

# **Witnessing** **in the Workplace**

**Letting Your Light Shine While  
Avoiding Legal & HR Pitfalls**

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August 7, 2015

# Presenter

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# Seminar Overview

— [ The Christian's commission

— [ Should Christians assert their legal rights & defend the rights of others?

— [ Overview of federal and state law regarding religion in the workplace

— [ Understanding religious discrimination and accommodation of religion in the workplace

— [ Protecting religious expression while avoiding unlawful harassment in the workplace

— [ Enforcement and remedies

— [ Summary + Q&A

# Disclaimer

— [ The entirety of this presentation is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

# The Christian's Commission

— [ “...When the Holy Spirit comes to you, you will receive power. You will be my witnesses... in every part of the world.” - Acts 1:9, NCV

— [ “Go... and make disciples of all the nations, baptizing them in the name of the Father and the Son and the Holy Spirit, teaching them to observe all that I commanded you; and lo, I am with you always, even to the end of the age.” - Matthew 28:19-20, NASB

— [ “Character is power. The silent witness of a true, unselfish godly life carries an almost irresistible influence.” - Christ's Object Lessons, p. 340

# The Christian's Commission

## Should Christian employers & employees be:

- Law-abiding citizens and people of integrity (Acts 5:29; 2 Peter 2:11-17)?
- Industrious: Be “not slothful in business; fervent in spirit; serving the Lord.”  
“Whatsoever thy hand findeth to do, do it with thy might.” (Rom. 12:11; Eccl. 9:10)?
- “It is the duty of every Christian to acquire habits of order, thoroughness, and dispatch. There is no excuse for slow bungling work of any character.” -  
Christ's Object Lessons, p. 344
- Respectful of the rights & freedom of others (Luke 6:31)?

# Asserting & Defending Legal Rights

— [ “Avenge not yourselves... ‘Vengeance is mine; I will repay,’ saith the Lord.” Rom. 12:19

— [ Love for God and our neighbor must motivate all that we do.

— [ Instead of passivity or aggression, Jesus gave us a “third way” to respond to evil (Matthew 5:39-42). Attitude is key.

# Asserting & Defending Legal Rights

— [ Paul did not consider it wrong to assert his legal rights as a Roman citizen (Acts 16:37;22:25-29; 26).

— [ What to do in any particular situation depends on the leading of the Holy Spirit.

— [ “Defend the poor and fatherless: do justice to the afflicted and needy. Deliver the poor and needy: rid them out of the hand of the wicked.” - Psalm 82:3-4, KJV



# Asserting & Defending Legal Rights

— [ “We are not doing the will of God if we sit in quietude, doing nothing to preserve liberty of conscience...Let there be more earnest prayer; and then let us work in harmony with our prayers.” Testimonies for the Church, Vol. 5, p. 714

— [ Should we defend freedom of conscience for those with whom we disagree?

— “Treat others the same way you want them to treat you.”  
- Luke 6:31, NASB

# Federal & State Statutes

— [ Title VII of the Civil Rights Act of 1964 (Title VII)

— [ Many states have laws modeled after Title VII, some more protective

— [ E.g., California's Fair Employment & Housing Act (FEHA)

— [ "The point of antidiscrimination laws is to open up employment opportunities for individuals in spite of differences. Allowing co-workers to stifle the religious beliefs of others (often resulting in the termination or constructive discharge of the religious employee) is antithetical to those principles, and results in a burden being placed on religious employees because of their religion." - Theresa M. Beiner & John M.A. DiPippa, Hostile Environments and the Religious Employee, 19 U. Ark. Little Rock L.J. 577, 605 (1997)

# Title VII Overview

## Title VII:

- Applies to businesses who employ 15+ employees.
- Your state's anti-discrimination law may apply to businesses with fewer employees.
- Religious organizations are permitted to give employment preference to members of their own religion.\*
- \*The exception applies only to those institutions whose "purpose and character are primarily religious." Factors include: whether its articles of incorporation state a religious purpose; whether its day-to-day operations are religious (e.g., are the services the entity performs, the product it produces, or the educational curriculum it provides directed toward propagation of the religion?); whether it is not-for-profit; and whether it affiliated with, or supported by, a church or other religious organization. (Source: EEOC.gov)

# Title VII Overview

— [ It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, **religion**, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. - 42 U.S.C. § 2000e-2(a)

# Title VII Overview

— [ The term “religion” includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business. - 42 U.S.C. § 2000e (j).

— [ Title VII prohibits employers from discriminating against any individual based on his or her “bonafide religious belief.”

# Title VII Overview

Protected beliefs must be based on “religion” and “sincerely held”

Atheists are protected under Title VII since courts have found that they should have the freedom to believe or not believe. Young v. Southwestern Sav. and Loan Ass’n, 509 F.2d 140 (5th Cir. 1975)

Plaintiff’s “personal religious creed” concerning Kozy Kitten Cat Food can only be described as...a mere personal preference and, therefore, is beyond the parameters of the concept of religion as protected by the constitution or, by logical extension, by 42 U.S.C. s 2000e et seq. Brown v. Pena, 589 F.2d 1113 (5th Cir. 1979)

# Title VII Overview

— [ Some courts recognize these basic causes of action for religious discrimination in the workplace:

— Disparate Treatment

— Disparate Impact

— Failure to Accommodate

# Making the Case for Religious Discrimination

— [ Plaintiff shows he was a member of protected class based on his religion;

— [ that he experienced an adverse employment action;

— [ that he was qualified for the job or performing well; and

— [ that he was replaced by someone outside of the protected class or treated differently than similarly situated employees.

(Source: Jennifer Ann Drobac & Jill L. Wesley, Religion and Employment Antidiscrimination Law: Past, Present, and Post Hosanna-Tabor)



# Making the Case for Failure to Accommodate

— [ An employee shows that she engages in a bonafide religious practice that conflicts with her job requirement;

— [ the employer is aware of the employee's practice and the conflict; and

— [ the employee suffers an adverse employment action for practicing her conflicting religious beliefs.

— [ The burden then shifts to the employer, who must show it offered a reasonable accommodation or that an accommodation would cause it undue hardship.

— [ Any accommodation that would cost the employer more than a "de minimis" cost is considered an undue hardship for the employer under Title VII.

# No Failure to Accommodate

— [ Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, (1977)

— [ Larry Hardison was a member of the Worldwide Church of God and kept the Sabbath.

— [ He previously worked as a clerk for a TWA store and requested an accommodation.

— [ He was subject to a seniority system based on a collective bargaining agreement with the airline union.

— [ After unsuccessful attempts to accommodate him, he was fired.

# TWA v. Hardison

— [ The United States Supreme Court held that:

— [ (1) The seniority system itself, as set out in collective bargaining agreement, represented a significant accommodation by employer to the needs, both religious and secular, of all of airline employees;

— [ (2) airline could not be faulted for having failed itself to work out a shift or job swap for stores clerk whose religious beliefs prohibited him from working on Saturdays;

# TWA v. Hardison

— [ (3) absent a clear and express indication from Congress, an agreed-upon seniority system in collective bargaining agreement was not required to give way so that airline employer could accommodate stores clerk whose religious beliefs prohibited him from working on Saturdays;

— [ (4) absent a discriminatory purpose, under the Civil Rights Act, the operation of a seniority system cannot be an unlawful employment practice even if the system has some discriminatory consequences, and

— [ (5) airline was not required to permit stores clerk to work a four-day week if necessary in order to avoid working on his Sabbath or to replace employee on his Saturday shift with other available employees through payment of premium wages.

# No Failure to Accommodate

— [ Cook v. Lindsay Olive Growers, 911 F.2d 233 (9th Cir. 1990)

— [ Joseph Cook was also a member of the Worldwide Church of God and a Sabbath keeper.

— [ Employer accommodated his Sabbath observance by having other employees work his Friday night shift, but did not pay them overtime.

— [ When other employees said they were no longer willing to cover Cook's shift without overtime pay, the employer was very proactive and, among other things, offered another position to Cook.

— [ Court found that employer had attempted to reasonably accommodate Cook.

# No Failure to Accommodate

— [ Irvin v. Aubrey, 92 S.W.3d 87 (Ky. Ct. App. 2001)

— [ Eric Irvin, an African American, was a deputy sheriff for the Jefferson County Sheriff's Office and also a Baptist minister.

— [ Irvin requested transfer to a unit that operated 24/7, but wanted accommodation so that he could still function as a minister at his church on Sundays.

— [ When he was denied accommodation at the new position, He sued for racial and religious discrimination.

# Irvin v. Aubrey

— [ Court held that Irvin had not established a prima facie case and that since the employer allowed Irvin, who declined the transfer because it interfered with his religious practice as a minister, to remain in his original position, which reasonably accommodated his religious practices, the employer was not required to make special provision to accommodate the deputy in the new position he desired.

# No Failure to Accommodate

— [ Harmon v. General Elec. Co., 72 A.D.2d 903, (3d Dep't 1979)

— [ John Harmon was a Catholic who worked in General Electric's machine shop. He was also a pacifist.

— [ He sought accommodation based on his religious convictions that would not permit him to continue to work in the GE machine shop.

— [ GE tried to accommodate him, and continued to pay him for 9 weeks, made an effort to relocate him, etc.

— [ Court held that employer's attempts at accommodation were more than reasonable.



# No Failure to Accommodate

— [ Benjamin v. County of Hennepin, 1996 WL 679690 (Minn. Ct. App. 1996)

— [ Irene Benjamin, a Native American, worked for Hennepin County as a clerical assistant in the alcohol receiving center.

— [ Benjamin alleged, among other things, that she was not allowed to “smudge,” a religious ritual involving the burning of a small amount of sage to purify her workplace.

— [ She alleged that since the employer refused her proposed accommodation, it had failed to accommodate her religious practice.

# Benjamin v. Hennepin

— [ The Court held that the employer had accommodated, for purposes of a religious discrimination claim under Minn. Stat. § 363.03, subd. 1(2)(c), the employee's request to "smudge" at her workplace by offering for Benjamin to smudge in the smoker's room, her supervisor's office, or at her desk after 4:30 p.m. due to air safety quality, fire safety concerns and employee complaints.

# Failure to Accommodate

— [ Rice v. U.S.F. Holland, Inc., 410 F.Supp.2d 1301 (N.D. Ga. 2005)

— [ Earl Rice, a Seventh-day Adventist, was a truck driver for the defendant. He requested to have Sabbaths off.

— [ He notified his supervisor of his newly found convictions and was assured that things would be taken care of.

— [ When a freight pick up required him to work on Sabbath hours, he notified his boss that he would be unable to make the pick up and was fired.

# Rice v. U.S.F. Holland

— [ Rice sued for failure to accommodate. The employer moved for summary judgment and the Court found for the plaintiff, Rice.

— [ Court held: The employer made no effort to accommodate Rice, even though there were accommodations available that would have removed the conflict and caused the employer no undue hardship.

# Failure to Accommodate

— [ California Fair Employment and Housing Com'n v. Gemini Aluminum Corp., 122 Cal.App 4th (2d Dist. 2004)

— [ Lester Young, a Jehovah's Witness, worked for the defendant for nearly 30 years and had attended a Witness convention nearly every year. Attending the religious convention is considered a form of worship and religious study in his faith.

— [ In 1997, Young again requested time off for a Friday and Saturday to attend the annual religious convention, noting that it was a part of his faith. Gemini denied the request.

# CFEHC v. Gemini

— [ Young went to the convention anyway and when he returned to work was suspended for 10 days. He protested, noting that other employees with more absences had received lesser suspensions.

— [ When Young notified his supervisor that he intended to file a complaint, he was terminated.

— [ The Court held that Gemini had: failed to initiate reasonable accommodation efforts; retaliated against Young; and failed to prevent discrimination.

# Failure to Accommodate

— [ Kenny v. Ambulatory Centre of Miami, Fla., Inc., 400 So.2d 1262 (Fla. Dist. Ct. App. 3d Dist. 1981)

— [ Margaret Kenny, a Catholic nurse, brought an action against her employer hospital following her demotion for refusing to assist with abortions.

— [ Hospital maintained that fiscal necessity, combined with the refusal of other nurses to exchange their duties and assignments with Kenny, justified its action.

# Kenny v. Ambulatory Centre

— [ The Appellate Court held that

- (1) An employer must reasonably accommodate an employee's religious practices unless he establishes that he would suffer undue hardship, and
- (2) Evidence, including the fact that 84 percent of nursing duties at hospital did not involve gynecological procedures demonstrated that additional efforts by employer to accommodate Kenny's religious belief would not have caused undue hardship...
- Kenny was entitled to reinstatement to former position, unpaid wages, damages and other appropriate relief.



# Failure to Accommodate

— [ Kentucky Com'n on Human Rights v. Lesco Mfg. & Design Co., Inc., 736 S.W.2d 361, (Ky. Ct. App. 1987)

— [ Cari Hardin, a Jehovah's Witness, worked for Lesco as a secretary where one of her duties was to answer the phone with "Merry Christmas, Lesco."

— [ Hardin objected to the greeting because of her faith and told her supervisor. She was then terminated for refusing to answer the phone with Merry Christmas.

# Kentucky CHR v. Lesco

— [ Hardin filed a complaint with the Kentucky Commission on Human Rights, which found that she had suffered religious discrimination and ordered back pay and compensatory damages.

— [ Lesco appealed. Appellate Court upheld the Commission's findings and found that the employer could have accommodated Hardin's religious beliefs without undue hardship.

# Failure to Accommodate

— [ EEOC v. Abercrombie & Fitch Stores, Inc., 135 S.Ct. 2028 (2015)

— [ Samantha Elauf, a Muslim, interviewed for a job at Abercrombie & Fitch. Elauf wears a headscarf as a part of her religious practice.

— [ Abercrombie failed to hire her because her headscarf violated their “look” policy.

# EEOC v. Abercrombie

— [ Title VII prohibits a prospective employer from refusing to hire an applicant in order to avoid accommodating a religious practice that it could accommodate without undue hardship.

— [ The issue in this case was whether this prohibition applies only where an applicant has informed the employer of his need for an accommodation.

— [ The Court held that the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: **an employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions.**

# Tip for Employers

— [ Explore reasonable ways to eliminate the conflict between the employee's religious practice/belief and the job requirement(s).

— [ When an employee requests an accommodation, being reasonable and nice will likely help you to avoid litigation down the road.

— [ Most religious accommodation cases settle prior to trial.



# Religious Expression in the Workplace

— [ **How do we find the balance?**

— Religious Accommodation/First Amendment Rights

— vs.

— Harassment/Hostile Work Environment

# The Witnessing Employer

— [ Title VII is violated when an employer or supervisor explicitly or implicitly coerces an employee to abandon, alter, or adopt a religious practice as a condition of receiving a job benefit or avoiding an adverse employment action.

— [ Venters v. City of Delphi, 123 F.3d 956 (7th Cir. 1997)

— [ EEOC v. Townley Engineering & Mfg. Co., 675 F.Supp. 566 (1987)

— [ Young v. Southwestern Savings & Loan Ass'n., 509 F.2d 140 (5th Cir. 1975)

# Making the Case for a Hostile Work Environment

— [ To establish a case of religious harassment, an employee must show that the harassment was:

— [ (1) based on her religion;

— [ (2) unwelcome;

— [ (3) sufficiently severe or pervasive to alter the conditions of employment by creating an intimidating, hostile, or offensive work environment; and

— [ (4) that there is a basis for employer liability.

(Source: EEOC Compliance Manual)



# Venters v. City of Delphi

Jennifer Venters worked for the City of Delphi as a 911 radio dispatcher for approximately 8 years before her dismissal by Police Chief Ives.

Ives was a born-again Christian, a Pentecostal, who incessantly lectured Venters on how she needed to give her life to God. He told her that if she did not, he would “trade” her.

Venters was eventually demoted and terminated. Ives and the department claimed her termination was for non-discriminatory reasons.

# Venters v. City of Delphi

— [ Ives to Venters:

— [ (1) that to be a good employee, a person had to be spiritually whole, and to be spiritually whole, a person had to be saved;

— [ (2) that Venters needed to pay attention when people were ministering to her because a person had a limited number of chances in their lifetime to accept God and be saved, and that Venters might be running out of chances;

# Venters v. City of Delphi

— [ (3) that all individuals were surrounded by spirits, and that Venters' "positive spirits" were doing battle with her "negative spirits;"

— [ (4) that if Venters were to attend Ives' church, the Assembly of God, she might feel the "altar call" and be saved;

— [ (5) that the police station was "God's house," and that if Venters were unwilling to play by God's rules Ives would "trade" her.

# Venters v. City of Delphi

— [ On appeal, the Court found that summary judgment on Venters' harassment/discrimination claim was inappropriate since a jury could reasonably characterize Venters' work environment at the Delphi police station as hostile and abusive.

# EEOC v. Townley

Jake & Helen Townley, born-again Christians, founded Townley Manufacturing Company, a closely held corporation that manufactures mining equipment.

The Townleys made a covenant with God to run their business as a Christian business.

Townley reflects its founders' covenant with God in several ways. For example, the company encloses a Gospel tract in every piece of outgoing mail; it prints Biblical verses on all company invoices, purchase orders, and other commercial documents; it gives financial support to various churches and missionaries; and, of particular importance to this case, it holds a devotional service once a week during work hours.

# EEOC v. Townley

— [ Townley's Florida plant has had weekly devotional services since its inception. They typically last from thirty to forty-five minutes, and may include prayer, thanksgiving to God, singing, testimony, and scripture reading, as well as discussion of business related matters. Townley required all employees to attend the weekly services; failure to attend was regarded as equivalent to not attending work.

— [ Townley hired Louis Pelvas, and in a signed statement agreed to abide by the rules of the employee handbook, including attendance at the required weekly devotional.

# EEOC v. Townley

Pelvas attended the services without complaint only until June 1984, when he asked to be excused from the services because he was an atheist. His supervisor told him that attendance was mandatory. The supervisor also stated that Pelvas could sleep or read the newspaper during the services. Pelvas continued to attend the services, but in October 1984 he filed a religious discrimination charge with the Equal Employment Opportunity Commission. In December 1984, Pelvas left the company. Pelvas states that he was constructively discharged; Townley says that Pelvas refused to accept an offer of transfer to another plant.

# EEOC v. Townley

— [ “We hold that Congress did clearly intend for Title VII to cover Townley’s mandatory devotional services. Sections 701(j) and 703(a) of Title VII make clear that requiring employees over their objections to attend devotional services cannot be reconciled with Title VII’s prohibition against religious discrimination. Furthermore, we hold that Congress did not intend section 702’s exemption for religious corporations to shield corporations such as Townley. We do hold, however, that Jake and Helen Townley have certain rights under the Free Exercise Clause that Title VII cannot infringe.”



# EEOC v. Townley

The Court of Appeals held that: (1) requirement that employer accommodate employee's religious objections to devotional services by excusing him from attendance would cause employer no undue hardship; (2) there can be no prospective waiver of employee's rights under Title VII; (3) employer was not religious corporation exempt from Title VII; and (4) requirement that employers accommodate those employees who have religious objections to devotional services by excusing them from attendance would not violate employers' First Amendment rights.

# Young v. Southwestern Savings

— [ All of the employees of Southwestern Savings & Loan were required to attend monthly meetings which began with a short nondenominational prayer and a religious talk delivered by a minister.

— [ The Court of Appeals held that “where employee’s superior advised her that she had obligation to attend monthly staff meetings in their entirety and advised her that she could simply close her ears during religious exercises with which meetings began after employee informed superior that reason for her absence from the meetings was her objection to the religious exercises and employee thereupon left her employment, employee was constructively discharged in circumstances amounting to religious discrimination.”

# Young v. Southwestern Savings

— [ Young and Townley suggest that when an employer seeks to impose a non-business related religious activity on its employees, the law provides greater protection for employees than in a situation where conflicts arise concerning employees' religious observances, such as accommodating Sabbath observance.

Source: Josh Schopf, Columbia Journal of Law and Social Problems

# The Witnessing Employee

Employers should not try to suppress all religious expression in the work place. Title VII requires that employers accommodate an employee's sincerely held religious belief in engaging in religious expression in the workplace to the extent that they can do so without undue hardship on the operation of the business. In determining whether permitting an employee to pray, proselytize, or engage in other forms of religiously oriented expression in the workplace would pose an undue hardship, relevant considerations may include the effect such expression has on co-workers, customers, or business operations. (EEOC Compliance Manual).

# The Witnessing Employee

— [ Chalmers v. Tulon Co. of Richmond, 101 F.3d 1012, (4th Cir. 1996)

— [ Charita Chalmers, an evangelical Baptist Christian, brought a failure to accommodate claim against her former employer, Tulon Co.

— [ Chalmers frequently discussed spiritual things with her immediate supervisor, LaMantia. At some point, she determined that it was time for LaMantia to accept the Lord. She believed LaMantia had told customers information about the turnaround time for a job when he knew that information was not true. Chalmers wrote him a letter.

# Chalmers v. Tulon Co.

— [ Chalmers sent the letter to LaMantia's home. He was not home when it arrived, and his wife opened it. She interpreted the letter to mean that LaMantia was having an affair. She called and interrupted a business presentation to accuse him of this.

— [ Chalmers also sent another letter to another employee chastising them for having an affair.

— [ Chalmers was then terminated.

# Chalmers v. Tulon Co.

— [ The Court of Appeals held that: (1) former employee failed to establish prima facie religious accommodation claim given absence of evidence that she gave former employer notice of her religious need to write accusatory letters to co-workers, and (2) such religious need was not susceptible to accommodation.

# The Witnessing Employee

— [ Brown v. Polk County, 61 F.3d 650 (8th Cir. 1995)

— [ Isaiah Brown, a born-again Christian, was a departmental director for Polk County, supervising approximately 50 people.

— [ Brown had his county secretary type up his Bible study notes; several employees would occasionally say prayers in Brown's office before start of work day (contrary to county policy prohibiting office space for personal use); other times, he would cite Bible passages, affirm his Christianity, and offer prayers during department meetings.



# Brown v. Polk County

— [ The county administrator reprimanded Brown for showing poor judgment, prohibited him from having a Bible in his office and eventually terminated him, using poor performance as the reason.

— [ Brown sued for discrimination under Title VII and the First Amendment, since this was a government employer.

— [ On appeal, the court found that the county could prohibit Brown from using his secretary to do personal work (typing the Bible studies) and using his office prior to work day against county policy.

# Brown v. Polk County

— [ “The defendants showed no “actual imposition on co-workers or disruption of the work routine,” generated by occasional spontaneous prayers and isolated references to Christian belief. On this record, we hold that the defendants failed to prove that accommodating such instances as they objected to would lead to undue hardship.”

— [ “Pickering [v. Board of Education] recognizes a public employee's right to speak on matters that lie at the core of the first amendment, that is, matters of public concern, so long as ‘the effective functioning of the public employer's enterprise’ is not interfered with.”

# Brown v. Polk County

— [ “We may concede for the sake of argument that Polk County has a legal right to ensure that its workplace is free from religious activity that harasses or intimidates. But any interference with religious activity that the exercise of that right entails must be reasonably related to the exercise of that right and must be narrowly tailored to its achievement.”

# The Witnessing Employee

— [ Banks v. Service America Corp., 952 F.Supp. 703 (1996)

— [ Lee Ray Banks and Marcus Horton worked for Service America Corporation serving food to their customers.

— [ Service America operates a cafeteria, similar to a fast food operation, at a GM automobile manufacturing plant where employees serve meals to plant workers.

# Banks v. Service America

— [ Banks and Horton would often greet customers with “Praise the Lord” and “God bless you!”

— [ At certain times, because they felt that the Holy Spirit moved them to bless all with whom they came into contact, plaintiffs extended such blessings to all of their food service customers. Service America deemed plaintiffs' greetings to be inappropriate and contrary to its policy.

— [ Eventually, plaintiffs were terminated for refusing to stop the religious greeting which they regarded as a spiritual duty.

# Banks v. Service America

— [ Banks and Horton sued Service America alleging religious discrimination under Title VII.

— [ Employer moved for summary judgment, which the court denied.

— [ “Plaintiffs have demonstrated a triable issue of fact whether Service America, without undue hardship to its business operation and procedures, could reasonably accommodate their religious practice of greeting GM food service customers. Defendant has not shown that the evidence on this issue is so one-sided that Service America must prevail as a matter of law, or that a reasonable jury could not sustain plaintiffs' claim.”

# The Witnessing Employee

— [ Wilson v. U.S. West Communications, 58 F.3d 1337 (8th Cir. 1995)

— [ Christine Wilson, a Roman Catholic, made a religious vow to wear a graphic anti-abortion pin or T-shirt at work.

— [ The button caused disruptions at work. Employees gathered to talk about the button. U.S. West identified Wilson's wearing of the button as a "time robbing" problem. Wilson acknowledged that the button caused a great deal of disruption.

# Wilson v. U.S. West

— [ Klein and Jensen (Wilson's supervisors - also Catholics who were against abortion) offered Wilson 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.

— [ Wilson responded that she could neither cover nor remove the button because it would break her promise to God to wear the button and be a "living witness."



# Wilson v. U.S. West

Information specialists refused to go to group meetings with Wilson present. The employees complained that the button made them uneasy. Two employees filed grievances based on Wilson's button.

Employees accused supervisor Jensen of harassment for not resolving the button issue to their satisfaction. Eventually, U.S. West told Wilson not to report to work wearing anything depicting a fetus, including the button or the T-shirt.

Wilson was eventually terminated after for missing work for three days.

# Wilson v. U.S. West

U.S. West did not oppose Wilson's religious beliefs, but rather, was concerned with the photograph. The record demonstrates that U.S. West did not object to various other religious articles that Wilson had in her work cubicle or to another employee's anti-abortion button. It was the color photograph of the fetus that offended Wilson's co-workers, many of whom were reminded of circumstances unrelated to abortion. Indeed, many employees who opposed Wilson's button shared Wilson's religion and view on abortion.

The court ruled that U.S. West's proposed accommodations had been reasonable and Wilson lost.

# Best Practices for Businesses

— [ **Employers should have a well-publicized and consistently applied anti-harassment policy that:** (1) covers religious harassment; (2) clearly explains what is prohibited; (3) describes procedures for bringing harassment to management's attention; and, (4) contains an assurance that complainants will be protected against retaliation. The procedures should include a complaint mechanism that includes multiple avenues for complaint; prompt, thorough, and impartial investigations; and prompt and appropriate corrective action.

— [ Employers should allow religious expression among employees to the same extent that they allow other types of personal expression that are not harassing or disruptive.

# Best Practices for Businesses

— [ Once an employer is on notice that an employee objects to religious conduct that is directed at him or her, the employer should take steps to end the conduct because even conduct that the employer does not regard as abusive can become sufficiently severe or pervasive to affect the conditions of employment if allowed to persist in the face of the employee's objection.

— [ If harassment is perpetrated by a non-employee assigned by a contractor, the supervisor or other appropriate individual in the chain of command should initiate a meeting with the contractor regarding the harassment and demand that it cease, that appropriate disciplinary action be taken if it continues, and/or that a different individual be assigned by the contractor.

# Best Practices for Businesses

— [ To prevent conflicts from escalating to the level of a Title VII violation, employers should immediately intervene when they become aware of objectively abusive or insulting conduct, even absent a complaint.

— [ Employers should encourage managers to intervene proactively and discuss with subordinates whether particular religious expression is welcome if the manager believes the expression might be construed as harassing to a reasonable person.

— [ While supervisors are permitted to engage in certain religious expression, they should avoid expression that might – due to their supervisory authority – reasonably be perceived by subordinates as coercive, even when not so intended.

(Source: EEOC Compliance Manual)

# Employers can...

— [ Witness to their customers however they desire.

— [ Under Title VII, business owners or supervisors are permitted to communicate their religious beliefs through their company policies and practices provided that 1) they do not give prospective or current employees the perception that employment or advancement requires workers to adopt a certain religious belief, 2) they accommodate employee objections, and 3) they do not require employees to participate in religious worship experiences.

David C. Gibbs, Jr., *The Legal Implications of Witnessing at Work*, CBN.com.

# Employees can...

While Christian employees have broad rights to express their faith to coworkers, there are two legal limitations:

**An employee must not allow religious discussions to interfere with work.** Stated differently, an employer has the right to insist on the employee's full attention during working hours. Therefore, a Christian employee should be careful not to create even the perception that religious discussions are interfering with job performance. Also, it is easier to prove that talking about religion is the reason for discipline if the employee has a good work reputation and a clean record as an excellent, dedicated employee.

# Employees can...

— [ In one case, a Christian employee's attorney was able to point to the employee's glowing performance evaluations (copies of which he always kept at home) when management insisted the employee was not a victim of religious discrimination, but rather was being disciplined for poor work performance.

David C. Gibbs, Jr., *The Legal Implications of Witnessing at Work*, CBN.com.



# Employees can...

— [ **If a coworker indicates directly or indirectly that she does not wish to discuss matters of religion, the Christian employee should immediately stop discussing it with her.** If the Christian does not stop, he can be disciplined for harassment.

David C. Gibbs, Jr., *The Legal Implications of Witnessing at Work*, CBN.com.

# Employees can...

— [ This precaution does not mean, however, that every time someone who has asked you not to talk about religion walks into the room, your conversation with others must stop. But, you should be sure not to direct the religious conversation to the employee who has objected. Religious conversations at work should take place privately and voluntarily. In fact, it may be wise to take a conversation elsewhere when a person who has objected comes on the scene, since this type of person would be **most likely to press the issue**. Source: David C. Gibbs, Jr., *The Legal Implications of Witnessing at Work*, CBN.com.

— [ Regarding witnessing to customers, it's up to your employer.

# Remedies

— [ Notifying and negotiating with employer/employee

— [ Involving your pastor, local religious liberty department

— [ Filing a charge with the EEOC

— [ Lawsuit

— [ Damages: back pay, front pay, compensatory damages, punitive damages

— [ Reinstatement, injunctive relief, attorney's fees

# The Hobby Lobby Case

— [ Owners of for-profit, closely held corporations sued the Federal Government's Secretary of Health & Human Services and other government officials and agencies, seeking declaratory and injunctive relief regarding regulations issued under Patient Protection and Affordable Care Act (ACA), based on allegations that the preventive services coverage mandate for employers violated constitutional and statutory protections of religious freedom by forcing them to provide health insurance coverage for abortion-inducing drugs and devices, as well as related education and counseling.

# Hobby Lobby

— [ Holding: A “person,” within meaning of RFRA’s protection of a person’s exercise of religion, includes for-profit corporations; the HHS contraceptives mandate, as applied to for-profit closely held corporations, substantially burdened the exercise of religion, for purposes of RFRA; and the HHS contraceptives mandate did not satisfy RFRA’s least-restrictive-means requirement.

# Hobby Lobby

— [ “Under RFRA, a Government action that imposes a substantial burden on religious exercise must serve a compelling government interest, and we assume that the HHS regulations satisfy this requirement. But in order for the HHS mandate to be sustained, it must also constitute the least restrictive means of serving that interest, and the mandate plainly fails that test. There are other ways in which Congress or HHS could equally ensure that every woman has cost-free access to the particular contraceptives at issue here and, indeed, to all FDA-approved contraceptives.”

# Hobby Lobby

— [ “In fact, HHS has already devised and implemented a system that seeks to respect the religious liberty of religious nonprofit corporations while ensuring that the employees of these entities have precisely the same access to all FDA-approved contraceptives as employees of companies whose owners have no religious objections to providing such coverage. The employees of these religious nonprofit corporations still have access to insurance coverage without cost sharing for all FDA-approved contraceptives; and according to HHS, this system imposes no net economic burden on the insurance companies that are required to provide or secure the coverage.”

# Hobby Lobby

— [ “Although HHS has made this system available to religious nonprofits that have religious objections to the contraceptive mandate, HHS has provided no reason why the same system cannot be made available when the owners of for-profit corporations have similar religious objections. We therefore conclude that this system constitutes an alternative that achieves all of the Government’s aims while providing greater respect for religious liberty.”



# How to Witness Like Jesus

— [ Christ's method alone will give true success in reaching the people. The Saviour mingled with men as one who desired their good. He showed His sympathy for them, ministered to their needs, and won their confidence. Then He bade them, "Follow Me."

# How to Witness Like Jesus

— [ There is need of coming close to the people by personal effort. If less time were given to sermonizing, and more time were spent in personal ministry, greater results would be seen. The poor are to be relieved, the sick cared for, the sorrowing and the bereaved comforted, the ignorant instructed, the inexperienced counseled. We are to weep with those that weep, and rejoice with those that rejoice. Accompanied by the power of persuasion, the power of prayer, the power of the love of God, this work will not, cannot, be without fruit. – *The Ministry of Healing*, p. 143

# How to Witness Like Jesus

— [ Jesus & the woman at the well: “The Savior was seeking to find the key to this heart, and with tact born of divine love, He asked...a favor.” - *The Desire of Ages*, p. 183

# How to Witness Like Jesus

— [ Agree with the people on every point where you can consistently do so. Let them see that you love their souls, and want to be in harmony with them so far as possible. If the love of Christ is revealed in all your efforts, you will be able to sow the seed of truth in some hearts; God will water the seed sown, and the truth will spring up and bear fruit to his glory. – Historical Sketches, p. 122

# How to Witness Like Jesus

— [ It is to be regretted that many do not realize that **the manner in which Bible truth is presented has much to do with the impressions made upon minds**, and with the Christian character afterward developed by those who receive the truth. Instead of imitating Christ in his manner of labor, many are severe, critical, and dictatorial. They repulse instead of winning souls. Such will never know how many weak ones their harsh words have wounded and discouraged. – Historical Sketches, p. 121

# Witnessing in the Workplace?

— [ Be like Jesus.

# QUESTIONS?