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Addressing Workplace Discrimination After Terror Attacks

Law360, New York (December 16, 2015, 12:27 PM ET) -- The Los Angeles Times reported last week on an incident that took place on Dec. 10, 2015, that is becoming frighteningly common in the wake of the terrorist attacks in Paris and the San Bernardino shootings — the hurling of abusive, ugly, racist remarks at Muslims. As the article notes, women wearing headscarves are ready targets because their headscarves serve to identify their religious beliefs which bigots then use as an excuse for vitriolic comments. In the reported incident, Sirat Al-Nahi, a senior at the University of Texas at Austin, and a devout Muslim who wears a headscarf, was harassed at a popular Austin restaurant by an elderly white man who told her to “go back to Saudi Arabia” and then asked if she had a gun and told her she “should just shoot” him. Al-Nahi’s friend, Leilah Abdennabi, asked the restaurant manager to intervene, but she said there was nothing she could do. The young women addressed the patrons to tell them racist remarks were being directed at them and that “no one did anything because who cares about us?” To which someone shouted “Nobody.” When later contacted, the restaurant’s CEO said in retrospect that the staff should have asked the “hateful guest” to leave.



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At a time when a popular presidential candidate similarly calls for the exclusion of Muslims, it is imperative that Americans reaffirm the values of religious pluralism, diversity and tolerance that are the hallmarks of our culture. In particular, employers need to be vigilant in ensuring that our workplaces are not poisoned with the shameful rhetoric and abuse that characterize our political discourse or that restaurant in Austin. While victims of religious bigotry may have few recourses on the streets and in places of public accommodation, there are employment discrimination laws that protect us all in our workplaces. Just this past summer the U.S. Supreme Court affirmed that a young woman who wore a hijab to a job interview could prevail on a Title VII religious discrimination claim where the employer refused to hire her and did not consider whether it could accommodate her by making an exception to its no-headwear policy for sales associates. See *EEOC v. Abercrombie & Fitch*, 135 S. Ct. 2028 (2015).

Although EEOC charge data is not yet available to determine whether there has been an increase in filing of religious discrimination complaints in the wake of the recent terrorist activity, it is likely there will be an increase, just as there was in the wake of the 9/11 attack. (See justice.gov.) We have a few suggestions to help employers prevent the type of disgraceful incident that occurred in the restaurant in Austin, and for how to deal with them appropriately if they occur.

There are some important steps employers should take to protect the rights of all their employees to work in an atmosphere of safety and mutual respect.

- Employers must not make hiring, firing or job placement decisions based on religion or national origin. Quite simply, it violates Title VII and analogous state and local laws to make decisions based on such protected characteristics. Such discrimination cannot be justified on the ground of customer preference, because refusing to hire someone who wears a headscarf or placing her in a less visible location on the ground that the scarf makes customers uncomfortable is exactly the same as just flatly refusing to hire someone who is a Muslim. See EEOC Compliance Manual, Section 12: Religious Discrimination, section II A. 1., Hiring and Promotion (2008), available here.
- Employers must make sustained efforts to prevent harassment of their employees — by other employees or by customers or visitors to the workplace — on the basis of religion, religious attire, or perceived or actual national origin. As one court has said, “abuse founded upon misperceptions that all Muslims possess hostile designs against the United States, that all Muslims support jihad, that all Muslims were sympathetic to the 9/11 attack, and that all Muslims are proponents of radical Islam” constitutes religious harassment in violation of Title VII. *EEOC v. Sunbelt Rentals Inc.*, 521 F.3d 306, 318 (4th Cir. 2008).
- Preventing harassment may require specialized, targeted training that makes clear that ethnic and religious slurs, and related offensive misconduct, will not be tolerated. The Los Angeles Times article could be used as a focal point for such training because it is rife with examples of reprehensible comments and conduct.
- Employers should ensure that there are confidential means to complain about harassing behavior so they can deal with it promptly.
- Victims and witnesses of harassment must be assured that there will be no retaliation for bringing this behavior to light.
- Employers should focus on putting an end to harassment but also on making sure the victims feel protected and safe to remain in the workplace.
- Although an emphasis on celebrating Christmas may not constitute workplace harassment, under current circumstances, as the Christmas holiday approaches tensions may mount in many workplaces that include workers of diverse backgrounds and beliefs. While Christmas decorations and parties seem innocuous, they can create feelings of isolation and intimidation among Muslims, Jews, secular humanists, Christians who do not celebrate Christmas and others. Such divisiveness could be minimized by planning more generic “holiday” parties and traditions or wishing all employees the “joy of the season.”
- In general for more ideas about preventing and correcting workplace religious harassment, see EEOC Compliance Manual Section 12 at III Harassment C. Employer Best Practices, available here.
- Employers must be particularly attuned to the needs of their employees for religious accommodations, whether they need variations from uniform requirements or time and space for religious prayers. Such accommodations must be

provided unless to do so would create an undue hardship on the employer's business. At a time when their religion is under assault, many proud Muslims feel more strongly than ever that they want to demonstrate their commitment to their beliefs through religious attire and prayer, and employers must ensure they are able to do so in the workplace. See *Religious Garb and Grooming in the Workplace, Rights and Responsibilities*, available here.

- Employers may make lawful background or security checks as long as the same screenings are done with all applicants or employees. Employers cannot single out some applicants for such background investigations based on their religion or national origin. See *Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians and Sikhs Under the Equal Employment Opportunity Laws*, available here.
- Anyone who believes he or she has been the victim of religiously motivated discrimination or harassment in the workplace should seek legal advice or file a charge with the EEOC or a state or local agency that handles workplace discrimination complaints. For information about filing a charge see EEOC's *How to File a charge of Employment Discrimination*.

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