

## **Employer Does Not have to Offer a “Reasonable Accommodation” for Employees Facial Jewelry**

*An employee sued her employer, a retailer, based on The Civil Rights Act of 1964, as amended, Title VII, 42 U.S.C. § 2000e-2(a), for religious discrimination because they failed to accommodate her piercing. The Court of Appeals held that reasonably accommodating her piercing would be an undue hardship on the employer.*

### The Facts

The employee first started her employment with the retailer in the deli department in 1997. In 1998 the employer revised its handbook to prohibit food handlers from wearing any jewelry. In 1998, after refusing to remove her earrings, she was transferred to a position where she was allowed to wear jewelry.

Over the next two years she engaged in various other forms of body modification including piercing and cutting. They were not motivated by a religious belief. The dress code was revised again in 2001 to prohibit all facial jewelry. However, she was not reprimanded for her eyebrow ring until several months later. When her supervisors asked her to remove the piercing, she refused and claiming that she was a member of the Church of Body Modification and eyebrow piercing was part of her religion.

A few days later the employee filed a charge with the Equal Employment Opportunity Commission (EEOC) based on religious discrimination. Again she was asked to remove the piercing by her manager or go home—she left. She was later terminated for failing to comply with the employer’s dress code.

During the EEOC mediation the employer offered to accommodate her piercing, allowing her to wear plastic retainers or band-aids over them. She denied both proposals. She maintained that the only acceptable reasonable accommodation was to exempt her from the dress code. The employer maintained that her proposed accommodation would interfere with its ability to maintain a professional appearance and would be an undue hardship on the business.

The EEOC determined that the employer violated Title VII of the Civil Right Act of 1964, as amended, because the employee’s failure to remove her piercing was religiously based. The employee then proceeded to file a lawsuit in federal district court. In order to establish a *prima facie* case for religious discrimination a plaintiff must prove: (1) a bona fide religious practice conflicted with an employment requirement; (2) she brought the practice to the employer’s attention; and (3) the religious practice was the basis for the termination. In the event that the plaintiff can establish a *prima facie* case, the burden shifts to the employer to show that it offered a reasonable accommodation or if it did not offer one, that doing so would have been an undue hardship. The Federal District Court did not determine if the Church of Body Modification was a bona fide religion, since regardless, the employer offered her a reasonable accommodation and granted summary judgment for the employer.

The employee appealed to the First Circuit Court of Appeals, it upheld the ruling of the district court on different grounds. The Court of Appeals held that offering her a reasonable accommodation would be an undue hardship on the employer because the employer had a legitimate interest in presenting a workforce to its customers that was professional.

### Lesson for Employers

It is important for employer to be careful of claims alleging religious discrimination because there are certain non-traditional beliefs that may not be recognized in mainstream society, but that are “religions” or “religious beliefs” for purposes of Title VII of the Civil Right Act. Other religions which courts have found covered under Title VII that employer may not be aware of include: Wiccan, White Supremacy, and Cold Fusion.

It is also important for an employer to realize that not all federal courts have ruled that after an adverse employment action is taken (for example termination or demotion) that a later reasonable accommodation will shield an employer from liability under Title VII. We encourage employers to consult with an experienced labor and employment attorney before taking any action.