

RELIGIOUS ACCOMMODATIONS IN THE WORKPLACE:  
AN ANALYSIS OF ATHEISTIC ACCOMMODATIONS IN  
THE WORKPLACE PERTAINING TO TITLE VII OF THE  
CIVIL RIGHTS ACT OF 1964

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*The legitimate powers of government extend to such acts only as are injurious to others. It does me no injury for my neighbor to say there are twenty gods or no god. It neither picks my pocket nor breaks my leg.*<sup>2</sup>

- Thomas Jefferson, Third President of the United States of America (1801-1809)

I. INTRODUCTION

Title VII of the Civil Rights Act of 1964 (“Title VII” or the “Act”) has been at the center of discussion for the past few years. With a greater number of individuals joining the workforce, more instances of discrimination are present. Discrimination, especially religious discrimination for the purposes of this article, is among the most contentious and difficult areas for employers and employees to navigate.<sup>3</sup> While our society becomes more pluralistic and religiously diverse, conflicts are bound to occur among individuals and their beliefs. The statistics provided by the Equal Employment Opportunity Commission (EEOC), the agency charged with overseeing employment discrimination, show that religious discrimination in the workplace is occurring at an alarming rate.<sup>4</sup> According to the EEOC, religious-based charges have increased approxi-

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1. Lead Notes Editor, Rutgers Journal of Law and Religion; *Juris* Doctorate Candidate May 2014, Rutgers School of Law-Camden; B.S. Drexel University, 2011.

2. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 170 (William Peden ed., University of North Carolina Press 1954) (1853).

3. *Religious Accommodation in the Workplace: Your Rights and Obligations*, RELIGIOUS FREEDOM RESOURCES, 1 (2012), [http://www.adl.org/religious\\_freedom/resource\\_kit/religion\\_workplace.asp](http://www.adl.org/religious_freedom/resource_kit/religion_workplace.asp) [hereinafter *Religious Accommodation*]. This nonprofit organization provides an overview of current issues of religious discrimination in the workplace with a roadmap of Title VII illustrating what an employer must do to accommodate an individual religion.

4. *Id.*

mately 41% since 1997, and payouts have increased approximately 174%.<sup>5</sup> The ramifications associated with being found guilty of religious discrimination are so great that most employers conscientiously pay careful attention to ensure compliance with the statute.<sup>6</sup>

Title VII, apart from its provisions enacted to deter discriminatory practices in the workplace, requires employers to reasonably accommodate the religious beliefs and practices of employees or prospective employees, unless doing so would create an undue hardship on the employer.<sup>7</sup> A reasonable accommodation is one that eliminates the employee's conflict between his religious practices and work requirements, without causing the employer an undue hardship.<sup>8</sup> Religious accommodations requested by an employee will vary based on what form of religion is practiced. For example, an employee might request a particular day off each year to celebrate a religious holiday, such as Yom Kippur for a Jewish observant.<sup>9</sup> A Catholic may request to refrain from work every week on the Sabbath.<sup>10</sup> A Muslim might wear religious garb in the workplace and request an established place to pray during the workday.<sup>11</sup> An employer must try and assist its employees in these circumstances in order to accommodate their religious beliefs.<sup>12</sup> For example, an employer might organize shift changes between employees of differing religions in order to accommodate their observances collectively.<sup>13</sup> Similarly, an employer might implement flexible scheduling that will allow an employee to work extra hours Monday through Thursday in order to observe the Friday Sab-

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5. *Religious Based Charges FY 1997 - FY 2012*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, <http://www.eeoc.gov/eeoc/statistics/enforcement/religion.cfm> (last visited Feb. 13, 2013).

6. *Teaching with Documents: The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission*, NAT'L ARCHIVES, <http://www.archives.gov/education/lessons/civil-rights-act/> (last visited Feb. 13, 2013) [hereinafter *Teaching with Documents*] (providing a brief history of the progression of the Civil Rights Act).

7. *Id.*

8. *Religious Accommodation*, *supra* note 3, at 1-2.

9. *Id.* at 2.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Chalmers v. Tulon, Co.*, 101 F.3d 1012, 1021 (4th Cir. 1996). A typical religious accommodations suit involves religious conduct, such as observing the Sabbath or wearing religious garb. *Id.*

bath.<sup>14</sup> An employer could also require an employee to use paid time off, such as personal or vacation days, to accommodate the employee's religious observance.<sup>15</sup>

The U.S Supreme Court ruled "undue hardship" means an employer need not incur more than minimal costs in order to accommodate an employee's religious practices.<sup>16</sup> The EEOC has interpreted this to mean an employer can show that a certain religious accommodation causes it "undue hardship" if accommodating that worker's religious need requires anything more than ordinary administrative costs, diminishes efficiency in other jobs, or impairs workplace safety.<sup>17</sup>

Another imperative consideration for employers is if the religious accommodation infringes on other employees' job rights or benefits and whether this discriminates against their beliefs or non-beliefs.<sup>18</sup> An important factor that chronicles this infringement upon other workers or non-believers is the aspect of religious proselytizing.<sup>19</sup> Religious proselytizing in the workplace presents a complex challenge for employers by placing them in a seemingly untenable situation. On the one hand, failure to respond to an employee's complaints about proselytizing could lead to charges of religious harassment; on the other, requiring a religious employee to cease proselytizing may result in liability for failure to reasonably accommodate his beliefs.<sup>20</sup> Nevertheless, where an employee restricted from proselytizing brings a suit against the employer for failure to accommodate, the court will heavily weigh whether this proselytization infringed on other employees' beliefs, or in the case of Atheists, non-beliefs.<sup>21</sup>

14. *Id.*

15. *Religious Accommodation, supra* note 3, at 2.

16. *Trans World Airlines, Inc. v. Hardison (TWA)*, 432 U.S. 63, 72 (1977). In 1967, the EEOC amended its guidelines to make reasonable accommodations to the religious needs of employees where such accommodations can be made without undue hardship to the employer's business. *Id.* The EEOC did not suggest what sort of accommodation is "reasonable" or when hardship is "undue." *Id.*

17. *Religious Accommodation, supra* note 3, at 2.

18. *Chalmers*, 101 F.3d at 1021 (rationalizing that an accommodation given to a Catholic might interfere with the rights of an Atheist).

19. *Religious Accommodation, supra* note 3, at 7.

20. *Id.*

21. *See Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337 (8th Cir. 1995). In *Wilson*, the Eighth Circuit held that an employee's vow to her religious beliefs, in this case Catholicism, did not require her to be a living witness and wear graphic anti-abortion buttons to the office. *Id.* at 1341. The employer's accommodation proposals allowed the employee to comply with her vow while respecting the desire of

When the employer himself is proselytizing his religious beliefs onto his employees, such as beginning a monthly staff meeting with a religious prayer, the employer cannot require employees of differing faiths, or Atheistic employees, to attend these meetings.<sup>22</sup> Making these meetings mandatory would be an act of imposing personal religious views onto a non-believer in violation of Title VII.<sup>23</sup> Workplace prayer groups are permissible so long as participation is voluntary and there is no employment related consequences to the employees' choice to participate.<sup>24</sup> Even when religious meetings are not mandatory, if an employee is pressured to attend by a supervisor or fellow coworker, an employer may be liable for allowing a hostile work environment for the pressured employee.<sup>25</sup> The law concerning religious proselytizing in the workplace is still a new and developing area, as the courts have made no decisive ruling yet.<sup>26</sup> Even though the line between religious proselytizing and workplace harassment remains blurry, there are important factors to be considered that offer guidance.<sup>27</sup> These factors, *inter alia*, include the persuasiveness and nature of the proselytizing, its impact on coworkers and work performance, and the capacity and willingness of the employer to take steps to accommodate the aggrieved parties, such as by moving the proselytizing employee and the offended employee to different workstations.<sup>28</sup> This issue, which will be explored *infra*, has a direct correlation to the accommodations that an Atheist must receive in the workplace.

An employee seeking to observe her religious belief within the workplace has a responsibility to notify her employer of the certain accommodation and must do her part in helping to resolve conflicts

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her coworkers not to look at the graphic button. *Id.* This case also states that once an employer reasonably accommodates the employee's religious belief, no matter how small, the statutory inquiry ends. *Id.* at 1342.

22. See *Young v. Southwestern Sav. & Loan Ass'n*, 509 F.2d 140, 145 (5th Cir. 1975) (finding that employer violated Title VII by requiring employee's attendance at meetings that were opened with prayer).

23. *Id.*

24. *Religious Accommodation*, *supra* note 3, at 8.

25. *Id.*

26. *Id.* at 7-8.

27. *Id.*

28. *Id.* at 8.

between her job duties and religious needs.<sup>29</sup> The employee must voice this requirement of notice at the time of accepting the job position or immediately upon becoming aware of the need for the accommodation.<sup>30</sup> The employee must clearly state that she is required not to work because of a religious belief.

An employer may not simply refuse to accommodate the religion of an employee.<sup>31</sup> If an employer claims that a certain accommodation is not feasible because of an “undue hardship,” the employer carries the burden of proving the undue hardship.<sup>32</sup> In examining a charge for religious discrimination, courts apply a two-step analysis.<sup>33</sup> First, the court examines whether the employee has established a prima facie case for religious discrimination.<sup>34</sup> To show a prima facie case of religious discrimination under Title VII, a plaintiff must proffer that: (1) He has a *bona fide* religious belief that conflicts with an employment requirement; (2) the employer was made aware of the conflict; and (3) he was subject to adverse action (such as termination of employment) for not complying with the employment requirement.<sup>35</sup>

Second, the employer can rebut a plaintiff’s prima facie case by showing a reasonable, good faith effort to accommodate the employee or an inability to accommodate due to an undue business hardship.<sup>36</sup> Congress was somewhat silent as to what specifically constitutes a good faith effort to accommodate the employee, making an assessment of the validity of a religious accommodation a

29. See *Chalmers v. Tulon, Co.*, 101 F.3d 1012, 1021 (4th Cir. 1996) (rationalizing that “part of the reason for the advance notice requirement is to allow the company to avoid or limit any ‘injury’ an employee’s religious conduct may cause.”).

30. *Religious Accommodation*, *supra* note 3, at 3.

31. *Id.* at 2.

32. *Id.*

33. *Cary v. Carmichael*, 908 F. Supp. 1334, 1342-43 (E.D. Va. 1995) (noting that “[o]nce a plaintiff has brought enough evidence forward to establish a prima facie case, the burden shifts to the defendant, which must show that it reasonably attempted an accommodation, short of causing an undue hardship on the employer” (citing *Trans World Airlines, Inc. v. Hardison (TWA)*, 432 U.S. 63, 74 (1977))). See also *Opuku-Boateng v. California*, 95 F.3d 1461, 1467 (9th Cir. 1996) (citing *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993) (outlining court’s two-step inquiry in religious discrimination cases)).

34. Polly Hayes, *Thou Shalt Not Discriminate: The Application of Title VII’s Undue Hardship Standard in Balint v. Carson City*, 45 VILL. L. REV. 289, 296 (2000).

35. *Id.*

36. *Id.*

highly fact-specific inquiry.<sup>37</sup> Because of the fact-specific nature, courts have interpreted the threshold of undue hardship differently.<sup>38</sup> In *Anderson v. General Dynamics Convair Aerospace Division*, the Ninth Circuit refused to find undue hardship when the employer was predicting future hardships based on speculation about the effects of a proposed religious accommodation.<sup>39</sup> The court rejected the employer's reliance on this hypothesis by finding that it is not enough to establish undue hardship by merely relying on employee complaints about a certain accommodation.<sup>40</sup>

Although the law requires that employers must reasonably accommodate "sincerely held" religious beliefs that conflict with work requirements, courts rarely, if ever, question either the sincerity or religiosity of a particular belief or non-belief.<sup>41</sup> The law intentionally includes a broad spectrum of religious practices and beliefs and is not limited to organized or recognized teachings of a particular religion.<sup>42</sup> Therefore, a religious belief need not be socially acceptable to be entitled to protection.<sup>43</sup> The fact that a group, such as Atheists, does not have any set beliefs will not determine whether the belief (or non-belief) is afforded protection under Title VII.<sup>44</sup> However, it is clear that the religious accommodation provisions of Title VII were only intended to protect individuals adhering to a sincerely held religious belief (or non-belief) and not those with political or other beliefs unrelated to religion.<sup>45</sup> As of late, this issue of "defining religion" has been greatly debated. Because the interpretation of religion within the Constitution is in a state of flux, this issue has led to a great deal of confusion among schol-

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37. *Id.* at 296-97.

38. *Id.* at 297.

39. 589 F.2d 397, 402 (9th Cir. 1978) (expressing skepticism concerning "hypothetical hardships" based on assumptions about accommodations which have never been put into practice) (citing *Draper v. U.S. Pipe & Foundry Co.*, 527 F.2d 515, 520 (6th Cir. 1975)).

40. *Id.*

41. *Religious Accommodation*, *supra* note 3, at 3.

42. *Id.*

43. *Id.*

44. *See id.* *See also* Dmitry N. Feofanov, *Defining Religion: An Immodest Proposal*, 23 HOFSTRA L. REV. 309 (1994). Feofanov concludes Title VII defined religion broadly, if not circularly. *Id.* at 320. As such, "[i]f Atheism is deemed a 'religion' under an over-inclusive definition of religion advocated by some, Atheists will be able to challenge job discrimination under a disparate-impact theory." *Id.*

45. *Religious Accommodation*, *supra* note 3, at 3.

ars.<sup>46</sup> Atheism, which is thought to be the antithesis of religion, has recently been included under the broad guidelines of Title VII.<sup>47</sup> Since Atheism is included under Title VII, non-believers have a voice with regard to religious conditions in the workplace.<sup>48</sup> Specifically, Atheists must be given similar accommodations in order to be on an equal footing with employees belonging to other established religions.<sup>49</sup>

## II. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII is a federal law prohibiting employment discrimination based on race, color, sex, national origin and, most relevant for the purposes of this article, religion.<sup>50</sup> Title VII applies to all employers with fifteen or more employees, including federal, state, and local governments, private and public colleges and universities, employment agencies and labor organizations.<sup>51</sup>

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46. Feofanov, *supra* note 44, at 311-12. This confusion stems from the inability by the Supreme Court to agree on what it is willing to call a “religion” under the First Amendment of the U.S. Constitution. *Id.*

47. Welsh v. Boy Scouts of Am., 742 F. Supp. 1413, 1433 (N.D. Ill. 1990) (finding that religious discrimination stems from a long history of persecution of individuals based solely on their religious beliefs; therefore, a father and son’s refusal to recognize an organization’s obligation to God should not be grounds for removal or denial of membership).

48. See Williams v. Allied Waste Serv., No. 1:09-CV-705, 2010 U.S. Dist. LEXIS 84218, at \*22-23 (E.D. Tex. June 30, 2010).

49. *Id.* (“Title VII prohibits workplace discrimination on the basis of religion. Hence, the statute clearly protects Jews, Catholics, Protestants, Hindus, Muslims, etc., from employment-related discrimination based on their religious beliefs. Atheism is not a religion. Literally, it represents antipathy to religion. Nonetheless, discrimination against employees because of their Atheistic beliefs is equally prohibited under the penumbra of rights guaranteed by Title VII.” (citing *TWA*, 432 U.S. at 91 n.4)). See also Young v. Southwestern Sav. & Loan Ass’n, 509 F.2d 140, 142 (5th Cir. 1975) (applying Title VII to religious discrimination claim based on Atheism).

50. Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (1994).

51. See *Title VII of the Civil Rights Act of 1964*, AAUW, [http://www.aauw.org/act/laf/library/workplaceharassment\\_TitleVII.cfm](http://www.aauw.org/act/laf/library/workplaceharassment_TitleVII.cfm) (last visited Feb. 19, 2013) for an overview of Title VII and the remedies afforded by the EEOC. Note, however, while federal law applies only to companies with more than fifteen employees, many state and local employment laws protect employees of smaller companies. See *Religious Accommodation*, *supra* note 3, at 3.

A. *Historical Timeline of the Progression of Title VII*

On June 2, 1964, Congress passed legislation leading to the advent of Title VII.<sup>52</sup> The original version of the Act did not include provisions on religious discrimination, but the legislative history reveals a clear congressional purpose behind the inclusion of a definition of “religion.”<sup>53</sup> In response to a growing body of case law pertaining to religious discrimination, Congress amended Title VII of the Act in 1972, broadening the definition of “religion.”<sup>54</sup> The legislative history of this amendment indicates that its purpose was to protect religious freedom in the workplace.<sup>55</sup>

Title VII of the Act created the EEOC to implement and enforce the law in cases of employment discrimination.<sup>56</sup> Subsequent legislation expanded the role of the EEOC to enforce laws prohibiting discrimination based on race, color, and religion, just to name a few.<sup>57</sup> In 1967, the EEOC changed the guidelines to clarify that an employer must “reasonably accommodate” an employee’s religious practices unless the employer can demonstrate the accommodation would create an undue hardship on his business.<sup>58</sup>

Today, the regulatory authority of the EEOC includes enforcing a range of federal statutes prohibiting employment discrimination.<sup>59</sup> The Civil Rights Act of 1991 amended Title VII again; the 1991 amendments provided for monetary damages in cases of intentional discrimination.<sup>60</sup> Specifically, 42 U.S.C. § 1981 states that compensatory and punitive damages may be awarded to a Title VII plaintiff in a workplace discrimination suit.<sup>61</sup> Finally, within the definitional section of Title VII, the term “religion” is presently defined to include all aspects of religious observance, practice and belief, unless an employer demonstrates that a reasonable accommodation of an employee’s or prospective employee’s

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52. *Teaching with Documents*, *supra* note 6.

53. Hayes, *supra* note 34, at 293.

54. Sara L. Silbiger, *Heaven Can Wait: Judicial Interpretation of Title VII’s Religious Accommodation Requirement Since Trans World Airlines v. Hardison*, 53 *FORDHAM L. REV.* 842, 844 (1985) (discussing legislative history of amendment behind adding a broad definition of religion to Title VII).

55. Hayes, *supra* note 34, at 294.

56. *Id.*

57. *Id.*

58. *Id.* at 294-95.

59. *Id.*

60. Hayes, *supra* note 34, at 294-95.

61. 42 U.S.C. § 1981.

religious observance, practice or belief would cause an undue hardship on the employer's business.<sup>62</sup> The Act is very broad in its definition of "religion," as this incorporates both religious observances and beliefs.<sup>63</sup> While Title VII establishes the employer's duty to accommodate an employee's religious beliefs, it does not offer clear guidance in interpreting the scope of that duty.<sup>64</sup>

### III. VARIOUS FORMS OF ATHEISTIC DISCRIMINATION IN THE WORKPLACE

Just as any religious employee can face persecution and ridicule for his or her beliefs, so can an Atheistic non-believer while at his or her place of employ. For example, Atheists might be subjected to religious aspects as a means of ridicule in the workplace, or they might be forced to participate in supervisory meetings when religious topics are discussed.<sup>65</sup> In these instances, it does not matter if an employee was terminated or left voluntarily for a religious reason. Title VII was designed to prohibit employment discrimination because of religion. Any subtle or unrealistic distinction that might be drawn between resignation and discharge usually does not deter a court from enforcing its statutory mandate.<sup>66</sup>

A key case involving this issue is *Williams v. Allied Waste Serv.*, where an Atheist waste management employee was chas-

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62. 42 U.S.C. § 2000e(j).

63. *Id.*

64. Hayes, *supra* note 34, at 291.

65. *See Young v. Southwestern Sav. & Loan Ass'n*, 509 F.2d 140, 142 (5th Cir. 1975). In *Young*, the defendant-employer required the plaintiff-employee to attend monthly staff meetings opened by religious talks or prayers. *Id.* at 141-42. Plaintiff resolved not to attend the meetings, as she felt her freedom of conscience was being violated. *Id.* Once defendant discovered that plaintiff was absent during these meetings, he told plaintiff that the meetings were mandatory, even though plaintiff voiced her objections to the religious contentions of the meeting. *Id.*

66. *See id.* at 145. The district court found the facts compelled the conclusion that plaintiff had voluntarily resigned her position and held that plaintiff failed to demonstrate any act of discrimination against her arising out of the monthly staff meetings. *Id.* at 143. The Fifth Circuit reversed, holding that the plaintiff had made out a *prima facie* case of religious discrimination. *Id.* at 145. In so holding, the court found that plaintiff only resigned her position because defendant required her attendance at meetings that were opened with prayer. *Id.*

tised and ridiculed for his non-belief.<sup>67</sup> Here, plaintiff began work at Allied Waste Services Factory as a leased temporary worker, while employed as an independent contractor.<sup>68</sup> He began his permanent employment in March of 2008, when he rode along in a garbage truck and assisted in emptying trash.<sup>69</sup> During his employ, plaintiff was an Atheist, but in his view, did not outwardly refute the existence of God.<sup>70</sup> Once his belief became known amongst fellow coworkers, he was chastised.<sup>71</sup> A week after plaintiff was terminated, he filed a discrimination suit alleging he was discriminated against based on his religion.<sup>72</sup> Specifically, plaintiff alleged he had been “subjected to harassment, a hostile work environment, unwarranted disciplinary write ups and suspensions, and different terms, conditions, and privileges of employment on a continuous basis . . . .”<sup>73</sup> The district court did not agree with plaintiff’s religious claims because he admitted to being terminated for non-compliance with the company’s employee code of conduct, rather than his Atheistic views.<sup>74</sup> Although this case did not come out in favor of the plaintiff who was allegedly discriminated against, the discussion of religious based claims under Title VII is worth noting.<sup>75</sup> As echoed by the court, Title VII prohibits workplace discrimination on the basis of religion.<sup>76</sup> The Act clearly protects Catholics, Jews, Protestants, Hindus, and Muslims from employment-related discrimination based on their religious beliefs.<sup>77</sup> Atheism, which is at issue in this case, is not a religion—it liter-

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67. No. 1:09-CV-705, 2010 U.S. Dist. LEXIS 84218, at \*5-6 (E.D. Tex. June 30, 2010).

68. *Id.* at \*3.

69. *Id.* at \*3.

70. *Id.* at \*5.

71. *Id.* at \*5-6.

72. *Williams*, 2010 U.S. Dist. LEXIS 84218, at \*10.

73. *Id.* at \*8 (finding plaintiff’s allegations, that several coworkers and his immediate supervisor repeatedly threatened him because of his religious beliefs, without merit, since he was terminated on other grounds).

74. *Id.* at \*3. Since the beginning of his employ, plaintiff refused to accept Allied’s “Code of Business Conduct and Ethics” which outlined general standards of business conduct. *Id.* at \*3. The court noted that a rejection of an employer’s code of conduct is not an activity protected by Title VII, since Title VII only protects retaliation based on race, color, religion, sex, or national origin. *Id.* at \*33. As admitted by plaintiff, his claim was not religious based; therefore, he may not invoke the protections afforded by Title VII. *Id.* at \*12.

75. *Id.* at \*22.

76. *Id.*

77. *Williams*, 2010 U.S. Dist. LEXIS 84218, at \*22.

ally represents the antipathy of religion.<sup>78</sup> However, if an Atheist is discriminated against in the workplace because of his Atheistic non-belief, this discrimination is equally prohibited under the penumbra of rights guaranteed by Title VII.<sup>79</sup>

In the workplace, unlawful religious discrimination can manifest itself in many forms.<sup>80</sup> One way is when an employer subjects an employee to a “hostile work environment,” which is central to workplace harassment.<sup>81</sup> The second occurs when a certain religion, or non-religion, is disparately treated on the basis of its beliefs. Disparate treatment was illustrated by the allegations in the *Williams* case, where the plaintiff was ridiculed for subscribing to Atheism.<sup>82</sup> In order for an employee to be entitled to relief under Title VII, he must establish both the “hostile work environment” and the “disparate treatment” prongs of the test.

Under the “hostile work environment” prong, a plaintiff must establish a *prima facie* case that his claim was based on religious persecution. This requires the plaintiff to produce evidence that he: (1) belonged to a protected class of individuals; (2) was subjected to unwelcomed harassment; (3) the harassment was based on religion; (4) the harassment affected a term, condition, or privilege of employment; and (5) the employer knew or should have known about the harassment, but failed to take steps to remediate the situation.<sup>83</sup> The plaintiff must also establish that the alleged harassment happened because of his religion or lack of religion, such as in the context of Atheism.<sup>84</sup>

78. *Id.*

79. *Id.* at \*23. See *TWA*, 432 U.S. at 91. See also *Young v. Southwestern Sav. & Loan Ass’n*, 509 F.2d 140, 142 (5th Cir. 1975) (applying Title VII to religious discrimination based on Atheism), *EEOC v. Townley Eng’g & Mfg. Co.*, 859 F.2d. 610, 613-14 (9th Cir. 1988) (same).

80. *Williams*, 2010 U.S. Dist. LEXIS 84218, at \*23.

81. *Id.*

82. *Id.* at \*6.

83. *Id.* at 23-24. See *EEOC v. WC&M Enters.*, 496 F.3d 393, 399 (5th Cir. 2007). In *WC&M Enterprises*, an Indian born car salesman and practicing Muslim was ridiculed and accused by his coworkers of being involved in the September 11, 2001 terrorist attacks. *Id.* at 396. These coworkers called this Indian employee “Taliban” every day he came to work and told the employee, “[T]his was America and if he did not like it, he could go back to where he came from.” *Id.* at 396-97.

84. *Williams*, 2010 U.S. Dist. LEXIS 84218, at \*24. See *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 80-81 (1998) (explaining that plaintiff must show the harassment was “because of” a protected characteristic). In other words, a plaintiff must demonstrate a “connection between the allegedly harassing inci-

Under the second prong, disparate treatment occurs when a certain employee is singled out and treated less favorably than others in the same working situation on the basis of a protected class under Title VII, such as religion.<sup>85</sup> As with the “hostile work environment” prong, the plaintiff must again prove a *prima facie* case to show disparate treatment against him. This requires the plaintiff to produce evidence that he was: (1) a member of the protected class; (2) fully qualified for the position he was applying for; (3) the victim of an adverse employment action; and (4) other employees not belonging to a certain religious group were treated more favorably.<sup>86</sup> If the plaintiff can prove that he faced or is facing hostile employment conditions and that his beliefs are disparately impacted by the discriminatory employment practices, then he has a successful claim for relief.

#### IV. RELIGIOUS ACCOMMODATIONS GRANTED TO OTHER ESTABLISHED RELIGIONS

Many religions form the mold for individual beliefs and ideologies. With domestic workplaces becoming more diverse, these individual beliefs and ideologies can be found in almost any modern industry. Simply put, the American workplace has become a melting pot for many established religions. Under Title VII, once an employee advises the employer of her sincerely held religious belief, the employer has a duty to reasonably accommodate this belief.<sup>87</sup> The employee has the duty to suggest accommodation alternatives if a certain request is infeasible.

Atheistic accommodations are a relatively novel concept being introduced in the workplace. As such, before Atheistic accommoda-

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dents and [his] protected status.” *Harris-Childs v. Medco Health Solutions, Inc.*, No. 4:03-CV-77-Y, 2005 U.S. Dist. LEXIS 3685, at \*20 (N.D. Tex. Mar. 10, 2005), *aff'd*.

85. *Williams*, 2010 U.S. Dist. LEXIS 84218, at \*28. *See* .

86. *Williams*, 2010 U.S. Dist. LEXIS 84218, at \*28. *See Okoye v. Univ. of Tex. Houston Health Sci. Ctr.*, 245 F.3d 507, 512-13 (5th Cir. 2001). *See also Rubinstein v. Adm’rs of Tulane Educ. Fund*, 218 F.3d 392, 399 (5th Cir. 2000) (establishing that a *prima facie* cause of action for “discriminatory discharge” on the basis of religion requires a plaintiff to show: (1) membership in a protected class; (2) qualification for the position; (3) discharge; and (4) after discharge, replacement with a person not a member of the protected class). *See Frank v. Xerox Corp.*, 347 F.3d 130, 137 (5th Cir. 2003) (citing *Bauer v. Albemarle Corp.*, 169 F.3d 962, 966 (5th Cir. 1999)).

87. Mathew D. Staver, *Religious Rights in the Workplace*, LIBERTY COUNSEL (2000), [www.lc.org/resources/workplace.htm](http://www.lc.org/resources/workplace.htm).

tions can be discussed, a brief journey through some religions more familiar to the workplace is in order. The three religions that will be focused on are Christianity, Judaism, and Islam, since these religions make up a large percentage of the American workforce.

#### A. *Catholicism and Christianity*

In the Catholic Church, many Holy days of obligations exist that mandate a devote Catholic's adherence. These Holy days happen sporadically during the calendar year, such as Sunday observance on the Sabbath, or Ash Wednesday, Holy Thursday and Good Friday of the Lenten season.<sup>88</sup> Although all of these Holy days are not days of obligation, Catholics have sincere beliefs about how to observe them.<sup>89</sup> If an employer cannot feasibly offer an accommodation for a Catholic employee desiring to observe one of these Holy days, then that Catholic employee must propose an alternative that would accommodate his or her observance.<sup>90</sup> This alternative measure is clearly stated in the EEOC Compliance Manual.<sup>91</sup> In addition to the granting of days off for Holy days, Catholics, and many other Christian sects similarly situated, may require in-work accommodations as well. These accommodations are among the rights granted to employees under Title VII, but, like all others, has the potential of being abused. In-work accommodations might lead to religious proselytizing, which could impede on the rights of other employees, such as Atheistic observ-

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88. David Foley, *Lent, Catholicism, Religious Accommodations*, DAVID FOLEY'S LABOR & EMPLOYMENT LAW BLOG (Feb. 21, 2012), [laborrelated.blogspot.com/2012/02/lent-catholicism-accommodations.html](http://laborrelated.blogspot.com/2012/02/lent-catholicism-accommodations.html) (discussing some of the litigation that has centered around the Lenten season in the Catholic Church, which prepares its followers for the Easter).

89. *Id.*

90. *Id.*

91. *Id.* See *EEOC Compliance Manual*, EEOC, [www.eeoc.gov/policy/docs/religion.html](http://www.eeoc.gov/policy/docs/religion.html) (last updated Feb. 8, 2011) ("A Catholic employee requests a schedule change so that he can attend church services on Good Friday . . . [this and other] accommodation request relates to a 'religious' belief or practice within the meaning of Title VII."). See also *Cardona & Borrero v. U.S. Postal Serv.*, EEOC Dec. Nos. 01882012, 01882013 (Oct. 11, 1989) (The Postal Service failed to reasonably accommodate the religious practices of Catholic employees where it allowed them to take only five hours of leave on Good Friday, while allowing Jewish employees to take a full day. "The agency's justification for the different treatment was based on its interpretation of Catholic [Canon] law, which did not require more than two hours of church attendance on Good Friday, and Jewish Law, which forbade work on holy days.").

ers.<sup>92</sup> However, not all religious proselytizing is prohibited in the workplace. Title VII does not outwardly ban proselytizing and in some instances, condones it.<sup>93</sup> Employees claiming to have been discriminated against on the basis of their religious beliefs and practices actually receive more favorable treatment than other classes of employees protected under Title VII.<sup>94</sup> In some cases, employers must accommodate employees who wish to proselytize in the workplace.<sup>95</sup> When an employee sincerely holds such religious belief, such as preaching the Good News of the Catholic or Christian Bible, the employer may be required to accommodate, even in the face of opposition from other employees. This is of particular concern to Atheistic employees, since members of other faiths, Christianity being the most predominant, have the right to “preach the Good News,” while an Atheistic observer must sit and listen to something he does not believe in. This would cut against any accommodation an Atheistic believer might have and creates a slippery slope for employers looking to follow the letter of the law.<sup>96</sup>

### B. Judaism

Along with Catholic and Christian accommodations, Jewish accommodations in the workplace also pose a potential conflict for non-believing employees. Jewish law, which is much stricter than the Catholic Canon law, requires adherence to the Holy days of obligation, and under Title VII, employers must be mindful and accommodate these employees for their observances.<sup>97</sup> For example, employers must reasonably provide accommodations for their

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92. See generally Michael D. Moberly, *Bad News For Those Proclaiming The Good News?: The Employer's Ambiguous Duty to Accommodate Religious Proselytizing*, 42 SANTA CLARA L. REV. 1, 19 (2001) (“Title VII obligates an employer to maintain a working atmosphere free of intimidation based upon race, color, religion, sex, and national origin,’ the EEOC explained that because a supervisor’s religious proselytizing has the potential to intimidate other employees, it may constitute unlawful religious harassment.” (citing EEOC Dec. No. 71-2344 (June 3, 1971))).

93. *Id.* at 3-5.

94. *Id.*

95. *Id.* See also *Meltebeke v. Bureau of Labor & Indus.*, 322 Ore. 132, 134 (1995) (involving an evangelical Christian who believed he had “a religious duty to tell others, especially non-Christians, about God and sinful conduct.”).

96. See *Wilson*, 58 F.3d 1337.

97. *Foley*, *supra* note 88 (stating that Jewish employees are allowed to take a full day off for Good Friday since Jewish law forbids work on Holy days).

employees adhering to the Jewish observance of the Sabbath. Exactly how an individual employer does so largely depends on the type of work involved and the number of employees requesting the accommodation.<sup>98</sup> If the desired religious accommodation allowing Jewish employees to observe the Sabbath results in undue hardship for the employer, certain arrangements, such as flexible scheduling or change in job assignments, may be utilized with other non-Jewish employees.<sup>99</sup> For instance, the employer could accommodate a Jewish employee by allowing that employee to work longer hours during the week in order to be granted time off for the Sabbath observance.

Jewish religious observances are similarly situated among public and private employees. In 1997, President Clinton issued the Guidelines on Religious Exercise and Expression in the Federal Workplace (the “Guidelines”).<sup>100</sup> The Guidelines clarify the rights of civilian federal employees with regard to religious exercise and expression in the workplace. In general, the Guidelines provide that the federal government, in its role as an employer, should accommodate the religious observances of employees so long as that accommodation is consistent with workplace arrangements and efficiency. Employers are also required to accommodate many in-office religious observances, such as the wearing of Jewish garb or symbols. Employers must attempt to accommodate employees who must maintain a particular physical appearance in keeping with the tenets of their religions.<sup>101</sup>

Jewish employees require strict accommodations for their observance of the Sabbath and Holy days, and this has led to much animosity among employees of other religious denominations.<sup>102</sup>

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98. Union of Orthodox Jewish Congregations of Am.; Inst. for Pub. Affairs, *Religious Accommodations in the Workplace: Your Rights and Obligations*, JEWISH LAW – LAW & POLICY, [www.jlaw.com/LawPolicy/accommodation.html](http://www.jlaw.com/LawPolicy/accommodation.html) (last visited Feb. 19, 2013) [hereinafter *Union of Orthodox Jewish Congregations*].

99. *Id.*

100. *Id.* See also *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace*, WHITE HOUSE OFFICE OF THE PRESS SECRETARY (Aug. 14, 1997), [clinton2.nara.gov/WH/New/html/19970819-3275.html](http://clinton2.nara.gov/WH/New/html/19970819-3275.html).

101. *Union of Orthodox Jewish Congregations*, *supra* note 98.

102. See Theresa M. Beiner & John DiPippa, *Hostile Environments and the Religious Employee*, 19 U. ARK. LITTLE ROCK L.J. 577, 579 (1997) (arguing that claims of religious harassment based on a hostile work environment appear easier to prove when an employee is seeking protection under Title VII against an employer or coworker motivated by religious beliefs than when a religious employee seeks to invoke the Act’s protection against a secular employee).

Courts have found that an employee is subjected to a hostile work environment when the employer uses the workplace to engage in religious discussion or proselytizing.<sup>103</sup> This hostile work environment can occur between members of organized religions, or between a believer and non-believer; the resulting harm is the same in the end. In this instance, a non-believing Atheist is constantly ridiculed for his lack of faith. On the other hand, members of organized religions proselytize, hoping to eventually convert non-believing employees. Jewish employees, however, experience much hostility in the workplace due to their devote beliefs. In *Brown Transport Corp. v. Commonwealth of Pennsylvania*, the court found religious harassment when an employer failed to remove certain religious material from the workplace.<sup>104</sup> In this case, the harassing employer placed various Christian Bible verses on employee paychecks.<sup>105</sup> A Jewish employee complained about the verses as well as the religious content of some articles in the company newsletter.<sup>106</sup> The verses were not removed from the paychecks and the company eventually fired the employee because of his complaints. Under Title VII, an employer has an affirmative obligation to maintain a work environment free of harassment, intimidation, and insult. The Supreme Court held that harassment need “not seriously affect employees’ psychological well-being” in order to be actionable under Title VII, “so long as the environment would reasonably be perceived, and is perceived, as hostile or abusive.”<sup>107</sup>

The trepidation of a hostile employment environment spans across all workplaces and religions alike. Just as Catholic, Christian, and Jewish adherents are affected in similar and different ways, so are those employees subscribing to the Islamic faith.

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103. *Id.* at 615.

104. 578 A.2d 555, 561 (Pa. Commw. Ct. 1990).

105. *Id.* at 615

106. *Id.*

107. *Harris v. Forklift Sys.*, 114 S. Ct. 367, 371 (1993). *See also Union of Orthodox Jewish Congregations*, *supra* note 98. The employer’s obligation extends to situations where she knows of the harassment or has reason to know of it and does nothing to correct the situation. *Id.* If fellow employees are creating a hostile work environment through religious harassment, the employee has an affirmative obligation to notify his supervisor of the harassment. *Id.* If the harassment continues after the supervisor is notified, the employee may file a complaint of discrimination against the employer with the appropriate government agency. *Id.*

### C. Islam

Along with the aforementioned denominations, members of the Islamic faith also require certain religious accommodations in their place of employment, and they also suffer from harassment at the hands of their employers and coworkers. Moreover, and also similar to other established religions in the workplace, certain accommodations afforded to Islamic employees might infringe on the rights of non-religious or non-believing employees. While proselytizing is a problem that faces all facets of religious rights in the workplace, Atheists bear the burden of proving that other religious employees are violating their rights and ideologies. In other words, Atheists must assert a successful Title VII violation in order to receive fair treatment and freedom from ridicule.

Allegations of Islamic discrimination in the workplace have been on the rise since 2004.<sup>108</sup> As such, workplace accommodations for Muslims have extended beyond what is required to accommodate a traditional Christian or Jewish employee. First, Muslim employees seek accommodations to wear hajibs, which are the predominant headscarves worn by Muslim women to represent a visible expression of their faith and devotion.<sup>109</sup> Second, Muslims may require time to be set-aside during the workday for daily prayer. To accommodate, employers may be required not only to schedule these times into the workday, but also to potentially provide a place for the prayers to be conducted within the facility.<sup>110</sup> Lastly, Muslim followers working for companies or facilities that handle meat or meat packing must be free from the requirement of handling pork products, since Muslims are strictly forbidden from doing so.<sup>111</sup>

All of these accommodations have led fellow employees to develop antagonism towards Muslim workers. This bitterness is most

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108. Robert I. Gosseen, *Accommodating Islam in the Workplace: A Work in Progress*, PRIMERUS, <http://www.primerus.com/business-law-articles/accommodating-islam-in-the-workplace-a-work-in-progress-332011.htm> (last visited Feb. 20, 2013) (“In 2009, the EEOC received 1,490 complaints from Muslims, the fifth consecutive year the number of complaints rose. ‘The trend could reflect a rise in Islamophobia in the workplace or an increased willingness on the part of Muslims to report discrimination—or both’” (citing Mark Benjamin, *Job discrimination claims by Muslims on the rise*, SALON (Sept. 8, 2010), [http://www.salon.com/2010/09/08/muslim\\_employment\\_discrimination/](http://www.salon.com/2010/09/08/muslim_employment_discrimination/)).

109. *Id.*

110. *Id.*

111. *Id.*

prominent concerning the requirement that Muslim women wear hajibs, especially following the tragic events of September 11, 2011.<sup>112</sup> An employer's duty to accommodate hajib wearing is not an absolute right for the Muslim employee; however, the extent of the accommodation depends on the context of the situation and, in some cases, the attitude of a particular branch's supervision.<sup>113</sup> Muslim accommodations for daily or weekly prayers have also led to much controversy in the workplace. Objections to this religious accommodation are often fierce, and many feel it is not the responsibility of private companies to "bend over backwards" to accommodate Islamic workers who want special breaks to pray.<sup>114</sup> Lastly, much litigation has resulted from the "no pork" rule observed by Muslims. The legality of this accommodation was recently tested in *EEOC v. Work Connection* where the EEOC alleged, in order to gain a referral to work in a meat processing plant, applicants were required to sign a form stating they will not refuse to handle pork while working.<sup>115</sup> Following much litigation, the employment agency agreed to no longer use this form.<sup>116</sup>

These views also parallel the experiences of non-religious employees. An Atheist can feel discriminated against when witnessing Muslim workers dressed in hajibs and being given time off to worship. Atheists, unlike their religious counterparts, do not have any beliefs that require them to miss work or to abstain from

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112. *Id. See, e.g.,* EEOC v. Am. Airlines, Civil Action No. 02-C-6172 (N.D. Ill. Aug. 28, 2002). Here, less than a year after 9/11, the EEOC brought a class action against American Airlines, alleging that the airline maintained a policy of refusing to hire Muslim women who wore hijabs as passenger service agents. *Id.* This case was settled within a week, resulting in American Airlines paying \$45,000 to the lead plaintiff and changed its uniform policy to contemplate exceptions to religious accommodations. Jeanne Goldberg, *Selected Recent EEOC Litigation: Religious Discrimination Issues Under Title VII*, AM. BAR ASS'N 1, 8, <http://apps.americanbar.org/labor/lel-annualcle/09/materials/data/papers/001-update.pdf> (last visited Feb. 20, 2013). *See also* EEOC v. Alamo Rent-A-Car, LLC, 432 F. Supp. 2d 1006 (D. Ariz. 2006).

113. Gosseen, *supra* note 108.

114. *Id.* These views are explicitly expressed by Congressman Tom Tancredo (R-Colo.), who stated, "The fact is that, if you take a job that requires your attendance on an assembly line from a point certain to a point certain, and if your religious views do not allow you to do that, then don't take the job." *Id.* Tancredo went on to state, "There is nothing forcing anybody to take the job. No one has put a gun to their head." *Id.*

115. *Id.*

116. *Id. See also* Al-Jabery v. Conagra Foods, Inc., No. 4:06CV3157, 2007 U.S. Dist. LEXIS 79080 (D. Neb. 2007).

workplace duties.<sup>117</sup> As such, Atheists and other non-religious workers will ultimately bear the brunt of the work that must be missed due to the accommodations afforded to religious coworkers. This notion illustrates the catch-22 of Title VII—accommodating all workplace religions will lead to the inevitable discrimination of one group, primarily the group of non-believers.

*D. The Effect of Accommodating Religious Employees on Non-Believers*

When an employer reasonably accommodates a religious employee and his or her religious practices, this leads to discrimination or bias against other employees, especially those employees that do not practice any form of religion. Religious employees, as seen with accommodations requested by Christians, Jews and Muslims, require certain exceptions during the workday and religious holidays. The work missed for religious holidays, or time taken off for prayer in the case of Muslims, must still be done. As such, employers need non-believers, without religious obligations, to work and make sure the job is done right and efficiently. Although religious employees can make up for the lost work at a different time, the reality of the situation imposes a heavier burden on employees that are free of religious obligations. While this increased burden is not illegal on its face, it leads to discrimination on the basis of lack of religion. Therefore, an Atheistic employee may bring a Title VII claim against his employer when that employer accommodates a religious employee at the expense of his rights as an Atheist.

As discussed *infra*, certain religious followers are also required to preach the “Good News” to others as a plea to convert non-believers to believe in their faith. When this happens, it is very controversial because such preaching impinges on the rights of other employees. This contentious issue was chronicled and squarely addressed in the Fourth Circuit case, *Chalmers v. Tulon*.<sup>118</sup> There, the Evangelical Christian plaintiff, who was an employee at Tulon, wrote letters to her supervisor and other employees expressing her religious beliefs and criticizing their immoral

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117. Gosseen, *supra* note 108. An obstacle for Muslims working in meat processing plants is the Quran’s prohibition of the consumption of pork. *Id.* Many Muslims also believe that even touching pork violates this tenet of Islam. *Id.*

118. 101 F.3d 1012 (4th Cir. 1996).

conduct.<sup>119</sup> On the first instance, the plaintiff and a supervisor developed a personal working relationship during the years they worked together, and the plaintiff alleged they discussed religion on many occasions and the supervisor never discouraged these conversations, expressed discomfort with them, or indicated they were improper.<sup>120</sup> The supervisor was not considered a religious individual, and the plaintiff felt that it was her duty to make him accept God.<sup>121</sup> The plaintiff was later fired after she sent a letter to her supervisor condemning him for sales tactics he used against consumers of the company and suggesting he should repent and accept the Lord in his life.<sup>122</sup> The plaintiff also sent a second letter to another employee within the company stating it was imperative that she accept God in her home and change her sinful ways.<sup>123</sup>

Upon termination, the plaintiff filed a Title VII action against the employer, claiming it was her right to preach the word of God and that she was a victim of religious discrimination.<sup>124</sup> The district court found that she failed to make a *prima facie* case of religious discrimination and thus dismissed her Title VII action against the employer on summary judgment.<sup>125</sup> The court held that the employee had to show “disparate treatment” due to her beliefs, or her employer’s “failure to accommodate” her religious practices.<sup>126</sup> The court reasoned that the employee failed to show disparate treatment because her letters caused the other employees much personal distress, invaded their privacy, and damaged their

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119. *Id.* at 1015.

120. *Id.* In one of these conversations, LaMantia, the supervisor, told the [plaintiff] that three people had approached him about accepting Christ. *Id.*

121. *Id.*

122. *Id.* Plaintiff testified that she was “led by the Lord” to write LaMantia and tell him “there were things he needed to get right with God, and that was one thing that . . . he needed to get right with him.” *Id.*

123. *Chalmers*, 101 F.3d at 1015. That employee, Brenda Combs, worked as a reprint operator in the Richmond office and Chalmers was her direct supervisor. *Id.* (citing J.A. 53, 56-57). Chalmers knew that Combs was convalescing at her home, suffering from an undiagnosed illness after giving birth out of wedlock. *Id.*

124. *Id.* Plaintiff contended that her letter writing constituted protected religious activity that Tulon, by law, should have accommodated with a lesser punishment than discharge. *Id.*

125. *Id.* at 1018. The court stated that plaintiff had failed to establish a *prima facie* case and that, even if she had, Tulon had offered a legitimate non-discriminatory reason for her discharge. *Id.*

126. *Id.* at 1020.

working relationship.<sup>127</sup> As such, the employer's reasons for the discharge were legitimate and non-discriminatory.<sup>128</sup> The employee could not show a failure to accommodate for two reasons: (1) she failed to notify her employer that her religious beliefs required her to write the letters, which meant the employer had no chance to accommodate the employee; and (2) it was not possible for the employer to accommodate such a practice without exposing the company to legal action by other employees.<sup>129</sup>

This case demonstrates how accommodating religious employees can interfere with the work and mentality of non-religious employees. By accommodating religious employees, employers are faced with a conflicting situation where they must balance the requests of believers with the rights of non-believers.<sup>130</sup> This balancing act addressed in *Chalmers* is not outwardly discussed in Title VII. If certain religions have specific accommodations required in the workplace, how does the employer comply with the Act when another employee is claiming to be an Atheist?

#### V. ATHEISTIC ACCOMMODATIONS (OR LACK OF COMPULSORY OBSERVANCE)

Atheistic employees in the workplace are constantly contending with accommodations that are granted to other religious employees. Religious employees are given time off for Holy days of Obligation, and they are, in some faiths, given time during the day for prayer and reflection.<sup>131</sup> These practices, although required by Title VII, will ultimately place a non-believer at a disadvantage, because their "lack of faith" does not require any special provi-

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127. *Id.*

128. *Chalmers*, 101 F.3d at 1020. Plaintiff was expected to know that sending personal, distressing letters to coworkers' homes, criticizing them for ungodly, shameful conduct, would violate her employment policy. *Id.* Accordingly, the failure of the company to expressly forbid supervisors from disturbing other employees in this way provided plaintiff with no basis for failing to notify Tulon that her religious beliefs required her to write such letters. *Id.*

129. *Id.* at 1021. *See also* *Wilson v. U.S. W. Commc'ns*, 58 F.3d 1337, 1342 (8th Cir. 1995) (holding that "Title VII does not require an employer to allow an employee to impose . . . religious views on others.").

130. *Chalmers*, 101 F.3d at 1021. When an employee contends that she has a religious need to impose personally and directly on fellow employees and does so, by invading their privacy and criticizing their personal lives, the employer is placed between a rock and a hard place—this might lead to Title VII litigation from both sides.

131. Gosseen, *supra* note 108.

sions. In an ideal situation for Atheistic employees, their accommodations might include freedom from compulsory observances of other religions; however, this “religion-free workplace” goes directly against the bedrock of Title VII.<sup>132</sup> There is no constitutional right to a workplace free of religion. Attempting to create such a workplace will ultimately expose the employer to a multitude of lawsuits by religious employees who are denied their constitutionally guaranteed right to express their beliefs in the workplace.<sup>133</sup>

Somewhere between no accommodations and the unrealistic accommodation of a completely “religion-free” workplace, a certain line must be drawn to determine what workplace rights should be granted to non-believers. Here, a distinction must be made clear—the difference between religious proselytizing and religious observance. Atheists have a strong claim of relief against the former, since they are being coerced and berated to follow the religious views of others. The latter, however, is expressly protected by the Constitution. An Atheist can rarely argue lack of accommodation due to the presence of religion alone.

#### A. *Freedom from Religious Proselytization*

An Atheist can claim freedom from religious proselytization because this leads to a hostile working environment for all employees not part of the proselytizing faith.<sup>134</sup> This accommodation is not only for the Atheistic employee’s rights and benefits, but also for other employees not sharing in the ideologies of the preaching coworker.<sup>135</sup> A key case that chronicles the freedom of coworkers from religious proselytization is *Wilson v. U.S. W. Communications*.<sup>136</sup> In *Wilson*, an employee made a religious vow to wear a

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132. Clifford R. Ennico, *Do Atheists Have a Right to a “Religion-Free” Workplace?*, CREATORS.COM (2010), <http://www.creators.com/lifestylefeatures/business-and-finance/succeeding-in-your-business/do-Atheists-have-a-right-to-a-quot-religion-free-quot-workplace.html>.

133. *Id.*

134. *Id.* The courts have been equally strict about not allowing one employee to create a hostile work environment for others by harassing them about what they do or do not believe. *See id.*

135. *Id.* An Evangelical Christian employee who passes out copies of the Gospel of John to all of his Jewish coworkers in an effort to convert them to Christianity would almost certainly have to be reprimanded for his behavior, and possibly terminated if he fails to cease proselytizing in the workplace after due warning. *See id.*

136. *Wilson v. U.S. W. Commc’ns*, 58 F.3d 1337 (8th Cir. 1995).

graphic anti-abortion button to work that depicted a color photograph of an aborted fetus.<sup>137</sup> This graphic button, which was seen as a case of religious proselytizing, caused much workplace disruption and outrage, especially amongst members of other faiths and non-believers.<sup>138</sup> This button was the cause of a decline in workplace productivity and output. The employer even gave the proselytizing employee many alternative options apart from visibly expressing her religious stance on abortion, consistent with the requirements of Title VII.<sup>139</sup> The employee was ultimately fired when she continued to wear the uncovered button, and she brought an action against the employer and her supervisors for religious discrimination. The district court entered judgment for the employer and the supervisors. On the appeal, the Eighth Circuit affirmed, holding the district court's finding that the employee's vow did not require her to be a living witness was not clearly erroneous.<sup>140</sup>

In this case, the court ruled that religious proselytizing, if not an outward requirement of one's faith, will not be protected under Title VII. Therefore, a non-believing employee or a member of an opposing faith need not remain subject to outward instances of religious persuasion. The employer is adequately protected so long as she gives the religious employee options that will protect other employees and their rights. The example presented in *Wilson* elucidates that Atheistic accommodations are not explicit. Rather, these accommodations inherently limit the rights of other workplace religions in order to allow a non-believing employee to work in an environment free of the pressures of religious persuasion or coercion.<sup>141</sup>

Another example of when religious proselytization limits Atheistic accommodations is seen in *EEOC v. Townley Engineering & Manufacturing Co.*, a Ninth Circuit case holding that an employer violated Title VII by requiring his employees to attend mandatory

137. *Id.* at 1339.

138. *Id.* Plaintiff's coworkers testified that they found the button offensive and disturbing for "very personal reasons," such as infertility problems, miscarriage, and death of a premature infant, unrelated to any stance on abortion or religion. *Id.*

139. *Id.* The company offered plaintiff three options: (1) wear the button only in her work cubicle, leaving the button in the cubicle when she moved around the office; (2) cover the button while at work; or (3) wear a different button with the same message but without the photograph. *Id.*

140. *Id.* at 1340.

141. *Wilson*, 58 F.3d at 1341.

religious services while at work, regardless of their religion.<sup>142</sup> In this case, devotedly religious individuals owned Townley Engineering & Manufacturing Company, a Florida Corporation that manufactured mining equipment.<sup>143</sup> The owners held a weekly devotional service during work hours since the plant opened in 1963.<sup>144</sup> These services typically lasted from thirty to forty minutes and included prayer, thanksgiving to God, singing, testimony, and scripture readings, in addition to discussion of business related matters.<sup>145</sup> Along with the weekly devotional services, the company would enclose a Gospel tract in every piece of outgoing mail, print Biblical verses on all company invoices and other business documents, and the owners, through the company, would financially support various missionary causes and churches.<sup>146</sup>

The crux of the litigation was the company's requirement that all employees attend these weekly services; failure to attend was regarded as the equivalent of not attending work.<sup>147</sup> The owners of the company were brought to court when an Atheistic employee filed a religious discrimination charge with the EEOC.<sup>148</sup> Subsequently, the employee left the company, but claimed he was constructively discharged.<sup>149</sup> The company alleged the employee refused to accept another offer or transfer to a different plant.<sup>150</sup> The owner of the company, in accordance with the requirements of Title VII, defended that adhering to the employee's Atheistic accommodation of refraining from attending the religious services would cause him undue hardship.<sup>151</sup> The district court found just the opposite –an Atheist refraining to be in the presence of a religious

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142. 859 F.2d 610, 621 (9th Cir. 1988).

143. *Id.* at 611-12.

144. *Id.* at 612.

145. *Id.*

146. *Id.*

147. *Townley Eng'g & Mfg. Co.*, 859 F.2d at 612.

148. *Id.*

149. *Id.*

150. *Id.* In July 1986, the EEOC filed this action against Townley. The EEOC charged that Townley violated § 703(a) of the Civil Rights Act of 1964 by: (1) requiring its employees to attend devotional services; (2) failing to accommodate employee objections to attending the services; and (3) constructively discharging the Atheistic employee. *Id.*

151. *Id.*

gathering would not cause added strain and burden on an employer.<sup>152</sup>

Here, the company's main defense was an attempt to link the spiritual hardship presented in this litigation with the conduct of the company's business. Title VII does not exclude the spiritual objectives of employers, and Section 702 expressly excludes religious corporations, associations, educational institutions, and societies from Title VII's prohibition against religious discrimination.<sup>153</sup> It is likely that Congress intended Section 702 to be the sole recourse of corporations professing to be religious.<sup>154</sup> When viewing the legislative history of this Act, the consensus among its drafters was that a company would not be protected if it were merely "affiliated" with a religious organization.<sup>155</sup> The debate centering on Section 702 is very complex, and the multitude of case law explaining it is not very helpful. In most cases, the defendant is clearly a religious corporation or association within the meaning of Section 702.<sup>156</sup>

In *Townley*, the court had no trouble holding the company at issue was not religious in nature. This company's core business was producing mining equipment. It was not affiliated with or supported by a church and its articles of incorporation did not

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152. *Townley Eng'g & Mfg. Co.*, 859 F.2d at 615. The district court found this accommodation would have caused Townley no undue hardship. *Id.* It stated, "Excusing [the employee] from the mandatory devotional services would have cost Townley nothing in the operation of its business activities, and would not have disrupted other workers." *Id.*

153. *Id.* at 616.

154. *Id.*

155. *Id.* at 617. Representative Celler, the Chairman of the Judiciary Committee and one of the drafters of the bill, was asked whether a church-supported orphanage would already be covered by the bill. *Id.* He said, "If it is a wholly church supported organization, that is, a religious corporation that comes under [then] section 703." *Id.*

156. *Id.* at 618. See *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1364 (9th Cir. 1986) (defendant was a "private educational institution . . . wholly owned and operated by the Assembly of God church"); *EEOC v. Pacific Press Publ'g Ass'n*, 676 F.2d 1272, 1274 (9th Cir. 1982) (defendant was a "nonprofit corporation . . . affiliated with the Seventh-Day Adventist Church" engaged in publishing "religiously oriented material"); *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1164-65 (4th Cir. 1985) (defendant was a church); *EEOC v. Miss. Coll.*, 626 F.2d 477, 478 (5th Cir. 1980) (defendant was college owned and operated by convention of Southern Baptist churches).

mention any religious purpose or goal.<sup>157</sup> Because of the secular nature of this company, the court held the proselytization exhibited by the owner went against the requirements of Title VII and the Atheistic employee had a clear case for religious discrimination.

### B. Religious Observances

Atheistic accommodations in the workplace, required per Title VII, include the outward freedom from being subjected to religious proselytizing by other religious employees or from the employer directly. A problem, however, arises when determining whether the observances of other religions in the workplace conflict with an Atheistic employee's non-belief. If an employer outwardly accommodates an Atheist's requests, such as the removal of any trace of religion from any part of the office, he or she will essentially be creating a hostile work environment for other religious employees.<sup>158</sup> To resolve this dilemma the ambiguity must be resolved in favor of a definitive line. If a definitive line were drawn, it would offer much needed guidance to employers in complying with the requirements of Title VII. Under the status quo, employers need to ensure they take appropriate steps to shield themselves from liability of religious discrimination suits brought by aggrieved religious employees. This requires making accommodations for religious employees. However, any accommodation granted in this context is inherently conflicting with the accommodations Atheistic employees may request. Moreover, any formidable resolution remains tenuous since non-believers cannot claim discrimination on the basis of religious accommodations for established religions.

Examples of accommodations that cannot be removed from the workplace at the request of an Atheistic employee might include the observances by Christians, Jews, and Muslims discussed *infra*. Time off for Holy days of obligation must be granted to religious employees if they find some way to make up the hours lost. For example, a religious employee may coordinate his schedule with a

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157. *Townley Eng'g & Mfg. Co.*, 859 F.2d at 619 (finding that the beliefs of the owners and operators of a corporation are simply not enough in themselves to make the corporation "religious" within the meaning of Section 702).

158. *Ennico*, *supra* note 132 (considering that if an employer is required to tear down a religious poster displayed in the office, he might have helped create a hostile working environment for religious people, justifying reprimand or termination).

non-religious employee; because the religious employee will make up his hours, an Atheist would not have a claim of discrimination. Islamic dress and dietary requirements might also pose a potential issue for Atheists. When a certain dress code applies at work, an Islamic woman might be exempt in order to wear her religious garb.<sup>159</sup> An Atheist might find this objectionable and allege discrimination because of the woman's outward showing of religion. Nevertheless, the Atheist would have no remedy under Title VII because the needs of other religious individuals will supersede the needs of the Atheist. This illustrates the most significant limitation imposed on any accommodation an Atheist might receive in the workplace—the risk of litigation from religious coworkers is too great for this to occur.

With Atheism being a less traditional form of religion present in today's workplace, many employers do not know how to remedy the rift between Atheistic employees and employees practicing more conventional religions. The problems employers face are directly correlated to the underlying fact that not all employees will receive what they ultimately want concerning a certain religious accommodation. As one employee is accommodated, another is discriminated. Accommodating two employees of differing religions, or a religious employee and a non-believer, is often a mutually exclusive task. If a member of the Jewish faith is given a certain accommodation, an Atheist or a Muslim employee might feel deprived of certain rights and vice-versa. This dilemma does not have a clear-cut solution. Many times it places employers in untenable situations, because they must balance the rights of religious employees to observe their religion with the rights of non-believers. Both the religious and the secular are protected under Title VII and the Free Exercise Clause of the Constitution.<sup>160</sup>

### *C. Atheism Pertaining to the Free Exercise Clause*<sup>161</sup>

Although employers have to balance the rights of religious employees with the rights of Atheists in the workplace, Atheists still can make valid claims under Title VII and the Free Exercise Clause. This clause, as with the Title VII workplace requirements,

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159. Gosseen, *supra*, note 108.

160. See Kent Greenawalt, *Title VII and Religious Liberty*, 33 LOY. U. CHI. L. J. 1 (2001).

161. U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”).

has certain criteria that must be met in order to plead a *prima facie* case of religious discrimination.<sup>162</sup> To determine whether an application of Title VII to the employment policies of a company violates an Atheist's Free Exercise rights, three factors must be weighed.<sup>163</sup> These factors include: (1) the magnitude of the statute's impact on the exercise of a religious belief; (2) the existence of a compelling state interest justifying the burden imposed upon the exercise of the religious belief; and (3) the extent to which recognition of an exemption from the statute would impede on the objectives sought to be advanced by the statute.<sup>164</sup>

In the workplace, an Atheist may suffer from outright discrimination from other workers because of his or her belief that no God exists.<sup>165</sup> This is the principal reason why an Atheistic employee needs to be granted some form of accommodation.<sup>166</sup> Although a typical Atheist does not have specific observances and practices similar to other organized religions, subscribers undoubtedly have certain beliefs about religion. These inherent beliefs may lead an Atheist to feel discriminated against if he is consistently forced to listen to religious doctrines, especially if proselytization is allowed in the workplace during normal business hours.<sup>167</sup> An Atheistic employee has the right to work in a place of employment free of religious harassment and coercion by opposing religions. Title VII, although instituted as a means of fostering religious accommodation, also prevents against religious discrimination. The workplace, as many cases have established, should not be a place of religious conversion or a pulpit to deliver a sermon; it should be a place in which work can be accomplished and business can be performed. The Free Exercise Clause gives Atheists the right to a workplace free from opposing religions. Under the Free Exercise Clause, a non-believer has the inherent right not to be

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162. *Townley*, 859 F.2d at 620.

163. *Id.*

164. *Id.* See also *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1367 (9th Cir. 1986); *United States v. Lee*, 455 U.S. 252, 257-58 (1982) ("The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.").

165. *Ennico*, *supra* note 132.

166. *Greenawalt*, *supra* note 160, at 27 (citing to the Civil Rights Act of 1964, (j) (1994)) (noting that the statutory language requires accommodation of religious "belief" as well as "observance and practice.").

167. *Id.* (citing *Townley*, 859 F.2d 610) (highlighting that compulsory prayer may strike an Atheist as a waste of time, but it may also be offensive to their conscience).

smothered by opposing religious doctrine, even though members of opposing religions, under the Constitution, have the right to freely exercise their religion. Certain requirements also exist in the workplace in order to promote peace and civility among diverse coworkers.<sup>168</sup>

Within the Free Exercise Clause and Title VII, an Atheist (or other religious employees collectively) is protected from workplace harassment. Religious harassment may include threats or orders that a worker's employment status will depend on religious affirmation or activities. This constitutes harassment when it results in a workplace with a hostile atmosphere that lowers workplace productivity for the discriminated individual.<sup>169</sup> Additionally, workplace harassment protected under the Free Exercise Clause and Title VII might not be outward proselytization. For example, if a supervisor fires an employee because she has been known to associate with a certain religion, the employee can rightly file a religious discrimination suit.<sup>170</sup> Under Title VII, religious mockery and abusive remarks against one's religion or lack of religion is treated in the same vein as remarks made against one's race or gender. In the modern workplace, such remarks simply will not be tolerated.<sup>171</sup> The same concept holds true with regard to abusive speech or communication that does not outwardly lead to religious har-

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168. Claire Mullally, *Free Exercise Clause Overview*, FIRST AMENDMENT CENTER (Sept. 16, 2011), <http://www.firstamendmentcenter.org/free-exercise-clause>. If a law specifically singled out a specific religion or particular religious practice, under current Supreme Court rulings, it would violate the First Amendment. *Id.* Controversy arises when a law is generally applicable and religiously neutral but nevertheless has the "accidental" or "unintentional" effect of interfering with a particular religious practice or belief. *Id.*

169. Greenawalt, *supra* note 160, at 25. *See also* Burlington Indus. v. Ellerth, 524 U.S. 742, 754 (1998) (holding that when an employee proves the tangible employment resulted in the refusal to submit to an adverse employment decision itself, this constitutes a change in the terms and conditions of employment that is actionable under Title VII).

170. Greenawalt, *supra* note 160, at 30 (determining that when a supervisor has the ability to cause the discriminating result, his serious quid pro quo threat itself alters the worker's terms of employment; and that should lead to the employer's liability, on the same theory a supervisor's act of firing or demotion would be attributed to the employer).

171. *Id.* at 31 (finding that such abusive remarks against one's religion or race spring from a hostile animus and are indisputably unwelcome to the listener).

assment, but is said in response to someone's religious convictions (or non-beliefs).<sup>172</sup>

## VI. CONCLUSION

As the interpretation of Title VII adapts to different and innovative times, Atheistic workers have been able to obtain similar treatment as employees of other established religions. With this shift to acceptance, one might ask what is next for the future of religious accommodations pertaining to Title VII. As this article discussed, Atheistic accommodations in the workplace are meant to provide Atheists freedom from religious proselytization. The underlying rationale being that religious proselytization leads to the harassment of non-believing employees trying to work and make a living. This, however, is not a proactive accommodation sought; rather, it is an employee's inherent freedom from being harassed by coworkers. The future of Atheistic accommodations in the workplace might ultimately parallel the more proactive requirements currently in place for traditional religious sects, such as time off for certain occasions or other observances. With the future holding many unknowns and as religions change and form into current doctrine over time, Atheism too will most likely adapt to the needs of its followers. Soon, Atheism may resemble more familiar ritualistic religions in the next phase of its existence and growth.

### A. *What Does the Future Hold for Atheistic Accommodations*

The future of accommodations for Atheists might mirror the requirements that Christians, Jews, and Muslims, collectively, presently share in the workplace. Since Christian and Jewish employees are allowed time off for the Sabbath and Muslim employees are allowed time for daily prayer and are allowed to wear religious garb, Atheists too might require some specific accommodations. The specifics and scope of these accommodations, however, cannot be known with any degree of certainty until more attention is devoted to the situation at issue. The Atheistic employees of today simply require that fellow employees respect their non-belief and abstain from trying to convert them into accepting God in

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172. *Id.* See generally *Finnemore v. Bangor Hydro-Elec. Co.*, 645 A.2d 15 (Me. 1994) (coworkers made salacious comments about a worker's wife, after the worker had expressed a religiously based objection to their crude sexual talk).

their lives. Atheists are firmly rooted in the choice they made and desire only to adhere to their non-belief. These non-believing employees should not be tempted or ridiculed by coworkers in a non-religious setting. This is precisely why Title VII was interpreted to define religion broadly, as a belief or an inherent non-belief in the presence of God or a higher being. This interpretation has been the center of much controversy among religious sects who pay close attention to how the government interprets the definition of “established religion” under Title VII. Many years ago, non-traditional religions were dismissed as not having the tenets of other established religions. Members of established religions, such as Christianity, Judaism, and Islam, would persecute and ridicule others associating themselves with radical beliefs or a lack of beliefs. Fortunately, Title VII evolved along with society. The present interpretation of Title VII, at least in theory, gave a way for all people of any religious belief (or lack thereof) in the employment setting to have equal rights. Members of established religions are barred from ridiculing and proselytizing individuals of differing faiths, which makes for a more accepting and bearable workplace for all employees. The current interpretation of Title VII truly addresses the need of the many, as opposed to the more constricting interpretation, which only adheres to the needs of the few.

Peeling back another layer to the issue leads one to a well debated issue within Atheism—the differentiation between accommodation and confrontation.<sup>173</sup> The concept of confrontation versus accommodation goes to the very heart of the social debate.<sup>174</sup> Many Atheists believe major changes will not occur just by relying on accommodations alone. This belief is rooted in the notion that our country was built on the religious values of the founders of our modern democracy, and issues in the workplace reflect the values and norms of our country as a whole.<sup>175</sup> However, as our country becomes more accepting of alternate forms of thinking and of equal rights more generally, many cannot refute that change is on the horizon for workplace accommodations as we know them. Religious accommodations in the workplace are leaning towards a future that requires equality for all people, no matter which religion one belongs to.

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173. Stephen Fullerton, *Accommodation v. Confrontation*, ATHEISMRESOURCE.COM, <http://www.atheismresource.com/2010/accommodation-vs-confrontation> (last visited Feb. 13, 2013).

174. *Id.*

175. *Id.*

Another aspect that reflects the change in Title VII jurisprudence, giving certain realistic avenues of relief for Atheists, concerns the revisions made to the Civil Rights Act providing for compensatory and punitive damages. An aggrieved plaintiff is now entitled to these damages if he or she can prove intentional discrimination in the workplace due to his or her belief or non-belief in a certain God.<sup>176</sup> The awarding of damages, which has been a part of Title VII for many years, provides an avenue for employees seeking relief and allows employees to obtain religious rights in the workplace. In the realm of religious discrimination, employers must be accommodating to all beliefs, and more recently, to non-beliefs. The domestic workplace is constantly changing and molding to an ever-diverse population. Because of this diversity, especially as it pertains to religion, accommodations are needed for all those who believe, and for those who do not.

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176. Civil Rights Act § 703, 42 U.S.C. § 2000e-2 (1994), *available at* <http://www.eeoc.gov/laws/statutes/titlevii.cfm> (providing for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII).