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Religion in the Workplace: New Perspectives and Laws

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Title VII of the Civil Rights Act has for 41 years been the law that governs religious discrimination in the workplace. For some Michigan employers, that may be about to change. On November 2, the Michigan House of Representatives passed Bill 972, known as the Conscientious Objector Policy Act. The bill will now go to the Senate, where it is also expected to pass. It is not known whether the governor will sign the bill.

Title VII of the 1964 Civil Rights Act forbids employment discrimination on the basis of religious beliefs or practices; no employer can refuse to hire a person based upon his/her religion or religious beliefs. In addition, Title VII imposes an obligation that employers accommodate religious beliefs unless doing so would cause undue hardship. The accommodations most frequently requested by employees concern time off for religious observance, wearing religious dress at work, and less frequently, release from job duties that violate religious beliefs. Courts have traditionally ruled that employers have to accommodate these requests unless doing so would violate a collective bargaining agreement, cost the employer an unreasonable amount of money, lower efficiency, or unduly burden other employees. Through the years, rulings by various courts have indicated that although an employer is expected to try to accommodate religious beliefs, companies do not have to go to extreme lengths in order to do so.

In the past few years, however, actions by pharmacists have led a few states to conclude that some employees need additional and specific accommodation of their religious beliefs. Pharmacists have begun to refuse to fill birth control prescriptions because contraception violates their religious or moral beliefs. Some pharmacists have refused to dispense any kind of contraceptive; others will fill such prescriptions for married women but not single women. Some have accompanied their refusal with a lecture and a few have confiscated the prescription, refusing to give it back to the customer or transfer it to another pharmacy. Seizing the prescription is blatantly illegal, but the rest of the actions have opened a debate. Some have championed the right of the pharmacists to practice their religious beliefs in the workplace. Opponents argue that these actions are denying women the right to health care; they contend that the writing of a prescription is a decision between doctor and patient, and a pharmacist has no right to insert his/her religious beliefs into that decision. The situation has led to political battles; some states are seeking to protect the pharmacists and others are introducing bills that will require pharmacists to dispense all prescriptions.

As a reflection of this disagreement, Bill 972 was introduced in the State of Michigan. The bill provides that a “health care worker may assert as a matter of conscience an objection to providing or participating in a health care service that conflicts with his or her sincerely held religious or moral beliefs.” The health care worker can assert his or her conscientious objection at any time he/she deems it necessary; the objection does not have to be revealed at the time of hire. Once an employer receives notice via a written objection, that employer can not require the health care worker to provide or participate in the objectionable health care service. Employers covered by the Conscientious Objector Policy Act include health facilities and agencies; physicians’ offices; teaching institutions; pharmacies; and corporations, partnerships, or sole proprietorships that provide health care service to individuals.

The bill does stipulate that a conscientious objection cannot be used in an event that requires immediate action to prevent the death of the patient. In addition, a health care worker cannot “assert an objection to providing or participating in a health care service based on the classification of a patient...protected under the Elliot Larsen Civil Rights Act” (i.e., the Michigan Civil Rights Act). The Michigan Civil Rights Act prevents discrimination on the basis of race, gender, color, religion, national origin, age, marital status, disability, family status, and height/weight. Sexual orientation is not protected in the State of Michigan.

What might all this mean for health care employers in Michigan? Probably the most contentious result is that since sexual orientation is not protected under the Elliot Larsen Act, a health care worker will be able to refuse to treat gays and lesbians because he/she morally objects to their lifestyle. The question about pharmacies that started the whole thing will be answered. No retail business could mandate that its pharmacists fill contraceptive prescriptions. If another pharmacist is on duty and willing to fill the prescriptions, the duty could be passed to him/her; but having more than one pharmacist on duty occurs only in the busiest and largest pharmacies at certain times of the day. If the bill passes and a pharmacy employs a conscientious objector, the pharmacy might have to notify its customers that it does not fill birth control prescriptions. A customer who could not get a contraceptive prescription filled at a pharmacy is likely to take all her prescription business elsewhere. Therefore, under Title VII, it could have been argued that an employer would not have to excuse a pharmacist from filling birth control prescriptions because such an arrangement would create

an undue hardship for the business. The Conscientious Objectors Policy Act makes no provision for a business to claim undue hardship unless the service that is being objected to claims 10% or more of the health care worker's time. Even in this circumstance, the health care worker must be given at least six months notice before termination of employment.

Finally, what about the rights of consumers? Proponents of Bill 752 observe that in a market economy, consumers can make choices. If a health care provider won't provide a service, then the consumer is free to take his/her business elsewhere. Of course, democracies regularly place limits on the free market. The market argument also assumes that customers do indeed have options, which may not be as true for people who live in small towns, for people who must pick up prescriptions after major retail hours, or for any other situation where the customer has a limited choice of pharmacies or health service providers.

If the bill becomes law, it is difficult to predict what its consequences will be for consumers and health care employers. No one knows how many health care workers will refuse to serve gays and lesbians or to provide some other health care service. Michigan employment laws usually don't attract national attention, but if passed, the Conscientious Objectors Policy Act will be one that is watched.