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**EEOC PROVIDES NEW GUIDANCE ON WORKPLACE
RIGHTS IN RESPONSE TO 9/11 BACKLASH
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Summary

Since the attacks of September 11th, the Equal Employment Opportunity Commission (EEOC) has experienced a significant increase in discrimination complaints based on religion and national origin. During this nine-month period, the EEOC received 497 charges of discrimination based on the Muslim religion, compared to only 193 such charges during all of 2000.

To help companies prevent workplace harassment, the EEOC recently released a fact sheet called "[Questions and Answers about Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians and Sikhs.](#)" The Commission also prepared a companion [fact sheet](#) that answers questions about employee rights.

EEOC Chair Cari Dominguez called the fact sheets "concrete answers to questions on the minds of employers and workers alike" and "tangible information sheets that could be shared and discussed." The fact sheets cover real-life scenarios based on complaints made to the EEOC.

Details:

The new EEOC guidance reaffirms longstanding legal prohibitions of workplace discrimination based on ethnicity, country of origin or religion. This includes making hiring preferences based on notions of customer preference about someone's attire, or refusing to hire an employee because they must wear a religiously mandated article of clothing, such as a turban. The EEOC has restated its position that "customer preference" does not establish undue hardship for an employer, and exceptions to accommodate religious beliefs should be made to otherwise enforceable dress code policies.

The EEOC also emphasized that, employers have an affirmative duty to ensure that employees are not harassed because of their religion or national origin. Managers and supervisors should be trained to recognize ethnic and religious

harassment, and to take immediate corrective action to stop it. It is also important to make sure that an employer's harassment policies must not only cover sexual harassment, but provide for a mechanism for promptly reporting harassment based on ethnicity, religion, national origin, and other protected categories under Title VII and California law.

The EEOC also restated its position that employers must work with employees to find appropriate, reasonable accommodations that meet employees' religious needs, as long as these accommodations do not impose an undue hardship. Whether an accommodation imposes an undue hardship will be determined on a case by case basis. Specific accommodations for Muslim employees may include time off for religious holidays or exceptions to dress and grooming codes.

Finally, the EEOC asserts that while employers may require the same pre-employment security checks that apply to other applicants for the same position, employers may not perform "special" background investigations or other screening procedures against Muslim, Arab or other religious or ethnic groups in a discriminatory manner.

What This Means:

While the new EEOC guidance does not change current employment law, it reaffirms and highlights that employers need to be aware of discrimination and harassment based on religion, ethnicity or national origin. Maintaining anti-discrimination and harassment policies and conducting regular training on personnel issues, makes good business sense. If a complaint of discrimination or harassment is made, an employer should conduct a thorough and impartial investigation and make good faith efforts to take immediate corrective action.

Employers should also familiarize themselves with potential reasonable religious accommodations, such as providing employees leave for religious observances, a time and/or place to pray, and the flexibility to wear religious attire. While the obligation to accommodate an individual's religious beliefs is less than the obligation to accommodate disabilities, it is important not to overlook the requirement of investigating and evaluating potential accommodations if the issue arises.

This E-Update was authored by [Lonny Zilberman](#). If you have any questions about this E-Update, please contact the author or any PPS&C attorney.

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