



U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, DC 20507

FEB - 3 2015

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Tim Walberg  
Chairman  
Subcommittee on Workforce Protections  
Committee on Education and the Workforce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Kline and Chairman Walberg:

This is in response to your January 12, 2015 letter regarding the Equal Employment Opportunity Commission (“EEOC” or “Commission”) question-and-answer publication entitled, *Religious Garb and Grooming in the Workplace: Rights and Responsibilities* and accompanying fact sheet. These publications, issued on March 6, 2014, are not enforcement guidance, but rather technical assistance documents. Such documents contain no new policy; they simply explain and apply existing law and policy in user-friendly terms as part of EEOC's ongoing outreach and education efforts. As such, they are not voted upon by the full Commission, but rather approved by the Chair for direct issuance.

The 2014 religious garb and grooming publications are based on the Commission’s *Compliance Manual on Religious Discrimination*, [www.eeoc.gov/policy/docs/religion.html](http://www.eeoc.gov/policy/docs/religion.html), which was unanimously approved at a public Commission meeting on July 22, 2008 by a full five-member bipartisan Commission, led by then-Chair Naomi Earp, with the advice and counsel of then General Counsel Ronald S. Cooper and Legal Counsel Reed Russell. In the development of the Compliance Manual, the staff and various Commissioners met with a wide range of stakeholders in both 2003 and again in 2008. These meetings included providing stakeholder groups with an overview of the issues that such a Compliance Manual might address, including review and discussion of Commission positions taken in litigation, and providing an opportunity for stakeholder input, questions, and reactions. All viewpoints were considered as part of the Commission’s deliberative process.

Representatives from the following organizations attended the 2003 meetings: AFL-CIO; Agudath Israel of America; American Jewish Committee; American Jewish Congress; American

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Civil Liberties Union; Americans United for Separation of Church and State; Anti Defamation League; Association of Corporate Counsel; Baptist Joint Committee; Christ African Theological Institute; Christian Legal Society; Church of Scientology International; Church of Jesus Christ of Latter Day Saints; D.C. Catholic Conference; Equal Employment Advisory Council; Evangelical Lutheran Church of America; Family Research Council; the Joint Baptist Committee; General Conference of Seventh Day Adventists; Hindu Temple; Institute on Religion and Public Policy; International Brotherhood of Electrical Workers; Islamic Supreme Council of America; Lawyers Committee for Civil Rights Under Law; Lutheran Office for Government Affairs; National Association of Evangelicals; National Association of Manufacturers; National Conference for Community and Justice; National Council of Churches; the National Education Association; National Sikh Center; National Federation of Independent Businesses; People for the American Way; Presbyterian Church U.S.A.; representatives from a law firm representing building and construction trade unions; Service Employees International Union; Sikh Media Watch and Resource Task Force; Society for Human Resource Management; Soka Gakkai International; Southern Baptist Convention; U.S. Conference of Catholic Bishops; U.S. Chamber of Commerce; UAW; Union of Orthodox Jewish Congregations of America; United Methodist Church; United Hindu and Jain Temples; and Washington Buddhist Vihara.

Representatives from the following groups attended the 2008 meetings: AFL-CIO; Agudath Israel of America; American Center for Law and Justice; American Federation of Teachers; American Humanist Association; American Jewish Committee; American Islamic Congress; American Red Cross; Americans United for Separation of Church and State; Association of Corporate Counsel; Baptist Joint Committee; B'nai B'rith; Center for Islamic Pluralism; Christ African Theological Institute/Covenant Baptist Church; Church of Jesus Christ of Latter-day Saints; Church of Scientology International; Equal Employment Advisory Council; Evangelical Lutheran Church of America; General Conference of Seventh-day Adventists; Hindu American Foundation; Human Rights Campaign; Institute on Religion and Public Policy; Int'l Brotherhood of Electrical Workers; IUE-CWA (Communication Workers of America); Lawyers' Committee for Civil Rights Under Law; National Education Association; National Federation of Independent Business; National Women's Law Center; People for the American Way; Planned Parenthood Federation of America; Sikh American Legal Defense and Education Fund; Sikh Coalition; Society for Human Resource Management; Union of Orthodox Jewish Congregations of America; United Sikhs; U.S. Chamber of Commerce; and U.S. Conference of Catholic Bishops.

The new 2014 educational materials responded to continuing long-term trends in discrimination charge receipts indicating the need for ongoing technical assistance regarding garb and grooming issues. Because the EEOC's Title VII charge receipts over nearly 20 years demonstrate a persistent uptick in religious discrimination charges that continues unabated, we continually look for ways to improve our education and outreach on this topic. In fiscal year

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2013, the Commission received 3,721 charges alleging religious discrimination (representing 4% of overall charge receipts), more than double the 1,709 charges received in fiscal year 1997 (when religious discrimination charges represented only 1.5% of overall charge receipts). A significant proportion of these charges involve meritorious claims related to religious garb and grooming. Focused outreach on this topic therefore addressed a clear need for continued education and compliance support on these issues.

Moreover, the new 2014 materials responded to stakeholder requests for further outreach and education on this particular topic. Such requests came from a range of religious groups and civil liberties stakeholders, including the Sikh Coalition, the American Jewish Committee, the Anti-Defamation League, the Interfaith Alliance, and the Muslim Public Affairs Council, with whom our General Counsel and Legal Counsel met to hear about their concerns, as well as from Congress itself (see enclosed responses to inquiries from Representatives Chu, Cleaver, and Gonzalez, as well as from Senator Udall's staff).

The 2014 question-and-answer document cites to representative consent decrees obtained by the Commission, and also provides practical advice and examples for stakeholders on disparate treatment, segregation, harassment, accommodation, and retaliation issues arising from the religious garb and grooming practices of applicants and employees. The accompanying fact sheet provides an additional short but informative and effective resource, especially for small business owners and other stakeholders seeking cost-free compliance advice and training materials. These and other technical assistance materials are effective and popular tools helping employers avoid discrimination problems in their workplaces.

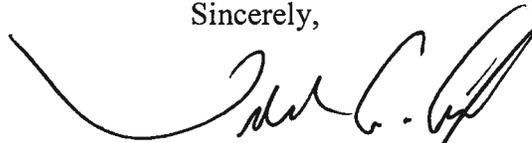
The process followed here is the same that the Commission under previous chairs has used for many years to provide stakeholders with user-friendly educational materials that promote and explain the application of previously-adopted policy guidance. For example, in addition to formal guidance documents under the Americans with Disabilities Act, the EEOC has developed a wide range of fact sheets, question-and-answer documents, and other technical assistance publications to help employees and employers understand the legal issues and to provide case examples and practical compliance advice. See [www.eeoc.gov/laws/types/disability.cfm](http://www.eeoc.gov/laws/types/disability.cfm) (scroll down to "Available Resources"). Similarly, at the time the current *Compliance Manual on Religious Discrimination* was issued in 2008, accompanying technical assistance materials covering this general topic were also published by EEOC. See *Questions and Answers: Religious Discrimination in the Workplace*, [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*, [www.eeoc.gov/policy/docs/best\\_practices\\_religion.html](http://www.eeoc.gov/policy/docs/best_practices_religion.html). As a law enforcement agency, the EEOC has an obligation to assist employers in understanding and complying voluntarily with the law, and that is a chief purpose of these technical assistance materials. EEOC fact sheets and

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question-and-answer documents simply summarize and highlight existing law and Commission-approved policy in a format that is easy for the public to use.

The Commission appreciates your inquiry about the process and considerations leading to issuance of these new technical assistance materials. We hope that this information is helpful to you. We look forward to continuing to work with Congress to ensure the nation's workplaces are free of discrimination.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Cox". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Todd A. Cox, Director  
Office of Communications  
and Legislative Affairs

Enclosures



U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, DC 20507

OCT 21 2011

Office of the Chair

The Honorable Judy Chu, PhD  
U. S. House of Representatives  
Washington, D.C. 20515

Dear Congresswoman Chu:

Thank you for your letter dated April 15, 2011, to the Commissioners and General Counsel of the U.S. Equal Employment Opportunity Commission, in which the Congressional Tri-Caucus requested written guidance from the EEOC addressing two court decisions in which Title VII was interpreted in ways that permitted employers to segregate visibly religious employees and job applicants from customers and the general public. *See Birdi v. UAL Corp.*, 2002 WL 471999 (N.D. Ill. Mar. 26, 2002) (unpublished); *Ali v. Alamo Rent-a-Car, et al.*, 2001 WL 218788 (4th Cir. Mar. 6, 2001) (unpublished).

The EEOC has long taken the position that assigning employees to non-customer contact positions because of their religious garb violates Title VII. This position has been expressly articulated in the Commission's policy guidance, and vigorously enforced through successful litigation. The EEOC Compliance Manual on Religious Discrimination (2008) expressly provides that "a denial of accommodation claim can be brought if the employer could have provided an accommodation absent undue hardship that did not disadvantage a term, condition, or privilege of employment, but did not do so. For example, if a Muslim employee is transferred to a non-customer service position because she refuses to stop wearing a religiously mandated headscarf, she states a claim for denial of accommodation under Title VII." (citing *Draper v. U.S. Pipe & Foundry Co.*, 527 F.2d 515 (6th Cir. 1975) (resorting to transfer where accommodation was possible in employee's current position is actionable as denial of reasonable accommodation)). The Commission has pursued lawsuits involving exclusion of employees wearing religious garb from customer contact positions, as well as situations in which employers require an employee to hide his religious garb, marking, or article of faith in order to remain in a customer service position. *See, e.g., EEOC v. Alamo Rent-A-Car, LLC*, 432 F. Supp. 2d 1006 (D. Ariz. 2006) (granting partial summary judgment to EEOC, the court rejected the employer's argument that it had offered a "reasonable" accommodation by proposing that the employee could wear the headscarf while working in the back of the office, but had to remove it while working with customers at the rental counter) (subsequent jury award of \$287,000, including \$250,000 in punitive damages); *EEOC v. Red Robin Gourmet Burgers, Inc.*, 2005 WL 2090677 (W.D. Wash. Aug. 29, 2005) (denying employer's motion for summary judgment on claim arising from employee's refusal to cover his religious markings in order to comply with employer's dress code for customer food service position).

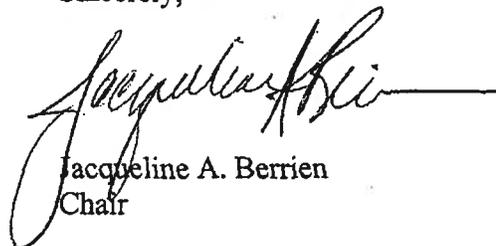
The Honorable Judy Chu  
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Following receipt of your letter, as well as similar joint correspondence received from the Sikh Coalition, the American Jewish Committee, the Anti-Defamation League, the Interfaith Alliance, and the Muslim Public Affairs Council, General Counsel P. David Lopez, Legal Counsel Peggy R. Mastroianni, Communications and Legislative Affairs Director Todd A. Cox, and I met with representatives from a number of these organizations to hear their concerns and suggestions regarding how the Commission might further promote our pursuit of cases in which employees are barred from customer contact positions by utilizing a segregation theory of liability pursuant to 42 U.S.C. § 2000e-2(a)(2). Following the meeting, representatives from these groups sent further correspondence to the Office of the Chair which has been shared with staff involved in these matters.

The Commission has, and continues to, litigate cases against employers that bar religious garb in retail sales positions on grounds of the "image" they seek to portray. *See, e.g., EEOC v. Abercrombie & Fitch Stores, Inc.*, \_\_\_ F. Supp. 2d \_\_\_, 2011 WL 2748406 (N.D. Okla. July 13, 2011) (finding violation of Title VII where retailer refused to hire applicant for customer sales position because her Muslim headscarf was contrary to the company's "Look Policy"). Indeed, religious discrimination charges represented 3.8 % of the EEOC's charge receipts in fiscal year 2010 and a far larger percentage of our litigation program, and many of these claims relate to discrimination based on religious garb and grooming. In addition to our active litigation docket of religious discrimination cases, the Commission often issues publications addressing key issues, and conducts frequent outreach and training to promote compliance with Title VII's prohibitions on religious discrimination.

As we continue our important work in this area, I can assure you that we will continue to consider your suggestions as they relate to further policy, enforcement, and outreach opportunities.

Sincerely,



Jacqueline A. Berrien  
Chair

**Congress of the United States**  
**Washington, DC 20515**

April 15, 2011

Chairwoman Jacqueline A. Berrien  
Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Commissioner Stuart Ishimaru  
Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Commissioner Constance S. Barker  
Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Commissioner Chai Feldblum  
Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Commissioner Victoria A. Lipnic  
Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Mr. P. David Lopez, General Counsel  
Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Dear Commissioners:

The Congressional Tri-Caucus—comprised of the Congressional Asian Pacific American Caucus, the Congressional Black Caucus, and the Congressional Hispanic Caucus—writes to request written guidance from the U.S. Equal Employment Opportunity Commission (“EEOC”) regarding issues of workplace segregation.

Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, makes it unlawful for an employer to segregate employees or job applicants “in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” With a view toward protecting religious freedom, Title VII also requires employers to reasonably accommodate the religious practices of their employees unless doing so would impose an undue hardship on the conduct of the employer’s business.

Notwithstanding these provisions, at least two federal courts have interpreted Title VII in ways that allow employers to segregate visibly religious employees and job applicants from customers and the general public without violating the law.<sup>1</sup> We are troubled by these decisions and the discriminatory impact they have on individuals whose religious observance encompasses adherence to dress and grooming requirements. We believe that such decisions give cover to employers to relegate Sikhs, Muslims, Jews, and other religious communities to the backrooms of the corporate world in the name of restrictive ‘corporate image’ policies. We believe such policies reinforce bigoted stereotypes about what American workers should look like; prevent employees of faith from gaining customer service experience at the cost of professional growth; and clearly undermine the integrative purpose of Title VII.

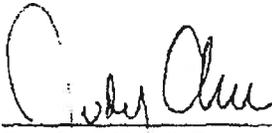
In light of the foregoing concerns, we respectfully request that the EEOC exercise its regulatory authority to protect employees and job applicants from workplace segregation based on religion. To this end, we

<sup>1</sup> See *Birdi v. United Airlines, Corp.*, No. 99 C 5576, 2002 WL 471999, 2002 U.S. Dist. LEXIS 9864 (N.D. Ill. Mar. 26, 2002); *Ali v. Alamo Rent-a-Car, et al.*, No. 00-1041 (4th Cir. 2001).

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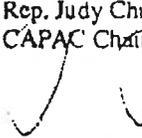
urge the EEOC to issue written guidance clarifying that religious accommodations requiring segregation from customers constitute adverse employment actions, which can never be deemed 'reasonable' under Title VII. Such a clarification would be consistent with EEOC guidance on racial discrimination, which categorically forbids racial segregation and denies that race or color can ever be considered a bona fide occupational qualification under Title VII.<sup>211</sup> No person qualified for a job should suffer the ignominy of being hidden from customers because of their skin color, beard, or religious head covering.

Please contact Mr. Gene Kim, Executive Director of the Congressional Asian Pacific American Caucus, at (202) 225-5464 or [gene.kim@mail.house.gov](mailto:gene.kim@mail.house.gov) if you have any questions. We thank you for your consideration and look forward to your reply.



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Rep. Judy Chu, PhD  
CAPAC Chair



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Rep. Emanuel Cleaver, II  
CBC Chair



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Rep. Charles Gonzalez  
CHC Chair

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<sup>211</sup> U.S. Equal Employment Opportunity Commission, *Facts about Race/Color Discrimination* (2008), available at [http://www.eeoc.gov/facts/fs\\_race.html](http://www.eeoc.gov/facts/fs_race.html).



U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, DC 20507

SEP 22 2011

The Honorable Tom Udall  
United States Senate  
Washington D.C. 20510

Dear Senator Udall:

Thank you for your e-mail dated September 14, 2011, with which you forwarded, and inquired about the status of, a letter dated April 15, 2011 from the Congressional Tri-Caucus to the Chair and Commissioners of the U.S. Equal Employment Opportunity Commission (EEOC). In this correspondence, the Tri-Caucus requested written guidance from the EEOC addressing two court decisions in which Title VII was interpreted in ways that permitted employers to segregate visibly religious employees and job applicants from customers and the general public. See *Birdi v. UAL Corp.*, 2002 WL 471999 (N.D. Ill. Mar. 26, 2002) (unpublished); *Ali v. Alamo Rent-a-Car, et al.*, 2001 WL 218788 (4th Cir. Mar. 6, 2001) (unpublished).

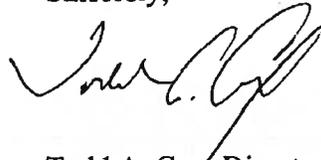
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The Honorable Tom Udall  
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Following receipt of the Tri-Caucus letter, as well as similar joint correspondence received from the Sikh Coalition, the American Jewish Committee, the Anti-Defamation League, the Interfaith Alliance, and the Muslim Public Affairs Council, EEOC Chair Jacqueline A. Berrien, General Counsel P. David Lopez, Legal Counsel Peggy R. Mastroianni, and I met with representatives from a number of these organizations to hear their concerns and suggestions regarding how the Commission might further promote our pursuit of cases in which employees are barred from customer contact positions by utilizing a segregation theory of liability pursuant to 42 U.S.C. § 2000e-2(a)(2). Following the meeting, representatives from these groups sent further correspondence to the Office of the Chair elaborating on their suggestions, and it has been shared with relevant staff involved in review of these matters.

We will continue to consider the suggestions made by these stakeholders as they relate to further policy, enforcement, and outreach opportunities.

Sincerely,

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Todd A. Cox, Director  
Office of Communications  
and Legislative Affairs