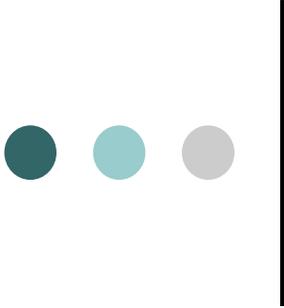




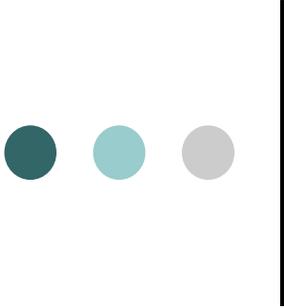
Religious Garb and Grooming in the Workplace:

**Rights and
Responsibilities Under
Title VII of the Civil
Rights Act of 1964**



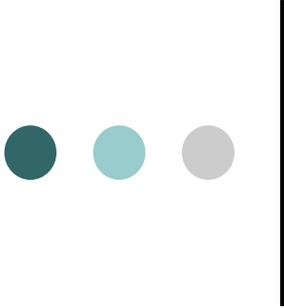
Presentation Outline

- What employers does the law apply to?
- What is religious garb & grooming?
- What is prohibited?
 - *Disparate Treatment*
 - *Segregation*
 - *Denial of Reasonable Accommodation Unless it Poses Undue Hardship*
 - *Retaliation*
 - *Religious Harassment*
- Case Examples
- Frequent Questions and Practical Compliance Advice



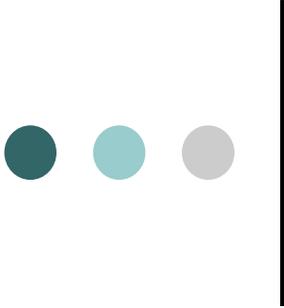
Religious Discrimination Under Title VII – What employers does the law apply to?

- Private, state, and local government employers with at least 15 employees
- Federal government agencies
- Employment agencies
- Unions



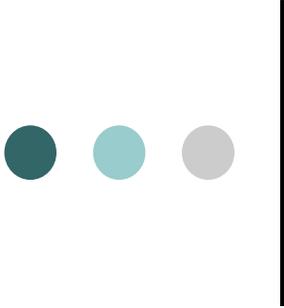
Title VII Provisions

- **Section 703:** It is unlawful for covered entities to discriminate against an employee or applicant for employment because of religion.
- **Section 701(j):** The term religion includes **all aspects of religious observance, practice and belief**, unless an employer shows that it cannot reasonably accommodate the employee's practice without undue hardship on the conduct of the business.



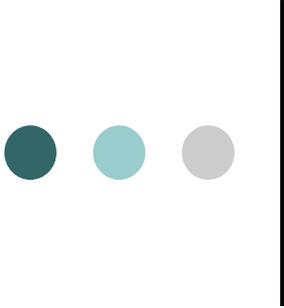
“All Aspects of Religious Observance, Practice, and Belief”

- Title VII applies to a wide range of religious beliefs and practices (e.g., scheduling time off or shift changes to accommodate attending worship services or Sabbath observance).
- This presentation focuses only on religious garb and grooming.
- See the resources listed at the end of this presentation for more information about workplace rights and responsibilities involving other religious practices.



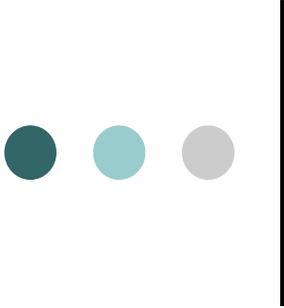
What Is a “Garb and Grooming” Practice?

- **Wearing religious clothing or articles** e.g., a Muslim hijab (headscarf), a Sikh turban, or a Christian cross
- **Observing a religious prohibition against wearing certain garments** e.g., a Muslim, Pentecostal Christian, or Orthodox Jewish woman's practice of not wearing pants or short skirts
- **Adhering to shaving or hair length observances** e.g., Sikh uncut hair and beard, Rastafarian dreadlocks, or Jewish peyes (sidelocks)
- **Wearing a religious object or a religious marking**



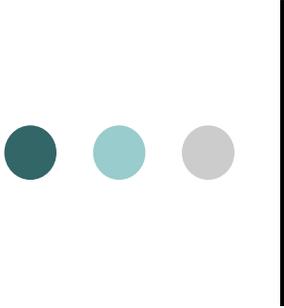
What is Considered “Religious” Under Title VII?

- “Religious” beliefs and practices under Title VII are not limited to established and organized faiths such as Christianity, Judaism, Islam, Hinduism, and Buddhism. “Religious” also includes, for example:
 - Atheist or agnostic beliefs, or an absence of religious belief
 - Beliefs that are new, uncommon, not part of a formal church or sect
 - Beliefs that are only subscribed to by a small number of people, or which are idiosyncratic, even if they seem illogical or unreasonable to others
 - Theistic or non-theistic moral or ethical beliefs as to what is right or wrong that are sincerely held with the strength or traditional religious views



Is a Garb and Grooming Practice Religious?

- Determining whether a practice is religious turns not on the nature of the activity, but on the employee's motivation.
- *Examples: beards, dreadlocks, tattoos, modest clothing*
 - *Could be protected as "religious" under Title VII if worn for religious reason*
 - *Not protected under Title VII if worn for fashion or other secular reason*



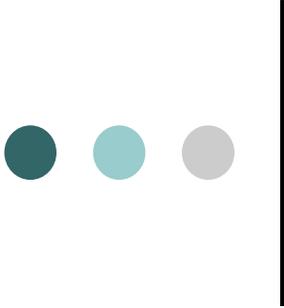
Disparate Treatment

- Title VII prohibits disparate treatment based on religious garb and grooming, including with respect to:
 - Recruitment, Hiring, and Promotion
 - Discipline and Discharge
 - Compensation and other terms, conditions, or privileges of employment



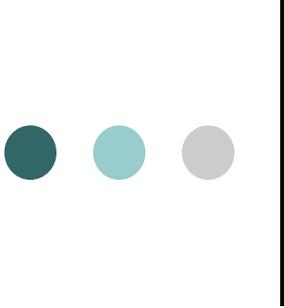
Example: Disparate Treatment and Customer Preference

- Adarsh, who wears a turban as part of his Sikh religion, is hired to work at the counter in a coffee shop. A few weeks after Adarsh begins working, the manager notices that the work crew from the construction site near the shop no longer comes in for coffee in the mornings. When the manager makes inquiries, the crew complains that Adarsh, whom they mistakenly believe is Muslim, makes them uncomfortable in light of the anniversary of the September 11th attacks. The manager tells Adarsh that he will be terminated because the coffee shop is losing the construction crew's business.
- ***Does this constitute unlawful discrimination?***



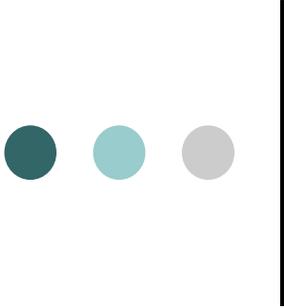
Segregation

- Title VII also prohibits workplace or job segregation based on religious garb and grooming practices.



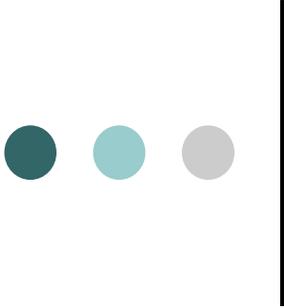
Example: Segregation

- Nasreen, a Muslim applicant for an airport ticket counter position, wears a headscarf, or hijab, pursuant to her religious beliefs.
- Although Nasreen is qualified, the manager fears that customers may think an airport employee who is identifiably Muslim is sympathetic to terrorist hijackers. The manager, therefore, offers her a position in the airline's call center where she will only interact with customers by phone.
- This is religious segregation and violates Title VII.



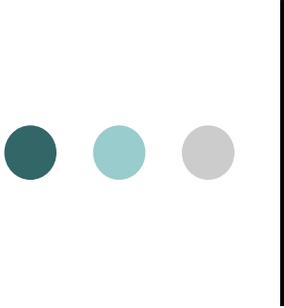
Religious Accommodation: Exceptions to Dress and Grooming Codes

- Making an exception to the employer's usual dress code or grooming code is a religious accommodation under Title VII.
- When an employer's dress and grooming policy or preference conflicts with an employee's known **sincerely held religious beliefs or practices**, the employer must make an exception unless it would pose an undue hardship on the operation of the business.
- An employer may hold other employees to the usual dress and grooming rules and expectations.



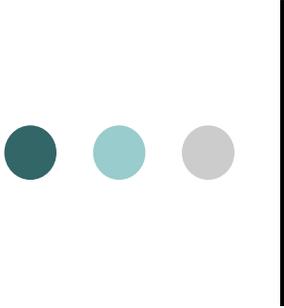
Religious Accommodation: “Sincerely Held” Religious Beliefs or Practices

- Like the "religious" nature of a belief or practice, the "sincerity" of an employee's stated religious belief is usually not in dispute in religious discrimination cases.
 - Don't automatically assume that a belief is not sincere because the belief or degree of observance changed over time, or the religious practice is novel.
- If an employer legitimately questions whether a particular belief or practice for which accommodation is requested is sincere and is religious, the employer may ask for information reasonably needed to evaluate the request.



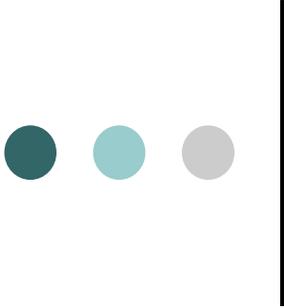
Example: “Sincerely Held” Religious Belief

- Afizah is a Muslim woman who has been employed as a bank teller at the ABC Bank for six months. The bank has a dress code prohibiting tellers from wearing any head coverings. Although Afizah has not previously worn a religious headscarf to work at the bank, her personal religious practice has been to do so during Ramadan, the month of fasting that falls during the ninth month of the Islamic calendar. The fact that Afizah adheres to the practice only at certain times of the year does not mean that her belief is insincere.



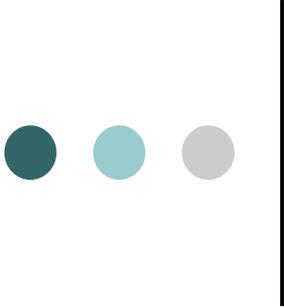
Undue Hardship

- Under Title VII, the Supreme Court has ruled that a religious accommodation poses an “undue hardship” if it would pose “more than a *de minimis* burden” on the operation of the business. *Trans World Airlines, Inc. v. Hardison* 432 U.S. 63 (1977).
- Undue hardship is a case-by-case, fact -specific determination.
- The Title VII “undue hardship” defense to religious accommodation is much lower (i.e., easier for an employer to show) than the “undue hardship” defense to disability accommodation under the American with Disabilities Act (ADA).
 - By contrast, under the ADA, “undue hardship” is defined in the statute as “significant difficulty or expense.”



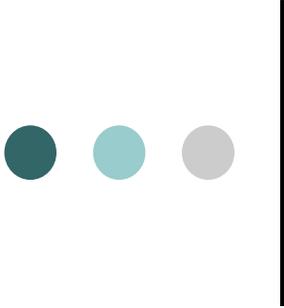
Undue Hardship (cont'd)

- Facts such as impairing workplace safety or a violation of another law could provide the basis for an undue hardship claim.
- Co-workers' disgruntlement or jealousy does not provide the basis for undue hardship, nor does customer preference.
- If an employee's proposed accommodation would pose an undue hardship, the employer should explore alternative accommodations.



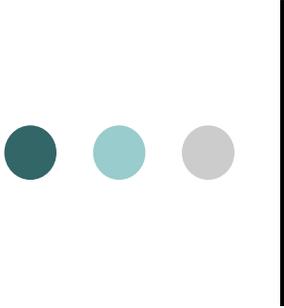
How Does an Employer Know To Consider a Religious Accommodation?

- Typically, the employer will advise an applicant or employee of its dress code or grooming policy, and subsequently the applicant or employee will indicate that an exception is needed for religious reasons.
- Applicants and employees will not know to ask for an accommodation until the employer makes them aware of a workplace requirement that conflicts with their religious practice.



How Does an Employer Know? (cont'd)

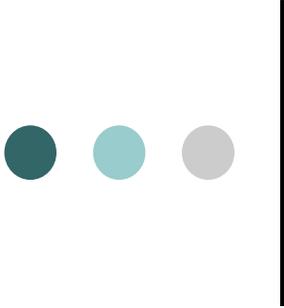
- The applicant or employee need not use any "magic words" to make the request, such as "accommodation" or "Title VII."
- If the employer reasonably needs more information, however, the employer and the employee should discuss the request.
- In some instances, even without a request, it is obvious that the practice is religious and conflicts with a work policy, and therefore that accommodation is needed.



Example: Employer Knowledge

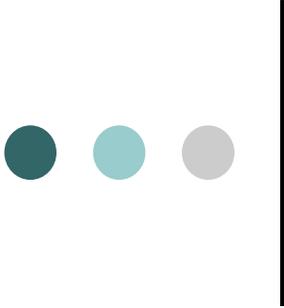
- James is hired based on an online application and a telephone interview. When he arrives the first day with an unshorn beard, his supervisor informs him of the company's "clean-shaven" policy, and tells him he must comply or be terminated.
- James refuses to shave, but fails to inform his supervisor that he wears his beard for religious reasons. He is fired.

Does James have a viable claim for denial or religious accommodation?



Example: Employer Knowledge 2

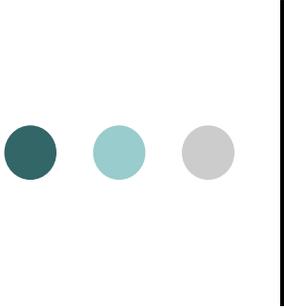
- Aatma, an applicant for a rental car sales position who is an observant Sikh, wears a chunni (religious headscarf) to her job interview.
- The interviewer does not advise her that there is a dress code prohibiting head coverings, and Aatma does not ask whether she would be permitted to wear the headscarf if she were hired.
- The manager believes that the headscarf is a religious garment, presumed it would be worn at work, and refused to hire her because the company requires sales agents to wear a uniform with no additions or exceptions. *What result?*



Example: Is Covering Religious Attire at Work an Accommodation?

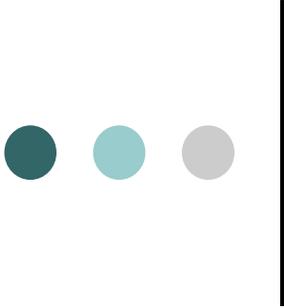
- Edward practices the Kemetic religion, an ancient Egyptian faith, and affiliates himself with a tribe numbering fewer than ten members.
- He follows the faith's concept of Ma'at, a guiding principle regarding truth and order that represents physical and moral balance in the universe. During a religious ceremony he received small tattoos encircling his wrist, written in the Coptic language, which express his servitude to Ra, the Egyptian god of the sun.
- When his employer asks him to cover the tattoos, he explains that it is a sin to cover them intentionally because doing so would signify a rejection of Ra.

Is allowing the tattoos to be worn if covered a reasonable accommodation?



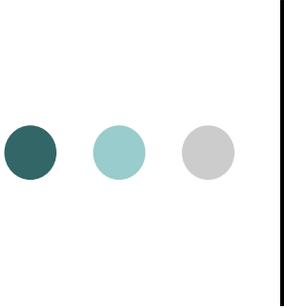
Example: Corporate “Image” and Religious Accommodation

- Jon, a clerical worker who is an observant Jew, wears tzitzit (ritual knotted garment fringes at the four corners of his shirt) and a yarmulke (or skull cap) in conformance with his Jewish beliefs. XYZ Temps places Jon in a long-term assignment with one of its client companies.
- The client asks XYZ to notify Jon that he must remove his yarmulke and his tzitzit while working at the front desk, or assign another person to Jon's position.
- According to the client, Jon's religious attire presents the "wrong image" and also violates its dress code prohibiting any headgear and requiring "appropriate business attire."
- If XYZ Temps complies with the client's request, it will violate Title VII.



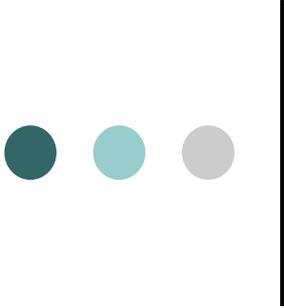
Example: Corporate “Image” 2

- Tahera, an applicant for a retail sales position at a national clothing company that carries current fashions for teens, wears a headscarf in accordance with her Muslim religious beliefs. Based on its marketing strategy, the company requires sales personnel to wear only clothing sold in its stores, and no headgear, so that they will look like the clothing models in the company's sales catalogues.
- Although the company believes that Tahera wears a headscarf for religious reasons, the company does not hire her because it does not want to make an exception.
- ***Does this violate Title VII?***



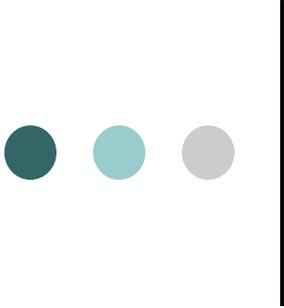
What About Government Agencies Whose Employees Work with the Public?

- Government agency employers, like private employers, must generally allow exceptions to dress and grooming codes as a religious accommodation.
- There may be limited situations in which the need for uniformity of appearance is so important that modifying the dress or grooming code would pose an undue hardship.
- Therefore, it is advisable in all instances for employers to make a case-by-case determination of any needed religious exceptions.



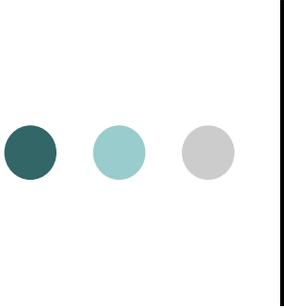
Example: Public Employee

- Elizabeth, a librarian at a public library, wears a cross as part of her Catholic religious beliefs. In addition, after church services she attends on Ash Wednesday each year, Elizabeth arrives at work with a black ash mark on her forehead in the shape of a cross, which she leaves on until it wears off. Her new supervisor directs her not to wear the cross in the future while on duty, and to wash off the ash mark before reporting to work.



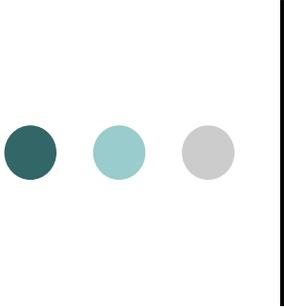
Example: Public Employee (cont'd)

- Because Elizabeth's duties require her to interact with the public as a government employee, the supervisor fears that her cross and ash mark could be mistaken as government endorsement of religion in violation of the Establishment Clause of the First Amendment to the U.S. Constitution. He cites the need to avoid any appearance of religious favoritism by government employees interacting with the public, and emphasizes that librarians must be viewed as impartial with respect to any information requests from library patrons.
- ***Has the supervisor violated Title VII?***



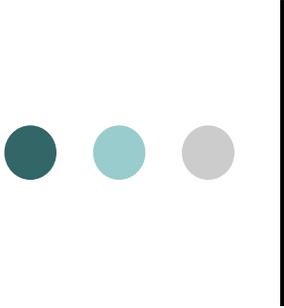
Example: Public Employee 2

- Gloria, a newly hired municipal bus driver, was terminated when she advised her supervisor during new-employee orientation that due to the tenets of her faith (Apostolic Pentecostal), she needs to wear a skirt rather than the pants required by the transit agency dress code.
- Absent evidence that the type of skirt Gloria must wear would pose an actual safety hazard, no undue hardship would have been posed by allowing this dress code exception, and Gloria's termination would violate Title VII.



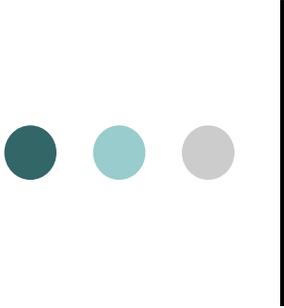
Safety, Security, or Health Concerns

- Safety, security, or health concerns can justify denial of accommodation *if the practice actually poses an undue hardship on the operation of the business.*
- The employer should not assume that the accommodation would pose an undue hardship.
- In many instances, there may be an available accommodation that will permit the employer to provide accommodation without more than a minimal burden on safety, security, and health, and thereby avoid undue hardship.



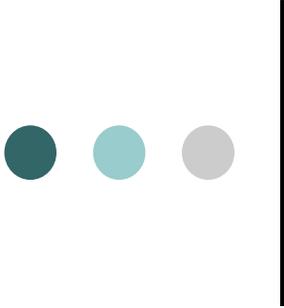
Example: Long Hair

- David wears long hair pursuant to his Native American religious beliefs. He applies for a job as a server at a restaurant that requires its male employees to wear their hair "short and neat." When the restaurant manager informs David that if offered the position he will have to cut his hair, David explains that he keeps his hair long based on his religious beliefs and offers to wear it in a ponytail or held up with a clip.
- The manager refuses this accommodation and denies David the position because he has long hair. Since David could have been accommodated without undue hardship by wearing his hair in a ponytail or held up neatly with a clip, the employer violated Title VII.



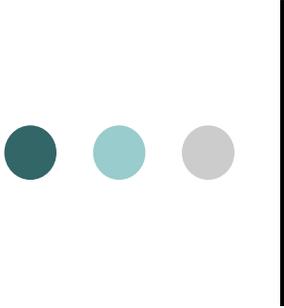
Example 1: Facial Hair

- Prakash, who works for CutX, a surgical instrument manufacturer, does not shave or trim his facial hair because of his Sikh religious observance. When he seeks a promotion to manage the division responsible for sterilizing instruments, his employer tells him that he must shave or trim his beard because it may contaminate the sterile field. All division employees are required to be clean shaven and wear a face mask. When Prakash explains that he does not trim his beard for religious reasons, the employer offers to allow Prakash to wear two face masks instead of trimming his beard.
- Prakash thinks that wearing two masks is unreasonable and files a Title VII charge. CutX will prevail because it offered a reasonable accommodation that would eliminate Prakash's religious conflict with the hygiene rule.



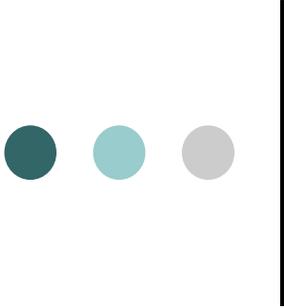
Example: Facial Hair 2

- Raj, a Sikh, interviews for an office job. At the end of the interview, he receives a job offer but is told he will have to shave his beard because all office staff are required to be "clean shaven" to promote discipline.
- Raj advises the hiring manager that he wears his beard unshorn because of his Sikh religious practice. Since no undue hardship is posed by allowing Raj to wear his beard, the employer must make an exception as an accommodation.



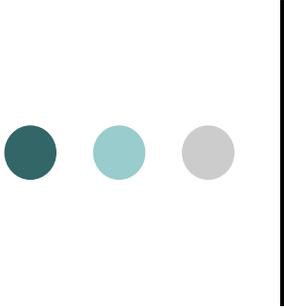
Example: Clothing Requirements Near Machinery

- Mirna alleges she was terminated from her job in a factory because of her religion (Pentecostal) after she told her supervisor that her faith prohibits her from wearing pants as required by the company's new dress code. Mirna requested as an accommodation to be permitted to continue wearing a long but close-fitting skirt.
- Her manager replies that the dress code is essential to safe and efficient operations on the factory floor, but there is no evidence regarding operation of the machinery at issue to show that close-fitting clothing like that worn by Mirna poses a safety risk.
- ***What result?***



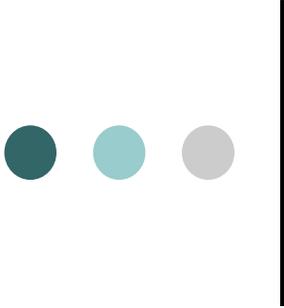
Example: Head Coverings That Pose Security Concerns

- A private company contracts to provide guards, administrative and medical personnel, and other staff for state and local correctional facilities.
- The company adopts a new, inflexible policy barring any headgear, including religious head coverings, in all areas of the facility, citing security concerns about the potential for smuggling contraband, interfering with identification, or use of the headgear as a weapon.
- ***Does this pose a problem under Title VII?***



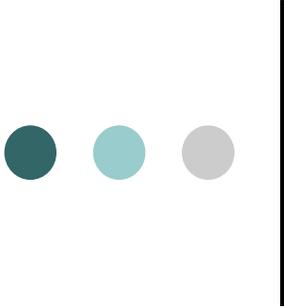
Example: Kirpan

- Harvinder, a Sikh who works in a hospital, wears a small (4-inch), dull, and sheathed kirpan (symbolic miniature sword) strapped and hidden underneath her clothing, as a symbol of her religious commitment to defend truth and moral values.
- When Harvinder's supervisor, Bill, learned about her kirpan from a co-worker, he instructed Harvinder not to wear it at work because it violated the hospital policy against weapons in the workplace.
- Harvinder explained to Bill that her faith requires her to wear a kirpan in order to comply with the Sikh code of conduct, and gave him literature explaining that the kirpan is a religious artifact, not a weapon. She also showed him the kirpan, allowing him to see that it was no sharper than the butter knives found in the hospital cafeteria. Nevertheless, Bill told her that her employment at the hospital would be terminated if she continued to wear the kirpan at work.
- ***Has Bill's decision violated Title VII?***



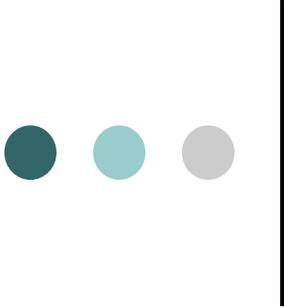
Retaliation

- Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, which includes requesting religious accommodation.
- Protected activity may also include opposing a practice the employee reasonably believes is made unlawful by one of the employment discrimination statutes, or filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the statute.



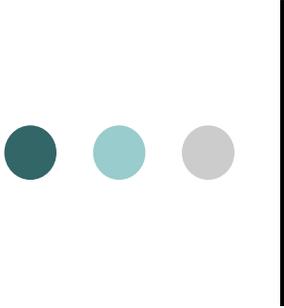
Example: Retaliation for Requesting Accommodation

- Salma, a retail employee, requests that she be permitted to wear her religious headscarf as an exception to her store's new uniform policy. Joe, the store manager, refuses.
- Salma contacts the corporate headquarters, which instructs Joe that in the circumstances there is no undue hardship, and that he must grant the request.
- Motivated by reprisal, Joe shortly thereafter gives Salma an unjustified poor performance rating and denies her request to attend training that he approves for her co-workers. This violates Title VII.



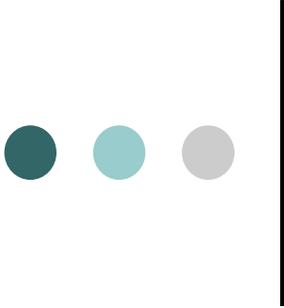
Harassment

- When an employee is required or coerced to abandon, alter, or adopt a religious practice as a condition of employment, it may be actionable as either disparate treatment or harassment under Title VII.
- Religious harassment may also occur when an employee is subjected to unwelcome statements or conduct based on religion.
- Harassment may include offensive remarks about a person's religious beliefs or practices, or verbal or physical mistreatment that is motivated by the victim's religious beliefs or practices.



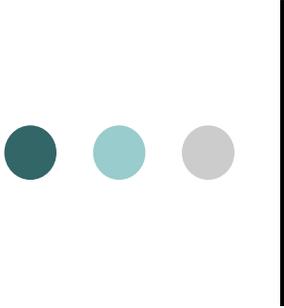
Example: Co-Worker Harassment

- XYZ Motors, a large used car business, has several employees who are observant Sikhs or Muslims and wear religious head coverings. A manager becomes aware that an employee named Bill regularly calls these co-workers names like "diaper head," "bag head," and "the local terrorists," and that he has intentionally embarrassed them in front of customers by claiming that they are incompetent. Managers and supervisors who learn about objectionable workplace conduct based on religion or national origin are responsible for taking steps to stop the conduct by anyone under their control.



Compliance Tips

- Train managers to allow employees to wear a religious head covering or other religious garb absent undue hardship, even if it requires making an exception to a dress code or uniform policy.
- Train managers that the law does not permit employment decisions related to religious garb and grooming to be made based on “customer preference.” Emphasize that employers are not permitted to assign an employee to a non-customer contact position because of “customer preference.
- Train all staff to avoid stereotyping based on religious dress and grooming.
- Do not assume that atypical dress will create an undue hardship; consider accommodation requests based on the facts.



Resources for Additional Information

- **Religious Garb and Grooming in the Workplace: Rights and Responsibilities**
www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm
- **Fact Sheet on Religious Garb and Grooming In the Workplace**
www.eeoc.gov/eeoc/publications/fs_religious_garb_grooming.cfm

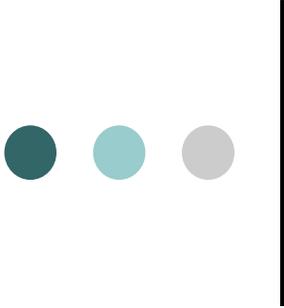
Resources (cont'd)



**EEOC Compliance Manual:
Religious Discrimination (2008)**
*[www.eeoc.gov/policy/docs/
religion.html](http://www.eeoc.gov/policy/docs/religion.html)*

**Questions and Answers:
Religious Discrimination in the
Workplace (2008)**
*[www.eeoc.gov/policy/
docs/qanda_religion.html](http://www.eeoc.gov/policy/docs/qanda_religion.html)*

**Best Practices for Eradicating
Religious Discrimination in the
Workplace (2008)**
*[www.eeoc.gov/policy/docs/
best_practices_religion.html](http://www.eeoc.gov/policy/docs/best_practices_religion.html)*



Resources (cont'd)

- **Guidelines on Religious Discrimination**
29 CFR Part 1605
- **Questions and Answers About Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians, and Sikhs**
www.eeoc.gov/eeoc/publications/backlash-employer.cfm
- **Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the Equal Employment Opportunity Laws**
www.eeoc.gov/eeoc/publications/backlash-employee.cfm