

Prepared Keynote Remarks

**BEST PRACTICES TO PREVENT RELIGIOUS DISCRIMINATION AND
PROMOTE RELIGIOUS INCLUSION**

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Good morning, I’m so delighted to be here with you all today.¹ Thank you so much to the Religious Freedom & Business Foundation for inviting me, for organizing this important annual conference focusing on faith at work, and for creating the corporate religious equity, diversity & inclusion index. I am so honored to be here. During my time at the EEOC thus far, religious discrimination has been a major focus for me, and it is my hope to make the protection of religious liberty a signature issue during my term.

Much of my remarks today will discuss best practices to prevent religious discrimination and promote religious inclusion. But before I jump into a discussion of best practices, I think it is important to set the stage a bit and discuss a few background points—namely, the importance of and need for religious liberty, a faith-based perspective on diversity, and the role of the EEOC and private corporations with respect to religious freedom.

A. Importance of Religious Liberty, a Faith-Based Perspective on Diversity, and the Role of the EEOC and Private Corporations with Respect to Religious Freedom

As many have recognized, the need for unity in our deeply polarized country has never been more important. But unity cannot come at the expense of diversity. We must find a way to be unified despite strongly held disagreements, *not* unified through uniformity. We live in a pluralistic society, and that is one of America’s strengths—that out of many people with many diverse backgrounds, experiences, and beliefs, we nonetheless are one country. Celebrating and defending religious liberty—the freedom to hold a diversity of views about some of the most foundational and ultimate ideas about life, death, purpose, and identity—is a foundational part of our republic.

¹ As a single Commissioner on a five-person panel, I cannot speak on behalf of the Commission by myself. As a result, the views I express today are my own and do not necessarily reflect those of the EEOC or any other Commissioner, except where I refer to Commission policy guidance and other documents and information published by the Commission.

Moreover, for many Americans, including myself, our faith gives a unique meaning to the value and importance of diversity. From this perspective, diversity is not just a numbers game, about statistics and disparities in representation or power, or lack thereof. Nor is diversity valued simply for utilitarian purposes, that is, for any material benefits it may bring. Instead, diversity matters to the extent it reflects the fundamental and faith-based belief enshrined by our founders in the Declaration of Independence—that all people are “created equal.” That no matter our innate or chosen differences, our diversity across every demographic or other factor one could imagine, that each of us has inherent equality, worth, and dignity. That we are unified in our equal humanity, and do not require uniformity for unity. From my perspective, this belief and principle—of inherent equality, equality granted by our creator, not society or any other external factors—provides the foundation for the constitutional guarantee of equal protection under the law, and for the statutory protections of equal opportunity in employment and other spheres of public life, as well as provides the best explanation of the value of diversity.

So where do the EEOC and private corporations fit into all of this? The EEOC’s pursuit of its mission to protect workers against religious discrimination furthers, in a very practical and real way, this Nation’s founding commitment to religious liberty. Of course, the EEOC is not charged with upholding the constitutional right to free exercise of religion under the First Amendment, but with protecting against employment discrimination under Title VII of the Civil Rights Act. Nonetheless, given the wide impact the private sector has on citizens’ daily lives—including the fact that most employees work for private employers—I view the EEOC’s task as a critical part of ensuring that our commitment to religious liberty flourishes in our country.

I am deeply concerned that today, religious liberty has become a disfavored or second-class right in some areas of our society and culture. To the extent that is true in the workplace and in private companies, that has serious implications—even where the government itself does not impose restrictions or burdens on people of faith. I believe that the fastest way to suppress religious believers’ ability to live out their beliefs in the marketplace and participate fully in society, the fastest way to encourage people to either discard their beliefs or retreat to isolated silos, is to condition people’s livelihoods on hiding, denying, or suppressing the exercise of their religious beliefs in their workplaces. As a practical matter, what good would it be to many people of faith that the government does not infringe on their right to free exercise, if freely exercising their faith means that they effectively cannot pursue their career of choice or, worse still, cannot hold a job because of the policies and actions of private employers? As a result, I believe the private sector has tremendous influence over religious liberty and therefore has a significant role to play in promoting and protecting religious liberty.

With this background in mind, I’ll turn now to highlighting nine categories of best practices for preventing religious discrimination and promoting religious inclusion in the workplace.

B. Best Practices

Preventing Discrimination Starts with Education and Awareness

The first three best practices I want to cover today address the fact that preventing discrimination starts with education and awareness.

1. BEST PRACTICE #1: Make sure you understand your basic legal obligations and rights related to religion in the workplace.

During my outreach and education work, I frequently encounter people who are not aware that religion is a protected characteristic in employment under Title VII, much less what specific protections federal civil rights laws provide related to religion in the employment context. At a very high level, you should understand the following key points:

- a. **The definition of religion is very broad:** Religion includes religious “beliefs” as well as “all aspects of religious observance and practice.”² Religion includes both common and non-traditional religious beliefs, observances, and practices; majority and minority religions; and even nontheistic or atheistic beliefs so long as they concern “ultimate ideas” about “life, purpose, and death” and occupy in the life of the individual a place parallel to that filled by God in traditionally religious persons.³
- b. **Prohibitions and duties:** Title VII prohibits discrimination, harassment, or retaliation based on religion.⁴ Title VII also requires employers to grant reasonable accommodations based on religion unless such accommodations would impose undue hardship on the employer’s business.⁵
- c. **Coverage:** These protections apply not only to employees but also to applicants.⁶

Of course, there is much more to understand on each of these topics, more than I could cover in many hours of discussion. That brings me to the next best practice.

2. BEST PRACTICE #2: Be aware of the substantial compliance resources provided by the EEOC and various EEOC Commissioners around religious accommodations and preventing discrimination, harassment, and/or retaliation based on religion.

You can, and should, go deeper in your education and awareness of religious rights in employment law by reviewing these extensive compliance materials. I’d like to highlight three categories of resources, many of which can be found on the EEOC website, my official social media, and other websites:

² 42 U.S.C § 2000e(j).

³ EEOC, EEOC-CVG-2021-3, *Compliance Manual Section 12: Religious Discrimination* (2021), <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>.

⁴ 42 U.S.C § 2000e–2(a).

⁵ 42 U.S.C. § 2000e(j); 29 C.F.R. § 1605.2 (2022).

⁶ 42 U.S. Code § 2000e–2(a).

- a. **Formal policy guidance:** To begin, last year the Commission published its updated formal policy guidance on religion.⁷ It also is known as the Commission’s compliance manual section on religious discrimination. This is a long-standing document which recently was refreshed to reflect a variety of developments in employment law and Supreme Court cases. This over 160-page document is a deep and fairly comprehensive policy document, explaining the variety of issues applicable to religious discrimination claims (including harassment, retaliation, and accommodation). Our policy guidance discusses typical scenarios in which religious discrimination may arise and provides guidance to employers on how to balance the needs of individuals in a diverse workplace.
- b. **Technical assistance:** Next, throughout the pandemic, the Commission has published informal guidance in the form of “technical assistance” via Q&As about COVID-19 and various EEO laws, including Title VII’s protection for religion. You can find this COVID-focused technical assistance on our website in the document titled “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.”⁸ This document includes an entire section on Title VII and religious objections to COVID-19 vaccine mandates by private employers,⁹ as well as religious accommodations from other COVID-related requirements that employers may have adopted during the pandemic.
- c. **Antisemitism:** Finally, in terms of other “hot topic” applications of the Commission’s general guidance around religious discrimination, in response to a marked rising tide of antisemitism in our country, in the past year the Commission and various Commissioners have provided various compliance assistance and education efforts around combatting antisemitism at work. In May 2021, the Commission issued a unanimous resolution condemning antisemitism.¹⁰ This resolution is an excellent template for companies hoping to make a statement in that space. In addition, my colleague EEOC Commissioner Sonderling and I have

⁷ EEOC, EEOC-CVG-2021-3, *Compliance Manual Section 12: Religious Discrimination* (2021), <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>.

⁸ EEOC, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

⁹ *Id.*, *Subsection L – Vaccinations – Title VII Religious Objections to COVID-19 Vaccine Requirements*, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L>.

¹⁰ EEOC, *Resolution of the U.S. Equal Employment Opportunity Commission Condemning Violence, Harassment, and Bias Against Jewish Persons in the United States* (May 27, 2021), <https://www.eeoc.gov/resolution-us-equal-employment-opportunity-commission-condemning-violence-harassment-and-bias-0>.

made combatting antisemitism a special focus of our work in the past year, including via creating a fairly comprehensive presentation on combatting antisemitism in the workplace.¹¹

3. BEST PRACTICE #3: In addition to providing compliance assistance, you should be aware that the EEOC takes seriously its enforcement efforts involving religious discrimination and accommodation—and therefore your company should too.

Specifically, the EEOC has a long track record across administrations of bringing religious discrimination and accommodation cases—in the past decade, it has brought almost *seventy* (70) such lawsuits.¹² While the hope is that companies will prevent religious discrimination, harassment, retaliation, and failures to accommodate in their workplaces, I believe it is clear from the Commission’s track record on religious discrimination cases and resolutions that the agency is committed to remedying such misconduct if it occurs.

Preventing Discrimination Requires Careful Policies, Implementation, and Training

Next, I want to highlight a few best practices related to the fact that in addition to education and awareness, preventing religious discrimination at work requires careful policies, implementation, and training. This is especially true for two core areas where religion at work often arises: religious accommodations and religious expression.

4. BEST PRACTICE #4: Employers should have clear, written, and easily accessible policies and procedures for religious accommodations.

This best practice bears elaboration because of how critical it is. Prior to COVID, many employers only rarely dealt with religious accommodation requests, and therefore often only had ad-hoc procedures to deal with these types of requests. That was never a good idea and left such companies ill-prepared to handle the substantial increase in religious accommodation requests that generally occurred during the pandemic. Indeed, many companies’ response to COVID-19-related religious accommodation requests are a case study in what *not* to do under the law. To better prepare for future religious accommodation requests in general, which undoubtably will come now that there is an increased awareness of the right to bring such requests, as well as handle the unfortunate possibility of future pandemic-related requests, it is essential for companies to prepare to take religious accommodations as seriously as they do disability accommodations.

There are a host of application points regarding this fourth best practice. These include that employers should:

¹¹ Andrea Lucas & Keith Sonderling, *Combatting Antisemitism in the Workplace* (Jan. 10, 2021), <https://brandeiscenter.com/wp-content/uploads/2022/01/Combatting-Antisemitism-in-the-Workplace.pdf>.

¹² See, e.g., EEOC, *Fact Sheet on Recent EEOC Religious Discrimination Litigation*, EEOC (Feb. 19, 2015), <https://www.eeoc.gov/fact-sheet-recent-eeoc-religious-discrimination-litigation> (summarizing prior data; similar trends have continued from FY11 to FY21).

- a. Have formal, written policies or procedures for requesting and processing a religious accommodation.
- b. Provide for an individualized, interactive process. Avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate.
- c. Have a formal, standardized accommodation form. Here is a place where even the EEOC had room to improve during the pandemic. Though there previously were extensive processes for dealing with religious accommodations, the agency's standardized form was a new development. And in response to seeing how many other companies were struggling with religious accommodations during the pandemic, we then released our internal form. It is publicly available on our website in a link within our COVID-19 technical assistance,¹³ and is a very helpful resource for crafting your own corporate accommodation form so that you can avoid having ad-hoc accommodation questions. In your company's form, avoid questions that presume insincerity or lack of religious basis for an accommodation request, as well as avoid theological debate, unwarranted intrusive questions, or questions that were intended to be related to religion but could constitute unlawful medical inquiries in violation of the ADA.
- d. Make the religious accommodation process clearly available for both applicants and employees, including via website links. Do not just have a link for disability accommodations; have one for religious accommodations too.
- e. Cover religious accommodations in new hire and regular trainings—both in anti-harassment/anti-discrimination trainings as well diversity trainings, and in trainings for both employees as well as managers, HR professionals, and diversity professionals.
- f. Finally, make sure trainings cover a diversity of contexts in which a request for a religious accommodation could arise, beyond simply more common and well-recognized accommodation requests related to religious service attendance and religious garb and grooming. Consider covering accommodations related to four broad categories, which my former colleague EEOC General Counsel Sharon Gustafson helped frame: i) appearance (which includes garb or grooming), ii) religious observance (which includes prayer breaks and schedule changes or time off for religious observances), iii) religious expression (which includes the ability to engage in religious speech or display a religious symbol), and iv) forced participation (which includes requests to be excused from participating in an

¹³ EEOC, *Religious Accommodation Request Form*, <https://www.eeoc.gov/sites/default/files/2021-10/EEOC%20Religious%20Accommodation%20Request%20Form%20-%20for%20web.pdf>.

activity, event, job duty, or training that is contrary to the employee’s religious or areligious beliefs).

5. BEST PRACTICE #5: To prevent discrimination and promote inclusion, employers should affirmatively allow for religious expression in the workplace, while understanding how to balance that expression with other rights at work.

Employers should allow religious expression among employees at least to the same extent that they allow other types of personal expression that are not harassing or disruptive to the operation of the business. Discussion of religion in the workplace is not illegal. “In fact, Title VII violations may result if an employer tries to avoid potential coworker objections to employee religious expression by preemptively banning all religious communications in the workplace or discriminating against unpopular religious views, since Title VII requires that employers not discriminate based on religion and requires that they reasonably accommodate employees’ sincerely held religious observances, practices, and beliefs as long as accommodation poses no undue hardship.”¹⁴

Instead, as the EEOC’s religious discrimination guidance notes, “[e]mployers should incorporate a discussion of religious expression, and the need for all employees to treat each other professionally, regardless of actual or perceived religious or lack of religious beliefs, into any anti-harassment training provided to managers and employees.”¹⁵

In particular, “[e]mployers should train managers to gauge the actual disruption posed by religious expression in the workplace, rather than merely speculating that disruption may result. Employers should also train managers to identify alternatives that might be offered to avoid actual disruption (e.g., designating an unused or private location in the workplace where a prayer session, study, or meeting can occur if it is disrupting other workers in a different location).”¹⁶

Emerging Issues

Finally, I want to briefly cover several best practices that touch on emerging issues in employment law.

6. BEST PRACTICE #6: Make sure that if you are incorporating AI into any employee/applicant-related processes, you keep in mind the need to avoid religious discrimination and bias and the obligations to provide religious accommodations.

¹⁴ EEOC, EEOC-CVG-2021-3, *Compliance Manual Section 12: Religious Discrimination* (2021), <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>.

¹⁵ *Id.*

¹⁶ *Id.*

Employers are increasingly using AI and other emerging tech-related tools in hiring and other employment decisions. In fall 2021, the EEOC launched its Initiative on Artificial Intelligence and Algorithmic Fairness.¹⁷ Just like any other protected basis, employers should review that any HR processes that use AI to ensure they do not incorporate anti-religious bias, even unintentionally. And just like with respect to disability accommodations, employers should make sure AI employment-related tools do not improperly screen out or penalize applicants or employees who need religious accommodations.

7. BEST PRACTICE #7: Explicitly include religion in diversity, equality of opportunity, and inclusion initiatives, commitments, trainings, and other diversity efforts.

As many companies go beyond simply HR and EEO training and adopt a variety of diversity initiatives and programming, it is important that those diversity efforts do not use too narrow of a lens to define diversity. Explicitly acknowledging and incorporating religion as a component of diversity both helps prevent discrimination and promotes inclusion.

8. BEST PRACTICE #8: Be aware of the many dimensions of how religion can intersect with racial, ethnic, and national origin diversity.

Our country’s ongoing national conversation about racial justice has motivated many companies to focus on racial, ethnic, and national original diversity. But any sincere and thoughtful implementation of diversity and inclusion initiatives related to this type of diversity must take into consideration how religion intersects with these groups. And in doing so, any such considerations must go beyond a simplistic and reductive focus only on overlaps between underrepresented groups. It is relatively well-recognized that in the United States, many adherents of minority religions (at least, with respect to religious representation in the United States’ population) are also members of racial, ethnic, and national origin minority groups, for example, many Muslims, Hindus, and Sikhs in the United States—and diversity initiatives certainly should acknowledge this. But employers also should keep in mind that many Black and Hispanic Americans have higher level of religiosity in general than white Americans, including with respect to participation in “majority” religious sects like Protestant and Catholic Christianity. The same fact of increased religiosity also is true for many immigrants from the Global South—Africa, Asia, South America. That may play out in a variety of ways in terms of how these minority ethnic, racial, and national origin employees experience or desire to express their religion at work.

9. BEST PRACTICE #9: When developing or implementing corporate initiatives related to promoting mental health and wellness, consider how religion, faith, and spirituality diversity and inclusion may be involved in or arise in this context.

May is Mental Health Awareness Month, and it is well-recognized that there is a mental health crisis in our country. This is part of an overall decline in wellness in the wake of the pandemic—spiking suicide rates, rising levels of addiction, and an overall decrease in physical and mental health. Many employers are responding with initiatives, programming, employee

¹⁷ EEOC, Artificial Intelligence and Algorithmic Fairness Initiative, <https://www.eeoc.gov/ai>.

benefits, and other efforts around promoting mental health, physical health, and wellness in general. In doing so, employers should consider how promoting diversity and inclusion efforts around religion, faith, and spirituality can be complementary to and play a role in these health and wellness efforts.

Just a few closing points on that note: As other speakers at today's conference have noted, chaplaincy can contribute to employee wellness. You also should prepare for accommodation requests for faith-based counseling services and addiction programs, in addition to accommodation requests related to secular services. In addition, as our society normalizes discussions of mental health in the workplace, you may need to be more prepared for discussions of prayer and other religious expression/observance coming up during or in response to mental health discussions. Further, to the extent that you offer wellness-related or other programming involving practices that have ties to Eastern religions, such as meditation, be prepared potentially to handle requests for programming related to prayer. Finally, if you incorporate mental health, wellness, or disability inclusion programs which permit employees to bring their dog or other animals into the workplace, whether as pets or service animals, prepare for other employees to potentially request religious accommodation to avoid such animals. Some faiths may have cleanliness concerns or other religious limitations about being around certain animals. Make sure you both are aware of that and are prepared to balance employee rights in that space.

There's so much more that I could say on each of these points, and I would be delighted to take questions now and to discuss these points further. Thank you again for the opportunity to speak with you all.