

March 25, 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

Dear Commissioners:

We, the undersigned organizations, representing diverse communities across the United States, respectfully request that the U.S. Equal Employment Opportunity Commission (“EEOC”) meaningfully address the problem of workplace segregation, which is premised on regressive “corporate image” policies and results in religious discrimination.

Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 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.”¹ 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.²

Notwithstanding these provisions, at least two federal courts in recent years have misinterpreted 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. In one case involving a Muslim woman wearing a headscarf, a court improperly assumed that segregating her from customers did not constitute an “adverse employment action” relating to “compensation, terms, conditions, or privileges of employment” or deprive her of “employment opportunities or otherwise adversely affect [her] status as an employee.”³ In another case, a court held that an employer satisfied its

¹ 42 U.S.C. § 2000e-2(a)(2).

² See 42 U.S.C. § 2000e(j).

³ See [Ali v. Alamo Rent-a-Car, et al.](#), No. 00-1041 (4th Cir. 2001).

Title VII obligation to make a “reasonable” accommodation of a turbaned Sikh employee by offering him positions out of public view.⁴

We are troubled by these misinterpretations and the discriminatory impact they have on individuals whose religious observance encompasses adherence to dress and grooming requirements. We believe that segregating such individuals in the workplace inherently constitutes an “adverse employment action” relating to the “terms, conditions, or privileges of employment”⁵ and that segregating individuals from customers in the name of so-called “corporate image” policies is inherently unreasonable. Such policies reinforce bigoted stereotypes about what American workers should look like; prevent employees of faith from gaining customer service experience, thwarting their professional growth; and clearly undermine the integrative purpose of Title VII. Workplace segregation is discrimination.

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 urge the EEOC to:

- (1) Enhance training and technical assistance on its existing Compliance Manual and FAQ guidance on the issue of inappropriate segregation in the religious discrimination context;**
- (2) Make agency enforcement of this issue a priority; and**
- (3) Issue written guidance clarifying that religious accommodations requiring segregation from customers in the name of corporate image constitute adverse employment actions and can never be deemed “reasonable” under Title VII.**

Such a clarification would be consistent with recent 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.⁶ No person qualified for a job should suffer the ignominy of being hidden from customers because of their skin color, or because they keep a beard or wear a religious headcovering.

Please contact Mr. Rajdeep Singh, Director of Law and Policy of the Sikh Coalition, at rajdeep@sikhcoalition.org if you require additional information, and please accept our gratitude for your consideration.

⁴ See *Birdi v. United Airlines, Corp.*, No. 99 C 5576, 2002 WL 471999, 2002 U.S. Dist. LEXIS 9864 (N.D. Ill. 2002)

⁵ See *Local Union 12 v. NLRB*, 368 F.2d 12, 16-17 (5th Cir. 1966); *U.S. v. Frazer*, 317 F.Supp. 1079, 1088-1089 (M.D. Ala 1970); II EEOC COMPLIANCE MANUAL 618.2 (1983); II EEOC COMPLIANCE MANUAL 618.1 (1998).

⁶ U.S. Equal Employment Opportunity Commission, *Facts about Race/Color Discrimination* (2008), available at <http://www.eeoc.gov/facts/fs-race.html>.

Respectfully submitted,

Agudath Israel of America
American-Arab Anti-Discrimination Committee (ADC)
American Association of Jewish Lawyers and Jurists (AAJLJ)
American Civil Liberties Union
American Jewish Committee
Anti-Defamation League
Asian American Justice Center, a member of the Asian American Center for Advancing Justice
Baptist Joint Committee for Religious Liberty
B'nai B'rith International
Center for Islamic Pluralism
Disciples Justice Action Center
Interfaith Alliance
Japanese American Citizens League
Jewish Council for Public Affairs
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
Muslim Public Affairs Council (MPAC)
National Asian Pacific American Women's Forum
National Employment Law Project
National Partnership for Women & Families
OCA
Sikh American Legal Defense and Education Fund (SALDEF)
The Sikh Coalition
South Asian Americans Leading Together (SAALT)
UNITED SIKHS