this perception, repeated violations of the law make it clear faith-focused businesses are taking actions that are creating genuine legal liability. One area of acute vulnerability is employment law. Declaring religious values is permissible, but merely the perception employment decisions have been guided by faith tenets could expose an organization to lawsuits. Navigating employment law while still staying true to their Christian identity presents a unique challenge to so-called Christian owned-and-operated businesses. It is therefore crucial the leaders of these organizations understand what the law requires, how to stay compliant while exercising their own religious rights, and how to best protect themselves from damaging legal action. This study conducted an extensive literature review to synthesize lessons and advice from both the latest academic literature and case law to develop a set of pragmatic guiding principles all Christian owned-and-operated businesses should apply for employment practices and policy.

Keywords

Title VII, Religion in Business, Employment Law, Religious Freedom, Business Ethics

1. Introduction

Across the United States, there are tens of thousands of individual businesses that openly advertise themselves as "Christian owned and operated" (Christians

in Business, n.d.). As of October 2022, one online listing service included over 55,000 businesses. There are numerous such local, online, and church-hosted directories across the country for small businesses. In addition, many large, well-known, for-profit companies openly embrace Christian values. This includes Hobby Lobby, Tyson Foods, Chick-fil-A, Forever 21, In-N-Out Burger, Alaska Air, and Interstate Batteries.

Publicly professing a business aligns with Christian beliefs and is a protected right. This right has been successfully defended in court on numerous occasions (Gregory, 2011). However, many business leaders fear by making a public faith statement, they are also making themselves a target for activists (New York Families, 2019; Piper, 2019). Even if this perception of vulnerability is false, it is clear, either out of ignorance or willful defiance, Christian business leaders are taking actions that are not in compliance with the law, creating genuine exposure to liability (EEOC, n.d.).

One of the areas of vulnerability that has emerged is employment law. While declaring Christian values is permissible, it could cause questions about a company's motives regarding employment decisions, exposing them to lawsuits (Gregory, 2011). Given the persistently high rate of religious discrimination claims (EEOC, n.d.), it is vital so-called Christian owned-and-operated businesses understand what the law requires, how to ensure compliance, and how to best protect themselves from damaging legal action.

While there are published guides on this topic, they generally come from non-scholarly or partisan sources. For example, Alliance Defending Freedom (n.d.), a legal organization built to defend religious rights and support certain Christian political goals, such as the end of legalized abortion, publishes *An employer's guide to faith in the workplace* (Alliance Defending Freedom, 2018). These types of guides are not meant to be objective in their presentation, but rather to support organizational agendas. There is an acute need for scholarly, validated, unbiased guidance. This study is aimed towards that gap.

This article begins with an introduction to the relevant law, as a grounding to the reader. It then reviews five operating principles, based on lessons synthesized from both the latest academic literature and case law. These pragmatic, guiding principles for employment practice and policy are each illustrated with example cases. The article concludes with recommendations that go beyond the basic requirements of the law to point faith-focused businesses towards inclusive, pluralistic cultures.

2. Relevant Law

2.1. First Amendment

The First Amendment of the United States' Constitution begins, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" (U.S. Const. amend. I, n.d.). The fact the first words of the Bill of Rights to the U.S. Constitution, ratified in 1791, were designed to protect reli-

gious freedom, suggests the concept's importance to America's founders. Religious freedom is therefore sometimes described as Americans' *first freedom* (Curry, 1986). However, the founders' intent with these words has been fiercely debated.

The original draft of the First Amendment, written by James Madison, stated, "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretence, infringed" (Gales, 1834: p. 451). Madison's original, more expansive wording helps to illuminate the founders' intent. The First Amendment was designed to ensure no citizen received a preferred status due to their religious beliefs or practices. The focus was on religious equality, not just freedom. Under the First Amendment, all religious freedom is protected equally, and there is therefore no conflict between equality and freedom (Hicks, 2003).

Madison's prohibitions were shorted to just 10 words in the final version of the First Amendment, creating what is now known as the *establishment clause*. The philosophy reflected in these words is sometimes referred to as the *separation of church and state*, an unfortunate turn of words that is often misunderstood. Legal scholars today agree America's founders did not intend to exclude religion from public discourse (Garry, 2004) or even to prevent the government from encouraging the practice of religion. At the time, congressional leaders attended church services in the capitol building and public schools taught religion. Instead, the First Amendment forbids laws from being passed that hold up one religion over another (Constitution Annotated, n.d.).

The next few words of the First Amendment, known as the *free exercise clause*, restrict the government from enacting laws infringing upon citizens' rights to freely practice their religion. Like the establishment cause, these words apply only to governments, a fact that was later clarified by the passage of the Religious Freedom Restoration Act (RFRA) in 1993. In the founders' time, large business organizations were rare, and it would have been difficult to separate the values of a company's owners from its operations. Today, many companies effectively establish a religion, with faith-based mission statements or company logos containing religious symbolism. This rarely raises concern or even attention. If anything, the First Amendment protects a company's right to do so (Alliance Defending Freedom, 2018).

In fact, given the First Amendment only places restraints on government action, not businesses, it would be easy to conclude it has no relevance for private businesses. It affords individuals and businesses some protection from government intervention (Griffin, 2015), but says little about internal company policies. However, when one particular religion, such as Christianity, is given some sort of preferred status at a company, violating the First Amendment's principle of religious equality, it can become problematic. This is not just a First Amendment rights issue, but also a problem of *discrimination* (Gregory, 2011). The

combination of the freedoms provided by the First Amendment and the civil rights protections of Title VII can set up a difficult tension for Christian owned-and-operated businesses.

2.2. Title VII

After the end of the Civil War, passage of the Thirteenth and Fourteenth Amendments to the U.S. Constitution abolished slavery and promised all citizens equal protection of the law. The Civil Rights Act of 1875 then went further, requiring equal treatment in public accommodations, public transportation, and jury duty. This law foreshadowed issues that would haunt the United States well until the 1960s, from seating on municipal buses to service at restaurants (Avins, 1966). However, by 1883 the legislation had been nullified. In a series of cases, the Supreme Court ruled the Fourteenth Amendment did not empower the government to prohibit discrimination by private individuals or businesses (Civil Rights Cases, 1883).

By the 1930s, legal theory had begun to shift. Today it is broadly accepted the federal government has the authority to intervene in the affairs of private businesses. For instance, numerous health and safety laws protect the rights of workers to be treated humanely. These laws are enforced based on what is known as the *Commerce Clause* in Article I, Section 8 of the U.S. Constitution, which gives Congress the authority to regulate interstate commerce (Leuchtenburg, 1996).

The Civil Rights Act of 1957 was the first attempt to enact federal civil rights protections since 1875. In response to a Supreme Court ruling against desegregation of public schools, this law was narrowly intended to protect African-American voting rights. It was followed by the Civil Rights Act of 1960, which sought to close loopholes in the 1957 law. Both of these laws were largely ineffective (Klarman, 2004). Finally, however, in response to continued civil unrest, a bill introduced by late President John F. Kennedy became the farther-reaching Civil Rights Act of 1964.

The Civil Rights Act of 1964 is composed of 11 titles, each with numerous sections. Titles II and VII are particularly important to the business world, because they effectively created new statutory rights that protect citizens from acts by private individuals and businesses. Title II ended discriminatory practices that limited customer access and service at various business establishments, based on race, color, religion, or national origin. At the time, such practices were not only common, but also often mandated by local government authorities. Title VII then addressed the internal operations of businesses, establishing prohibitions against discrimination in employment decisions. It also created a new federal commission, the Equal Employment Opportunity Commission (EEOC), to enforce the Title's requirements (Back, 2020).

Title VII has two major themes. It first demands employers eliminate any form of discrimination based on race, color, religion, sex, or national origin

from all employment decisions. It then demands employers make attempts to accommodate the beliefs and practices of their workers, even when a conflict arises between those practices and the worker's job duties (Gregory, 2011). In the context the law was initially passed, it is clear the impetus for the law was racial disparities in employment. However, since 1964, employment issues surrounding religion, ethnicity, and sex (including gender identity) have also been heavily litigated. This has resulted in an abundance of clarifying case law, along with numerous amendments, including in 1972, 1978, 1991, and 2009 (Back, 2020).

The Title VII protections against religious discrimination apply to all employers with more than 15 employees, except explicitly religious institutions and some nonprofit private-membership organizations. The First Amendment does not allow the government to interfere with the internal workings of religious organizations. Therefore, Title VII generally allows religious groups, including schools, churches, and other ministerial nonprofits, to discriminate on the basis of religion, although not on the basis of gender, race, or national origin (Gregory, 2011). The exemption does extend to some businesses, if they exist strictly to support and proliferate a particular Christian denomination. However, the connection must be very clear. In addition, particular roles in a secular business may require religious qualifications. Title VII allows for *bona-fide occupational qualifications* (BFOQ) in these rare instances. A common example is a counselor or chaplain hired to serve to a specific religious group (Back, 2020). Note simple preference for a particular religion, no matter how fervent, is not sufficient for a BFOQ exemption (EEOC (Equal Employment Opportunity Commission) v. Kamehameha School, 1993).

Title VII protection extends to specific, identifiable classes of individuals in the case of sex, race, or national origin. This is not true in the case of religion. Religion extends across all these classes and is not always as clearly identifiable (Gregory, 2011). The 1972 amendment to Title VII defined religion as "all aspects of religious observance and practice, as well as belief" (Equal Employment Opportunity Act, 1972: p. 103). This definition is intentionally broad. The Equal Employment Opportunity Commission has stated it will not confine the definition of religious practices to the realm of traditional religious concepts, but instead will also consider any strongly-held moral and ethical precepts honestly held with the strength of orthodox religious views. In practice, the courts rarely question the sincerity of a person's asserted religious beliefs, unless that person clearly acts inconsistent with those beliefs (Gregory, 2011).

Title VII of the Civil Rights Act of 1964 sets up some challenging dilemmas. The Act makes it clearly illegal to discriminate based upon religion with regards to any terms of employment. This includes hiring, firing, promotion, or any other employment decisions, such as compensation or training. Employers are further burdened with the duty to accommodate religious practices and expression, up to the point accommodation would cause undue hardship to the con-

duct of business (Gregory, 2011). Experts have highlighted the tension that has thus been created between two competing legal interests: 1) Freedom of speech and religious expression, guaranteed businesses by the First Amendment; 2) Freedom from religious harassment or discrimination, guaranteed employees by Title VII (Schopf, 1997). This tension is what Christian owned-and-operated businesses must learn to successfully navigate.

One dilemma involves the concept of undue hardship. The amended version of Title VII passed in 1972 states employers are required to provide reasonable accommodation for their worker's religious observances unless the employer can demonstrate doing so creates an "undue hardship" (Equality Employment Opportunity Act, 1972: p. 103) on their business. Of course, what sort of accommodation is considered reasonable, and at which point the costs of doing so become an undue hardship, are unclear, and have been the subject of much litigation (Schopf, 1997). After 50 years of testing, it has become clear the courts will only accept a proposed accommodation causes undue hardship if the employer can unequivocally demonstrate actual financial costs have been incurred, not merely on the basis of speculation they may occur. Employers are not expected to violate legal agreements, such as union contracts. Furthermore, employees requesting accommodation are expected to cooperate with their employer and fellow employees. This means they cannot insist on an accommodation which isn't reasonably available without disrupting the employer's business, nor can they demand actions that would negatively impact their coworkers' rights (Gregory, 2011).

Title VII's prohibitions against religious harassment can also create dilemmas. The Act ensures employees are provided a pleasant work environment free of discriminatory intimidation or insult (Schopf, 1997). This is an area of risk for Christian owned-and-operated businesses. When little space has been left for any non-Christian employees to safely express their own individual faiths, or when it has been made clear these employees' religion is viewed as something lesser than Christianity, it is reasonable for these employees to have concerns (Hicks, 2003). If a worker is subjected to repeated harassment, intimidation, ridicule, degradation, or oppression of their religious beliefs or commitments, this is generally considered a violation of the first section of Title VII, as it alters the conditions of employment. These cases typically hinge on the severity of harassment and its persistence over time (Gregory, 2011).

The imprecise way Title VII defines religion obviously this leaves an opportunity for people to take advantage of Title VII to claim discrimination against an adverse employment decision based on less-than-genuine religious positions. In addition, the evidence suggests workers have become more aware of their rights under Title VII, so even as employers have grown more adept at navigating their legal responsibilities, the variety of circumstances they have been forced to manage have broadened. Concurrently, the cases facing the courts have become more complex (Gregory, 2011). This should cause concern for Christian owned-and-

operated businesses. However, the courts have made it clear they will not allow Title VII to be abused by employees who think it will simply protect them from any comment or situation they find offensive. This is not the case. An employer cannot be held liable if they aren't aware of an apparent conflict between an employee's beliefs and their work circumstances. They must at least provide sufficient information that an employer can seek accommodation. Nor can an employer be found liable for stray comments that don't reflect a pattern of discriminatory decisions or rise to the level of creating a hostile work environment (Back, 2020). Remarks that are merely condescending or inappropriate, particularly when they are made by non-managerial coworkers, rarely justify a court case (Gregory, 2011).

Title VII is well known and established, so it is rare for an employer to overtly discriminate in employment decisions. To do so would be foolhardy. Therefore, cases based on direct evidence are rare. More commonly, discrimination cases involve some form of indirect evidence. When an employer is accused of religious bias, they almost invariably claim their employment decisions were based on some other, legitimate reason. The burden of proof then passes to the worker. If the worker can show the reason given by the employer is not credible, then the courts will assume the employer was attempting to hide their actual, discriminatory reasons. The primary job of a plaintiff's attorney becomes to show the employer's stated reasons for making an adverse employment decision are false or not trustworthy. If the explanation is false, then discrimination is inferred (Gregory, 2011). This process is known as the *McDonnell-Douglas rule*, based on 1973 Supreme Court case (Green, 1999). The approach has made the legal landscape more difficult for employers to navigate, but also offers some lessons for how Christian owned-and-operated businesses can protect themselves against potential lawsuits. Fortunately, the Religious Freedom Restoration Act offered some clarity about the boundaries of the government's right to intervene in private businesses.

2.3. RFRA

In 1993, the Religious Freedom Restoration Act (RFRA) was passed in an impressively bipartisan fashion. The law was a direct response to Employment Division v. Smith (1990), a Supreme Court case involving the state of Oregon and Native American plaintiffs. Two Native American addiction counselors had been fired from their jobs after it was discovered they had participated in a religious ceremony involving peyote, an illegal drug. The state denied the plaintiffs unemployment benefits, causing them to sue for protection under the free exercise clause of the First Amendment. The Supreme Court sided with the state of Oregon (FindLaw, 2016).

The Employment Division v. Smith (1990) case involved an important legal principle. Historically, the courts had been highly deferential to plaintiffs seeking protection under the First Amendment of their religious rights. However, in a

6-3 decision, the Supreme Court ruled an individual's religious beliefs cannot excuse them from complying with valid, neutrally-applied laws in areas the government has the authority to regulate. The majority expressed concern that providing discrete religious exemptions from federal law could result in chaos and confusion. The minority, however, asserted when fundamental rights are at issue, the highest standard of *strict scrutiny* should be applied by the courts. This standard requires the government to prove not only that there is a compelling state interest that outweighs the burden placed on the citizen, but also that the law or regulation is narrowly tailored to achieve that interest (FindLaw, 2014).

RFRA was passed to reestablish the standard of strict scrutiny in cases involving religious rights. Under RFRA, laws of neutral or general applicability affecting the free exercise of religion must be narrowly tailored to meet a compelling government interest (Griffin, 2015). RFRA thus becomes a defense anytime government action infringes upon an individual or businesses' religious exercise. One example is the famous Burwell v. Hobby Lobby Stores (2014) case. Hobby Lobby is a business closely-held by a Catholic family who asserted their business is organized around the principles of the Christian faith. They thus objected to the Affordable Care Act's (ACA) mandate that employers provide paid healthcare that specifically includes access to abortion-inducing drugs. Citing RFRA, the Supreme Court ruled the ACA's contraceptive mandate created a substantial burden that is not the least restrictive method of satisfying the government's interests, and so exceptions must be allowed for religious organizations, even if they are for-profit corporations.

Originally, RFRA was intended to apply to both states and the federal government, but in 1997 the Supreme Court ruled the law was an intrusion into state authority and was not valid with respect to state law (Griffin, 2015). Following this ruling, 21 states then adopted their own version of the law. This reflects the initial popularity of the concept. After near-unanimous bipartisan passage through Congress, RFRA was signed into law in 1993 by a Democratic President, Bill Clinton. However, by the early 2000s the political winds had shifted and RFRA laws had become highly controversial. They were frequently viewed as a Republican effort to thwart LGBT rights. Proponents of the laws noted they were targeted to restrict governmental action and therefore should not impact individual rights. However, opponents suggested the laws could lead to discrimination by companies who could simply claim they were acting according to their own religious tenets, and the government would be blocked from intervening (Miller, 2018).

While RFRA laws are not directly employment laws, they do interact with those laws, and have complicated the picture. Even the EEOC's own compliance manual remarks on this complication (EEOC, 2021). The tension created by the First Amendment's protections and Title VII's prohibitions against discrimination has already been highlighted. RFRA has now become a defense. Christian owned-and-operated businesses could be tempted to assert the government

cannot interfere if they decided to discriminate in their employment decisions on the basis of religion (Brennan, 2018). So far, this has not proven true, as will be shown in case law.

3. Methodology

At this point it should be apparent that while the laws at the intersection of religious freedom and employment are robust, they are also often unclear and incomplete. They provide a foundation and starting point, but are insufficient on their own to guide the particulars of organizational policy. To achieve this level of detail, we must rely on case law (Gregory, 2011; Brennan, 2018). Holes in employment law could easily cause Christian owned-and-operated businesses to stumble. Fortunately, decades of court cases have helped to slowly define boundaries of the law and to refine our understanding. This then allows for a few basic operating principles to be extrapolated.

To construct these principles, a systematic review was first conducted of both academic and legal sources. In January of 2021, a Boolean search was executed in leading business and legal scholarly databases for any reference to employment law and religion, including ProQuest's ABI/INFORM Collection, EBSCO's Business Source Complete, EBSCO's Academic Search Complete, HeinOnline, and LexisNexis. This returned hundreds of potential articles, studies, and case analyses. This collection was further narrowed by relevance, recency, and source credibility. Since the study focuses on the U.S. legal environment, contemporary American scholarly sources were favored. Non peer-reviewed industry sources were only included as context, as they often seek to advance a given agenda. Content from the remaining sources was then curated into categories and redundancies were removed. This information was ultimately distilled into five operating principles, which are presented below. Each of these principles is supported by an example case, illustrating the principle in action.

4. Operating Principles

4.1. Do Not Make Employment Decisions Based on Religious Practices or Beliefs

In a recent case, a funeral home fired an employee after they were informed the front-line worker intended to transition from male to female. The funeral home was part of a closely-held corporation who claimed the termination decision had been made due to the owner's sincerely-held religious beliefs. The company felt to support the employee amounted to an endorsement of their actions. Furthermore, they feared backlash from customers who expected the funeral home to lead religious services. When the EEOC filed suit on the terminated employee's behalf, the company asserted RFRA prohibited the EEOC from taking action against them (Shaw, 2018). On Appeal, the Sixth Circuit held the restrictions against the funeral home's free exercise of religion did not meet the standards of strict scrutiny in RFRA. The company had not been asked to endorse or

support the transgender employee's behavior and could not preemptively assume customer bias would have any significant financial impact. Furthermore, the EEOC was defending a compelling government interest in eradicating all forms of employment discrimination. Enforcing Title VII was judged the least restrictive means available for doing so. These rulings were later upheld by the Supreme Court (Harris Funeral Homes v. EEOC, 2020). After a six-year court battle, the funeral home paid a $250,000 settlement and was required to revise its policies and provide anti-discrimination training to its employees (EEOC, 2020).

Perhaps this seems an overly obvious point, but it is an important place to start: Christian owned-and-operated businesses should not discriminate in employment decisions based on religion, nor should they discriminate based on race, color, national origin, or sex, including gender identity. Neither the First Amendment nor RFRA will protect those who claim they are discriminating as an act of free religious exercise. A basic philosophy of the U.S. system of government is each individual is free to make their own choices and act according to their own conscience. However, this freedom extends only up to the point an individual's behavior violates the agency and rights of others. This same principle applies to organizations (Gregory, 2011). Therefore, as a general rule, religious freedom does not mean Christian owned-and-operated businesses have the right to be discriminatory with their employment decisions.

According to the EEOC, legal cases of overt discrimination like this are unusual (EEOC, 2021). However, there is reason to believe the number of Title VII cases filed for religious discrimination understates the magnitude of the problem. One survey showed only two percent of organizations had been involved in a religious discrimination suit, but a third of HR leaders had been involved in a workplace dispute involving religion (Grossman, 2008). A 2013 study showed 55 percent of U.S. respondents believed religious discrimination and bias were commonplace, with 21 percent claiming they had personally experienced it in some form (Tanenbaum Center for Interreligious Understanding, 2013). Most claims of religious discrimination are settled outside the court room, perhaps explaining the discrepancy (Gregory, 2011). This may be particularly true when straight-forward discrimination is involved since the legal result is rather predictable. Christian owned-and-operated businesses should take this as clear instruction.

4.2. Robustly Document Non-Religious Reasons for All Employment Decisions

In Tillery v. ATSI, Inc. (2003), the plaintiff, Darla Tillary, alleged her employer, ATSI, had improperly terminated her due to her refusal to conform to her supervisor's religious beliefs. Her immediate supervisor was Christopher Miller, the founder and sole owner of this small company. Miller was a practicing Catholic and frequently invited Tillary to his church. After she and her husband attended a service, he then repeatedly asked why they had not come again, pressured they were making a mistake by not attending, and suggested Tillary pray

about it. Miller expressed strong opinions about Tillary's previous divorce, noting she wouldn't be allowed to join the Catholic Church as a divorced woman. He placed rosary beads and religious pamphlets near her office, asked her to pass them out, then recommended she take some home to her family. Whenever Miller and Tillary discussed personal issues, Miller habitually recommended prayer and that Tillary needed to get into church. In July 2000, Miller wrote on Tillary's formal performance appraisal she should, "keep going to church, seek God lst[;] all other things will come". When Tillary was terminated in January 2001, Miller wrote in her termination letter the decision had been made "after great prayer to God". He closed the letter, "Your Brother in Christ" and, in a postscript, wrote "I strongly suggest you talk with God, just take some time by yourself and talk with him, no formal prayers required. If you'd like the Lord's prayer always helps me to open up to our heavenly Father." He then added citations to the Lord's Prayer in scripture.

Under the McDonnell-Douglas rule, a plaintiff bears the initial burden of establishing a case of discrimination. If successful, discrimination is then presumed, and the burden shifts to the employer to demonstrate legitimate, non-discriminatory reasons for their actions (Green, 1999). Unfortunately for the defendant, in Tillery v. ATSI, Inc. (2003), Miller's written words and actions provided ample evidence and religious discrimination was reasonable to infer. However, the company claimed Tillary had been terminated not for religious reasons, but due to incompetence and negligence. One of Tillary's duties was to prepare and send invoices. A few days before her termination, a coworker discovered hundreds of thousands of dollars of original invoices that had never been presented to customers. The defendant presented an affidavit to the court from a customer validating this fact. While Tillary asserted her innocence, the court, citing several other cases, noted they cannot act as a personnel department. Even if the company had terrible decision-making processes and terminated her in error, this would not support her claim she was the victim of religious discrimination. The case was summarily dismissed.

Despite the apparent fear many Christian owned-and-operated businesses have of being abused by false accusations of religious discrimination (Alliance Defending Freedom, 2018), workers will not be successful with these claims with the EEOC or in court unless they can provide evidence the employment decisions made against them were made for reasons other than what the employer claims. This can be easily solved by implementing robust processes for employment decision making and carefully documenting the rationale behind any action. Most adverse employment actions are the result of poor performance. In order to win a discrimination case, the affected worker would have to provide evidence to contradict this assertion. If the employer has done even a reasonable job of documenting the employee's performance record, and assuming it is legitimately and persistently below others in similar roles, the worker has virtually no chance of moving a discrimination claim forwards (Gregory, 2011).

4.3. Proactively Disseminate Policies on Religious Discrimination and Expression

In 1993, Kenneth Weiss alleged his former employer, REN Laboratories, had terminated him solely due to his religious beliefs. Weiss contended he was required, as a matter of his Christian faith, to share his beliefs with others. By all reports, he did so frequently and aggressively, resulting in numerous complaints from his coworkers. He acknowledged as a supervisor he had a duty to ensure his employees were not subjected to a hostile work environment and that he understood the company's policies against harassment. Nevertheless, he persisted. This included repeatedly condemning two homosexual women, confronting others about their lifestyles, attempting to convert a Muslim subordinate, laying hands on unwilling employees, and distributing Bibles and refusing to take them back. After repeated verbal and written warnings, REN Laboratories finally fired Mr. Weiss. He then sued for protection under Title VII (Weiss v. REN Laboratories of Florida, 1999).

Weiss had placed his employer in a difficult position. Title VII does protect his right to express his religious beliefs, but only to a point. Once his coworkers made it clear his advances were unwanted, even offensive, he was required to stop (Gregory, 2011). REN Laboratories was at risk of losing employees to resignation and also of being sued for tolerating a religiously hostile work environment. Under Title VII, they had not only the right, but also a legal duty to take action to keep the workplace free of religious harassment. The company was able to present to the court their employee handbook, which prohibited harassment of any type. Mr. Weiss had been trained on these policies. Testimony by coworkers verified these policies were well understood. Ultimately, they helped protect the company against Weiss' unmerited lawsuit (Weiss v. REN Laboratories of Florida, 1999).

The fact written, well-communicated policies on religious discrimination, expression, harassment, and accommodation help protect a company from lawsuits should be a strong incentive (Hicks, 2003). However, studies have shown shockingly few companies have developed such policies as part of their diversity initiatives or ethics training. One study found only two percent of companies surveyed by the Society of Human Resource Managers had an explicit policy on religious discrimination or expression. Most companies simply include it in the list of protected categories in their diversity training, without addressing religion specifically. It is perhaps easier to focus on ostensibly-observable characteristics, like race, than differing worldviews (Grossman, 2008). Self-declared Christian owned-and-operated businesses should be especially wary of making such a mistake, as such declarations will naturally heighten employees' awareness of religious issues.

As the Weiss v. REN Laboratories of Florida (1999) case illustrates, employers are liable for the actions of their employees, especially those in managerial roles. It is therefore only prudent to develop policies on religious discrimination, ex-

pression, harassment, and accommodation, and then to proactively train all employees on those policies. Although it seems to be popular opinion (New York Families, 2019), religion is not inescapably divisive or dangerous in the workplace. Instead, what unites or divides is the way beliefs are communicated and the way workers behave towards each other. To create a healthy, pluralistic environment, organizations need to determinedly engage in efforts to design policies and to build a culture that encourages employees to safely express their own identities (Hicks, 2003). Attempting to avoid the subject is only asking for trouble.

Through formal policies and training, as well as through informal behavioral norms and culture, organizations define what is expected of a good employee with regards to religion (Pfeffer, 2003). Ultimately, it is actions, not their perceived religious or other motivations, which must adhere to minimal standards to avoid coercion or degradation of employees (Hicks, 2003). Recommendations for appropriate policies can be found elsewhere, but numerous examples are readily available to serve as guides for Christian owned-and-operated businesses (Kendall, 2019). For instance, in August of 1997, the Clinton administration issued a 15-page document titled *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace*. The document was created by a diverse committee of government and religious leaders (Stout, 1997). Over time this document has come to be viewed as a strong example of a workplace policy regarding religion (Tanenbaum Center for Religious Understanding, 2013).

4.4. Provide Inclusive, Supportive Accommodation for Religious Beliefs and Practices

In one of the best-known cases involving religious accommodation, 19-year-old Umme-Hani Khan sued her employer, Abercrombie and Fitch, after they fired her for wearing a hijab, a headscarf required by her Muslim religion. This was actually the second time Abercrombie and Fitch had been sued over this exact issue with the support of the EEOC. Khan was employed at the company for only four months. Initially she was told her headscarf was acceptable as long as she wore company colors. However, later she was asked by a district manager to no longer wear the headscarf at all. She refused, was suspended, and then terminated (Durrani, 2012).

Abercrombie and Fitch's stores are known for having a strict dress code informally known as "the look" (Gerdeman, 2018). CEO Michael Jeffries had previously argued all employees, including those who don't directly interact with customers, like Khan, were effectively sales models, and their appearance was important to the company's brand. In court, however, this argument was quickly rejected. Judges in the case found the company had offered only unsubstantiated evidence and personal opinion that Khan's headscarf represented some kind of undue hardship on their operations. They were fined and required to revise their policies (EEOC & Khan v. Abercrombie and Fitch, 2013).

While Abercrombie and Fitch does not claim to operate on religious principles, this case describes an issue faced many Christian owned-and-operated businesses. Companies are often working to present and manage a certain brand image, and for self-declared Christian businesses, their brand is religious. Meanwhile, Title VII requires businesses to work diligently to accommodate the religious beliefs and practices of their employees, even when those practices directly conflict with the employee's job responsibilities or the stated values of the organization (Gregory, 2011). This is an example of how U.S. law can create difficult balancing acts for some employers. Multiple court cases have affirmed even if an employee openly disagrees with the company's religious guiding principles, it cannot affect any decisions about the employee's performance evaluation or standing in the organization (Alliance Defending Freedom, 2018).

It should be noted accommodation does not mean exclusion. A popular secular viewpoint is that religion is a private matter, so it should be excluded from public settings entirely. This is a tempting approach, because it seems to be fair and equitable (Hicks, 2003). In reality, however, many employees have made religious commitments that require them to overtly express their beliefs in the workplace. Furthermore, religion is central to many people's identities. If managers fail to enact policies that allow workers to express themselves in a mature, peaceable manner, then it will likely happen anyway, just in a less-productive fashion. Religiosity has a wide range of expressions in the workplace, and for the most part, these expressions are protected by law (Mitroff & Denton, 1999; Hicks, 2003).

Modern management practice has already acknowledged that to get the best out of employees, at minimum accommodation must be made for needs that extend beyond the workplace. Day care centers, flextime, job-sharing, spousal benefits, and family leave programs all recognize the value of providing for workers' non-work needs. This philosophy should extend to religious commitments, and the law supports this viewpoint (Rhodes, 2003). Employers are expected to not simply tolerate, but to actually support their employees' religious commitments and practices, even when this requires significant inconvenience or cost (Gregory, 2011; Hicks, 2003).

As previously mentioned, Title VII requires religious accommodation up to the point of undue hardship, but what qualifies as undue hardship is unclear and has been heavily litigated (Gregory, 2011). Legal guidance for religious accommodation based on past case precedents is instructive for organizational leaders, but only in a limited sense (Hicks, 2003). The courts have frequently found an employer's genuine efforts to accommodate a worker's religious commitments simply didn't go far enough. Christian owned-and-operated businesses should be prepared they may have to endure substantial hardship before it could dependably be labeled as undue by the legal system.

The EEOC & Khan v. Abercrombie and Fitch (2013) example illustrates the type of issues Christian owned-and-operated businesses should expect to face.

Dress codes and personal appearance are one of the most common sources of religious discrimination complaints. The courts have repeatedly held if the employee notifies their employer these issues are a matter of religious conviction, not just a personal preference, they are protected. The employer must make accommodation and cannot take action against the employee unless they can show a compelling reason, such as safety. Employers claiming religious symbols or dress are simply disruptive or unprofessional have consistently lost those legal arguments (Gregory, 2011).

Other common issues include work hours, spontaneous or scheduled prayer times, proselytization, and the distribution or display of religious scriptures and paraphernalia.

This does not mean all practices and commitments must be honored. Standards can be put in place to exclude clearly degrading or oppressive commitments, regardless of their genesis (Hicks, 2003). However, failing to reasonably accommodate religious practices and commitments could be deemed as hostility towards religion, which Title VII protects against. This can create yet another challenge for employers, who admirably desire to protect employees against religious harassment and to prevent their workplace from becoming polarized. The results of various court cases have been mixed (Schopf, 1997; Brennan, 2018).

Christian owned-and-operated businesses often wish to hold company-sponsored religious events, such as worship services, or to actively encourage their employees to participate in outside church events. As a general statement, this is protected religious expression. Companies are allowed to hold religious ceremonies, to open or close meetings with prayer, to pass out information on religious topics, and to invite employees to church meetings. However, there is a legal risk involved, because if not handled properly, all these behaviors could become material or perceived forms of religious harassment or discrimination. The law is clear that workers have rights, including not only the right to bring their religious values with them when they enter the workforce, but also the right not to be religiously bullied or harassed (Gregory, 2011). Expression of religious beliefs can create a hostile work environment, and coworkers should not be forced to accept such activity, if reasonable alternatives exist (Schopf, 1997). This means if a company chooses to sponsor religious events and activities, they must be purely optional, with no repercussions for lack of participation. They must be offered in a non-threatening manner. If an employee raises legitimate objections to any behavior directed at them, such as proselytization, that behavior should cease immediately. Better yet, Christian owned-and-operated businesses should consider offering alternative activities and events that support non-Christian beliefs and practices (Hicks, 2003).

4.5. No Retaliation of Any Form for Claims or Concerns

In the summer of 1983, Brown Transportation Company (BTC) began printing Bible verses on all their outgoing checks. Stephen Sopher, a Jewish employee,

was reportedly offended by the verses printed on his paychecks. He complained to his immediate supervisor and asked for the verses to be removed. His supervisor then consulted with his managers, who elected not to act on the complaints, but did suggest Sopher put his concerns in a letter to the company owner. In January of 1984, the company started a newsletter that included articles with Christian content. Stopher again complained to his supervisor. These complaints continued as the company issued additional newsletters with religious connotations in March, April, and May. Sopher expressed that he simply felt religion should not be part of business communications and asserted he would object even if the messages supported his own religious beliefs. In June 1984, Sopher was abruptly terminated (Brown Transport v. Human Relations Commission, 1990).

Sopher filed a complaint with the Pennsylvania Human Relationship Commission, which following an investigation, pursued the case on his behalf. Sopher claimed he had been terminated due to his Jewish religion and had been subjected to religious harassment. BTC responded they had fired Sopher due to his inconsistent performance and poor attitude. However, up until only two months before he was fired, Sopher's documented performance reviews were excellent and made no mention of his complaints. As the case progressed, Sopher added he had been unlawfully retaliated against due to his objections. It was this final claim that caused BTC to lose the case. Sopher received back pay plus interest (Brown Transport v. Human Relations Commission, 1990).

While this is an older case, there are many lessons to be learned from Brown Transport v. Human Relations Commission (1990). For instance, the company's failure to document any non-religious reasons to justify their decisions against Sopher assured they had little chance for success in court. Regardless, the deciding issue in the case was the fact BTC had retaliated against Sopher. As previously explained, printing and distributing Bible verses or newsletters with religious content is permissible. BTC was not forcing their employees to support religious activities and their behavior hardly rose to the level of harassment. When BTC fired Sopher for his protests, however, they crossed a legal line. Sopher also has rights, including the right not to be retaliated against for expressing his religious beliefs (Alliance Defending Freedom, 2018).

Over 30 percent of all cases filed under Title VII include claims not just of discrimination, but also of retaliation. When a worker notifies their employer of potential discrimination, it is considered a protected action (Gregory, 2011). Unfortunately, many employers are reacting emotionally and unwisely to such accusations, striking back. It appears while human resource professionals and others trained in employment law are well aware retaliation is unlawful, many of the managers actually supervising employees are not (Hicks, 2003). This has led to a number of Title VII cases where the employer was vindicated of any discrimination, but still lost the case due to retaliation from the claim (Gregory, 2011).

To win a retaliation case, the employee doesn't have to show discrimination. They simply need to provide evidence their complaint of discrimination was made in good faith, and they then suffered adverse employment consequences as a result. Furthermore, the Supreme Court has ruled very little damage must be done to an employee for it to be considered retaliation. If the action taken by the employer would serve to dissuade victims even minimally from bringing forward complaints in the future, it is considered retaliation (Gregory, 2011). It is critical Christian owned-and-operated employers learn this simple lesson: If an employee expresses any concerns about infringement on their religious rights, no retaliation of any kind is acceptable.

5. Beyond the Law

Operating according to the five principles outlined above should help a Christian owned-and-operated business navigate the tension between their First Amendment free exercise rights and their employees' Title VII statutory rights against discrimination. However, it would be hard to claim this minimal ground as success. Most American companies already take defensive measures to prevent overt religious discrimination and to shield themselves from legal risk (Hicks, 2003). If a company was genuinely striving to live up to the moral principles of Christianity, however, it would go beyond legal mandates. Instead, it would seek to operate in a manner consistent with building up the human spirit of their workers, regardless of their personal religious beliefs (Pfeffer, 2003).

Successfully dealing with religious issues in the workplace ultimately requires mutual respect. When issues reach the courts, it usually means one party or the other failed to approach the dispute with genuine goodwill (Gregory, 2011). Christian business owners and managers should certainly be allowed to live out their faith in their workplaces. However, it must be recognized any unifying institutional response towards religion will inevitably offend or marginalize others. Promoting any particular religious practice means some employees will understand their viewpoint is not the preferred one, but our goal should be to treat all employees respectfully as moral equals (Hicks, 2003).

One well-respected example of an operational model that strives for this goal comes from Douglas Hicks (2003). Hicks' model of *respectful pluralism* is based on "the presumption of inclusion, with limiting norms" (p. 173). He proposed workers should be allowed to fully express all aspects of their identities by default, subject only to behavioral norms established to protect workers from forceful coercion, degradation, or marginalization. These limiting norms should be consistent, whether addressing workers' religious, gender, political, or other identities. Workers are not expected to compartmentalize their lives. Instead, the burden shifts to organizations. In effect, the standard of strict scrutiny is applied to the company's policies (Griffin, 2015). Policies that restrict behavior are only justified when they advance compelling moral interests and when they are narrowly tailored to achieve those interests.

True pluralism requires intentional effort by an organization (Eck, 2001). Instead, many workers put enormous energy into conforming, shaping their character, perceptions, and expectations, to fit the preferred orientation of their organization (McKnight, 1984). Compelling anyone to behave in a manner that is inconsistent with their self-identity not only creates stress and consumes energy, but also effectively devalues them. It sends a message the organization does not value who they are as a person and prefers something different, which they are tacitly elevating as superior (Pfeffer, 2003). If this is not reason enough for Christian owned-and-operated businesses to carefully consider how they treat non-Christian employees, then perhaps they should remember an employer's history of treating workers unfairly or unequally is often presented as evidence of their intent in court. This can turn jurors against employers, who often identify with the mistreatment from their own experiences (Gregory, 2011).

6. Conclusion

The five operating principles outlined above, collectively, ensure some level of protection for Christian owned-and-operated businesses. They should provide reassurance to the owners of these businesses that they can safely function, while staying true to their religious values, within the confines of the law. However, laws at the intersection of religious freedom and employment are often unclear and incomplete. As a result, this is a rapidly developing area of law. It should be noted that by the time this article reaches publication, case law will likely have moved the boundaries once again.

There are several cases already in the pipeline that seek to clarify the margins of the narrow exemptions and exceptions allowed for religiously affiliated businesses. For example, in a case jointly filed by a church and a private, for-profit business, the plaintiffs sought to better define what types of institutions could be categorized as religious, and therefore qualify for exceptions from Title VII rules (Bear Creek Bible Church v. EEOC, 2021). This case will likely be elevated to the conservative Supreme Court which has been supportive of religious freedoms (EBIA, 2021), and could have important implications for the applicability of Title VII to Christian owned-and-operated businesses.

While the results of this study should be applicable to most U.S.-based, religiously focused businesses, specific circumstances could change the calculus. As always, when in doubt, the best advice is to seek the counsel of a knowledgeable attorney. Future studies will be necessary as the case law progresses, refining boundaries and definitions. Hopefully, this article helped provide a foundation from which future studies could be built. In the meantime, all businesses, regardless of religious affiliation, should ardently strive for a culture of mutual respect and understanding grace.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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