

An
Employer's
Guide to

faith

IN THE WORKPLACE

Legal Protections for Christians
Who Own a Business





**“...whatever you do,
do it all for the glory
of God.”**

1 Corinthians 10:31

“In order to effectively serve our owners, employees, and customers the Board of Directors is committed to: Honoring the Lord in all we do by operating the company in a manner consistent with Biblical principles....”

Hobby Lobby Statement of Purpose



Introduction

As a Christian who owns a business, your passion is to run a successful, thriving business in a way that brings glory and honor to God. Your faith is what makes you who you are – it impacts everything about the way you live your life, including the way you run your company.

This guide is for you, whether you are the founder of a brand new start-up, or a veteran CEO – and everything in between. With recent significant cultural and legal changes in our society we at Alliance Defending Freedom (ADF) have recognized it is more important than ever for you to have a guide like this one in order to help you navigate potential challenges to your business.

After all, America has a rich history of business owners running their companies consistently with their beliefs. Rose Marcario, the CEO of Patagonia, an outdoor clothing company, has said that “businesses need to step up and take a lead with moral and ethical voices, and call out the things that are harming people and the planet.”¹ True to her word, Patagonia sponsors a “Vote the Environment” campaign, which supports environmentally conscious candidates for office.² And Starbucks recently launched its “Race Together” initiative, an effort aimed at sparking a national dialogue to improve race relations. Remarking on the initiative, Starbucks CEO Howard Schultz said, “I feel we’ve been called to do this.”³

But while some business owners are cheered and commended when they blend certain beliefs and work, Christian business owners are often derided and denigrated, and sometimes face legal challenges, when they do the same. Because of this, they may be hesitant to put their religious beliefs into practice at work.

This guide will help you understand what the law says, and how to legally integrate your faith with your business.

This guide provides advisable steps business owners can take to increase the likelihood of success in the face of what we see as emerging threats, but there are no guarantees. Because each business and situation is unique, we recommend that you contact an attorney for specific advice. **If you face a legal situation, please contact us at 1-800-835-5233 so our attorneys can evaluate whether we can provide pro bono legal service or refer you to an ADF allied attorney for assistance.**

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SECTION I

An Employer's Guide to

General Workplace Policies

Q Can I Adopt a Statement of Religious Faith and Purpose for My Business?

A Yes. Courts have held that business owners may affirm their faith in business objectives.⁴ The law “does not, and could not, require individual employers to abandon their religion.”⁵ In fact, in the abortion pill mandate case, the United States Supreme Court determined that family-owned corporations can base their health care policy decisions on the religious convictions of the owners, and that the federal Religious Freedom Restoration Act (RFRA) protects this exercise of religion from interference by federal government officials.⁶ The Court even cited the business owners’ written statements of religious faith and purpose in ruling in their favor.⁷

Christian business owners may therefore improve their chances of establishing a religious liberty defense if they include a statement of faith and religious purpose in their bylaws or business policies. Such statements not only express the owners’ core religious beliefs, but also serve as clear evidence of those beliefs should they be questioned in a lawsuit. *A model “Statement of Faith and Religious Purpose” is provided in Appendix 1. A model “Statement on the Sanctity of Human Life” is also provided in Appendix 2, which may be helpful in a context like the Health and Human Services mandate requiring employers to include abortifacients in health insurance plans.*

Caution: Employers must be careful not to condition employment, benefits, or advancement within the company on an employee’s agreement with or acquiescence in the religious beliefs of the employer (unless religion is a bona fide occupational qualification (BFOQ) for the position, see Section II: “Hiring, Firing and Religious Accommodations,” “Q: Can a Christian Service Business Ever Limit Particular Jobs to Christians?”). Employers can protect against religious discrimination claims in a number of ways. For instance, employment application forms should state that applicants are considered for all positions without regard to religion. This statement should also be included in orientation materials, employee handbooks, policy manuals, and employee evaluation forms. Of course, employers must also be sure that this policy is actually followed by not discriminating on the basis of religion.

Q Can I Share the Gospel with My Employees?

A | Employers can talk about their religious beliefs with employees as long as employees know that continued employment, benefits, and advancement within the company are not adversely affected by an employee's acceptance of the employer's religious beliefs. For instance, one court held that an employer did not discriminate against an employee by sharing the Gospel with him and inviting him to church.⁸ And another court held that owners of a company were free to share their faith with their employees, as long as they did not do so at meetings where attendance is mandatory.⁹ Thus, employers must not require employees to listen to unwanted proselytizing if the employee objects. Such unwanted proselytizing could be deemed religious harassment or the creation of a hostile work environment.¹⁰

Q Can I Give My Employees Religious Information/Literature or Post It in the Workplace?

A | As with spoken religious speech, employers can share their religious beliefs with their employees in printed form – such as through pamphlets, books, and newsletters.¹¹ Employers must be careful, however, not to take any adverse employment action against an employee, or give employees the impression that they have to agree with the employer's religious beliefs in order to keep their job, retain their benefits, or be promoted. In one case a court ruled that a Jewish employee was wrongfully terminated for complaining about the printing of Bible verses on his paychecks and the religious content of a company newsletter.¹² If an employer shares religious convictions with employees, and an employee disagrees or protests, no adverse action can be taken against the employee.¹³ In expressing their own religious beliefs in the workplace, employers must be careful not to create a hostile working environment for employees who do not share the employer's religious convictions.

Furthermore, employers should be ready to accommodate any employee's objections to the religious speech contained in publications distributed to employees. It may be a sufficient accommodation to provide the objecting employee with a publication that does not contain the religious content. If an accommodation is requested regarding the posting of religious materials, employers should attempt to post the materials in a place that can be avoided by the employee. However, the employer is not required to make an accommodation that would hinder its right to base legally permissible business goals and objectives on religious principles, as outlined above. In order to counter any impression given by publications that job security and advancement are contingent upon faith, it is also recommended that publications with religious material state that the employer does not discriminate on the basis of religion for purposes of continued employment, employee benefits, or promotion, and, of course, the employer should not, in fact, treat an objecting employee any differently than a non-objecting employee with respect to employment benefits, security, or advancement.

Q Can I Hold Regular Prayer Meetings or Chapel Services for My Employees?

A | Employers can hold regular devotionals like prayer meetings or chapel services for employees, so long as attendance is not required.¹⁴ Moreover, active participation of management personnel in these meetings is permitted.¹⁵ To ensure that employees understand that devotional meetings are voluntary, notice of the meetings should state that they are not mandatory and that an employee's attendance or non-attendance will not affect any aspect of the employee's employment in any way. It is wise to hold these meetings before the work day begins, during breaks, or after work. And, of course, an employer may not take any adverse employment action against an employee on account of the employee's failure or refusal to attend or participate in religious activities at work.

Q Can I Require Employees to Attend Training Based on Biblical Principles?

A | Employers can use training programs that are based on the Bible. For example, requiring an employee to attend a management seminar put on by the Institute of Basic Life Principles, which used scriptural passages to support the lessons it sought to promote, did not violate a Massachusetts civil rights law.¹⁶ However, employees cannot be required to undergo religious training, participate in religious services, or engage in behavior that would violate their sincerely held religious beliefs.

Q Can I Regulate Employee Speech and the Literature Displayed on an Employee's Desk or in an Employee's Office?

A | As a general rule, employers are permitted to control their own business premises, including the image presented to the public.¹⁷ There is no constitutional right of free speech for private employees because the First Amendment to the United States Constitution applies only to governmental entities.¹⁸ Accordingly, the employer can determine what literature and other expressive items can be displayed at desks and in offices that are frequented by and visible to customers and other members of the public without violating the U.S. Constitution. For example, a private employer can prohibit the display of a picture of a burning United States flag because the employer might reasonably believe that customers would think the picture represents the employer's views, and that it would reflect poorly on the business. Employers can also prohibit employees from saying things to customers that actually hurt business.¹⁹

Under the federal employment anti-discrimination law, known as Title VII of the Civil Rights Act of 1964,²⁰ however, an employer may become subject to a religious discrimination claim if it discriminates against employees on the basis of religious expression. For example, an employer could probably prohibit employees from displaying any non-work-related items in their workspaces. But if an employer allows employees to display non-work-related items and expression in their workspaces generally, it may constitute illegal religious discrimination under Title VII to ban religious items or expressions.

Employers can also restrict the posting of material that will affect the efficiency of the workplace. Title VII has been found to protect an employee's religious belief that she must wear a picture of an unborn child at all times, even at work, but the employer could require her to keep the button covered because it was causing disruption with other employees.²¹ Employers do not have to permit signs disparaging co-workers or management. Furthermore, literature that constitutes sexual harassment (e.g., pornography)²² or religious harassment (e.g., a sign saying Jews are "Christ Killers"²³) can and should be prohibited. For example, an employer's dismissal of an argumentative atheist employee who proselytized on the job and switched off religious music at a Christmas party in favor of secular music did not violate Minnesota's version of Title VII. The court found that the case involved "aggressively offensive behavior exhibited by an outspoken advocate of atheism wholly intolerant of those foolish enough to admit to other views on the existence of a Deity. He was, indeed an argumentative, proselytizing polemicist."²⁴ Thus, the court determined that the employee was not terminated because of his religious beliefs, but because of "[his] offensive conduct in the office and in the field, his expressed attitude toward other workers, and his unproductive job performance."²⁵

Of course, an employer must attempt to accommodate employees' requests to display items in their workspace pursuant to their religious beliefs. Employees should be allowed to display religious items and speak about their religious faith at work to the same extent as employees are allowed to express themselves generally in the workplace, as long as there is "no 'actual imposition on co-workers or disruption of the work routine.'"²⁶

Q Can I Regulate the Music an Employee Listens to at Work?

A | Like the display of literature and religious items, an employer can regulate music that affects the image the company is attempting to convey to the public.²⁷ An upscale retail clothing establishment targeting women in their fifties and sixties does not have to allow the store manager to play alternative rock and roll music. Moreover, music that is disruptive to the work environment can also be restricted, even if the public will not be exposed to it. Employers have no obligation to allow their employees to listen to music on the job.²⁸ However, if music is allowed, an employer cannot prohibit an employee from listening to religious music if that employee has a sincerely held religious belief to do so and it is not disruptive.²⁹

Q Can I Regulate Employee Grooming and Clothing Worn at Work?

A | Yes. For instance, an employer does not discriminate against an employee by requiring him to shave his long facial hair and refrain from wearing a turban, if both of these religious practices result in safety hazards by preventing a hardhat and respirator from being worn properly.³⁰

However, employers must accommodate religious beliefs requiring an employee to dress or groom in a certain manner, unless the rule prohibiting dressing that way is justified by a business necessity or undue hardship. The EEOC has ruled that a nurse whose Old Catholic faith required her to wear a scarf was unlawfully discharged for refusing to come to work without the scarf, because requiring the nurse to wear a cap instead of the scarf was “not so necessary to the operation of [the employer’s] business as to justify the effect that this policy has upon the employment opportunities of [plaintiff] and others of similar religious convictions.”³¹



faith

IN THE WORKPLACE

The Hahn Family | *Conestoga Wood Specialties*

You would think a family that's spent a half-century making drawers and cabinets would know a little something about compartmentalizing. That is, after all, why people buy and install drawers and cabinets—so that they can tuck away things they're not using ... store them out of mind and out of sight.

The Hahns understand that. They make their living carefully crafting oak and cherry, maple and pine creations so simple and beautiful that whatever may be stored within becomes almost an afterthought.

They're good at it—so good that their business, which began in the family garage in 1964, has grown from a two-man operation to more than a thousand employees and has earned a reputation for excellence.

The Hahns themselves speak little of any of these things; privacy is as fundamental to their character as faith is to their beliefs. But they are not ashamed of their convictions or of how those convictions shape their daily life and work environment. Their beliefs are personal, but they are not hidden away.

Then, in 2012, the Hahns encountered a hard reality. A lot of people who don't share their religious beliefs—and even some who do—look at faith like the things in their cabinets: as something to be tucked away, out of mind, and out of sight.

Among those who believe this are officials of the Obama Administration's Department of Health and Human Services, whose 2012 abortion pill mandate stunned Christian business owners across America, including the Hahns. The law dictates that all employers must underwrite, as part of their employees' insurance benefits, early life-ending abortion drugs. Those who decline to provide coverage for their employees' abortion pills risk fines of \$100 dollars a day, per employee.

In effect, the government is demanding that business owners—whatever their personal views on the sanctity of human life—actively support abortion, or risk crippling fines. And for people like the Hahns, who have built their business as much on deep-seated beliefs as on finely crafted wood, those demands go hard against the grain.

But standing for their convictions puts the Hahns on the horns of another dilemma: confronting their own government. For the Hahns are Mennonites, and, as their attorney puts it, "Mennonites don't go to court."

This left the family with a harrowing choice: ignore the mandate, and face \$100,000 *a day* in fines ... or supplement abortion. In the end, their commitment to life won out. In 2012, they filed suit against the government in federal court.

They lost. They appealed to the U.S. Court of Appeals for the 3rd Circuit—and lost again. Finally,

they asked the U.S. Supreme Court to review their case. The High Court accepted their case in conjunction with that of another family-owned business, Hobby Lobby, owned by the Green family of Oklahoma. In July 2014, the Supreme Court delivered a landmark victory for Hobby Lobby and Conestoga, protecting religious freedom by allowing them to operate their businesses according to their convictions.

They may make drawers and cabinets, but people like the Hahns have no compartments in their hearts. They believe in holding true to their faith convictions ... not just in church, or at their own breakfast table, but on the floor of their factory, on the streets of their community, and—if need be—all the way to the steps of the Supreme Court.

 **WATCH**

**The Hahn
Family's Story**

alln.cc/ConestogaWood



SECTION II

An Employer's Guide to

Hiring, Firing, and Religious Accommodations

Q What Is My Obligation to Employees Who Have Religious Obligations or Objections to Certain Work Requirements?

A | The religious freedom of most employees is protected by Title VII.³² The purpose of this law is to protect employees from religious discrimination and harassment as well as to provide reasonable accommodations for their religious beliefs and practices. A specific provision of Title VII “was enacted with the stated purpose to protect Sabbath observers whose employers fail to adjust work schedules to fit their needs.”³³ The protection extends to “all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.”³⁴

In order to bring an action under Title VII for a religious accommodation, an employee must show: (1) A sincere religious belief that conflicts with an employment requirement; (2) The employer was aware of the conflict; and (3) Discharge, discipline or discriminatory treatment resulted from failing to comply with the conflicting employment requirement.³⁵

1. SINCERELY HELD RELIGIOUS BELIEF.

The sincerity of religious belief is rarely at issue in Title VII cases. Although failure to act on a religious belief consistently may be considered evidence that the belief is not sincerely held,³⁶ the fact that the belief was only recently acquired does not render it an insincere one.³⁷ An employee is not held “to a standard of conduct which would have discounted his beliefs based on the slightest perceived flaw in the consistency of his religious practice.”³⁸

Religion under Title VII is broadly defined as including “all aspects of religious observance and practice, as well as belief ...”³⁹ The Equal Employment Opportunity Commission (EEOC) – which is the federal agency that enforces Title VII – defines religious practice as including:

*“moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee”*⁴⁰

In other words, the EEOC’s test does not require that the employee’s religious beliefs coincide with the tenets of his church: “Title VII protects more than the observance of Sabbath or practices specifically mandated by an employee’s religion ...”⁴¹ Religion under Title VII has been held to include the Black Muslim faith, the “old Catholic Religion,” a “faith in humanity being,” and atheism.⁴² However, “religion” does not include membership in the Ku Klux Klan or the United Klans of America, or belief in the power of a certain cat food.⁴³

For purposes of a Title VII religious accommodation claim, an employer should assume that an employee’s religious beliefs are sincerely held unless the employer is in possession of significant evidence that such is not the case.

2. EMPLOYER WAS AWARE OF THE RELIGIOUS BELIEF.

In order to be entitled to a religious accommodation, an employee must show that the employer was aware of the belief and that the employee requested an accommodation. An employer has sufficient notice of an employee’s religious belief if it has “enough information about an employee’s religious needs to permit the employer to understand the existence of a conflict between the employee’s religious practices and the employer’s job requirements.”⁴⁴

Notification in writing is not absolutely necessary, as long as the employer is aware of the beliefs. However, an employee’s claim will be rejected if the employee does not make his or her religious belief sufficiently clear so as to allow the employer to determine whether an accommodation is necessary and, if so, how and whether an accommodation can be made without imposing an undue hardship on the employer.⁴⁶

The Supreme Court recently clarified in *EEOC v. Abercrombie & Fitch* that an employer’s “actual knowledge” of a job applicant’s religious accommodation needs is not a prerequisite to bringing a successful Title VII claim.⁴⁷ Instead, the applicant “need only show that his need for an accommodation was a motivating factor in the employer’s decision.”⁴⁸ In *Abercrombie*, it was sufficient that the company “believed [the applicant] wore her headscarf because of her [Muslim] faith” and declined to hire her to avoid providing such an accommodation, even though the applicant never expressly raised the need for a religious accommodation.⁴⁹

3. DISCRIMINATORY TREATMENT OF EMPLOYEE.

If an employee can show that the employer knew about a sincerely held religious belief, Title VII prohibits

the employer from discriminating against the employee because of the belief. “Discrimination” includes demotion, layoff, transfer, failure to promote, discharge, harassment, intimidation, or the threat of these adverse employment actions.⁵⁰

The employer is required to reasonably accommodate the employee’s religious beliefs unless such accommodation would result in undue hardship to the employer.⁵¹ One example of undue hardship is if it would cost more than a minimal amount of money to provide the accommodation.⁵² “Accommodation” means that employer neutrality is not enough.⁵³ In general, an employer is required to accommodate an employee’s adherence to the principles of the employee’s religion unless an accommodation will actually interfere with the operations of the employer. This principle would apply even to an atheist.⁵⁴

Q What Should I Do When Faced with a Discrimination Claim?

A | All employers should have a written set of procedures for handling discrimination claims. These procedures should be created under the direction of an attorney and made available to all employees. Employers should also require mandatory training for all employees and supervisors on the types of discrimination prohibited. Following is a general checklist of initial steps to take when an employee claims that discrimination has occurred:

1. Contact an attorney who specializes in employment law. No notes or other documentation of the incident should be made until an attorney has been consulted and has advised the employer about the proper documentation of the matter. The employer should then take the steps outlined below under the direction and approval of the attorney retained.
2. Two supervisors should interview the employee making the claim and obtain all of the facts and information surrounding the incident. If possible, the supervisors conducting the interview should be individuals who are not implicated in the charge of discrimination.
3. The claim should be investigated immediately (within a matter of days) by interviewing the parties involved. Any documentation of the investigation should be carefully supervised by an attorney.
4. If the discrimination is ongoing, the employee should be given the option of taking a paid leave of absence during the investigation.
5. If the claim of discrimination is found to have merit, appropriate action should be taken to eliminate the discrimination immediately. This may include placing the parties on administrative leave until the matter is resolved, and/or disciplining the appropriate parties. The employer should also consider, under the advice of an attorney, what training or policies need to be developed to prohibit future discrimination.

If the claim does not have merit, the extent of the investigation should be carefully documented under an

attorney's direction, and the complaining employee should be given the option of bringing the matter to the attention of a more senior supervisor.

Q If I Own a Christian Service Business, Can I Ever Limit Particular Jobs to Christians?

A Christian book distributors, bookstores, editing services, counseling services, and other businesses that primarily serve the Christian community may have a genuine need to employ Christians to interface with the public. For example, a Christian bookstore owner may want employees who interact with customers to be able to give advice on Bible translations, Bible studies, Bible commentaries, authors, performers, and other matters. And the owner may also want employees to be able to bear a Gospel witness to non-Christian customers. It would be difficult to meet these religious business objectives with non-Christian employees.

The general problem with a for-profit business limiting employment to Christians is that Title VII prohibits employment discrimination on the basis of religion.⁵⁵ That prohibition does not apply, however, “in those certain instances where religion ... is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise”⁵⁶ To attain this protection, a business owner must demonstrate that Christianity is a bona fide occupational qualification for all or some of the positions within the organization.

The Supreme Court has emphasized “that in order to qualify as a BFOQ, a job qualification must relate to the ‘essence’ or to the ‘central mission of the employer’s business.’”⁵⁷ The Christian bookstore owner may be able to establish that giving customers good counsel on Bibles and other Christian materials, or effectively interacting with its overwhelmingly Christian customer base, or evangelizing non-Christian customers, relates to the essence or central mission of the business. That would be easier to do with a clear statement of religious business objectives and employee responsibility.

A model “Personnel Policy for Christian Service Business” is provided in Appendix 7.

Q What Characteristics May I Generally Consider When Making Personnel Decisions?

A Generally, employers may not consider race, color, religion, sex, national origin, ancestry, age, veteran status, marital status, or the existence of a non-job-related disability when making employment or personnel decisions. Some states, cities, and municipalities have added other protected categories, like sexual orientation and gender identity, to this list.⁵⁸ If an employer is uncertain as to whether an anti-discrimination law applies or whether consideration of a particular characteristic is illegal in the jurisdiction(s) in which it conducts business, it should contact a local attorney. ADF may be able to recommend a local Christian attorney.

Q May I Consider Sexual Orientation or Gender Identity in Making Personnel Decisions?

A In many cases, an employee’s sexual orientation or gender identity is irrelevant to the job at issue. However, a company’s particular values or mission, or the nature of a particular type of job, may make sexual orientation or gender identity an important factor to consider in hiring decisions. But the enactment of certain anti-discrimination laws (more on these types of laws available on p. 19) across the country purport to make an employer’s consideration of sexual orientation or gender identity illegal unless it is a bona fide occupational qualification.⁵⁹ Although there is currently no federal law expressly prohibiting sexual orientation or gender identity discrimination, some federal courts have effectively swept some forms of sexual orientation and gender identity discrimination into the sex discrimination provisions of Title VII through “sexual stereotyping” theories.⁶⁰ Moreover, the EEOC currently claims that Title VII’s sex discrimination prohibition includes sexual orientation and gender identity discrimination.⁶¹ At least 23 states and the District of Columbia have SOGIs; they include the following jurisdictions:

California	Illinois	Nevada	Rhode Island
Colorado	Iowa	New Hampshire	Utah
Connecticut	Maine	New Jersey	Vermont
Delaware	Maryland	New Mexico	Washington
District of Columbia	Massachusetts	New York	Wisconsin ⁶²
Hawaii	Minnesota	Oregon	

If your business operates in any of these states, you may be prohibited from discriminating based on sexual orientation and/or gender identity.

Hundreds of cities and counties across the country have also enacted similar restrictions applicable to private employers. Employers should check with all municipalities and other governmental authorities where they conduct business to determine whether there is a prohibition on private employers discriminating on the basis of sexual orientation or gender identity.⁶³ Some of these state statutes and municipal ordinances have exemptions for religious organizations, while others do not. In addition, they may define “religious organization” in different ways.

See Appendix 8.

Q Are For-Profit Businesses Treated Differently than Non-Profit Religious Organizations?

A | In some contexts, for-profit businesses are treated differently than non-profit religious organizations, but a proper interpretation of constitutional protections and most religious-freedom laws should not distinguish between the two. Indeed, as mentioned above, the United States Supreme Court has concluded that federal RFRA protects the rights of family-owned corporations to operate consistently with the religious convictions of the owners on issues like abortion, just as it protects the rights of non-profit religious organizations.⁶⁴

Moreover, Title VII provides an exemption for “religious corporation[s]”—it does not prohibit those entities from discriminating in hiring on the basis of religion.⁶⁵ An employer qualifies for this exemption if it “is primarily religious, taking into account all significant religious and secular characteristics.”⁶⁶ While this exemption clearly applies to non-profit religious organizations, it remains to be seen whether it will also protect for-profit businesses.⁶⁷

Most states with discrimination statutes also provide an exemption from the prohibition on religious discrimination for religious organizations. *See Appendix 8*. However, Michigan and West Virginia do not provide such an exemption. *See Appendix 8*. Local governments like cities and counties may also have anti-discrimination laws, and while some of them exempt religious organizations, others do not.

Q Are All Employers Subject to Anti-Discrimination Laws?

A | Most but not all employers are subject to anti-discrimination laws. Under federal law, employers that have 15 or more employees are prohibited from discriminating on the basis of race, color, sex, national origin, and religion.⁶⁸ Many states have lowered this number so that even very small businesses are restricted by state anti-discrimination laws. *See Appendix 9*. In addition, many states and municipalities have expanded the prohibition on discrimination to include other categories, such as sexual orientation and/or gender identity.



faith

IN THE WORKPLACE

Barronelle Stutzman | *Arlene's Flowers*

Leonardo da Vinci had his paints, Michelangelo had his sculptures, Beethoven had his notes and chords. Barronelle Stutzman has flowers. Name the occasion – wedding, funeral, birthday, prom – and she can weave a bouquet or arrangement to fit. For decades, she's been delighting the people of rural Richland, Washington with her floral creations. Give her an armful of delphiniums, daisies, or daffodils – and a challenge – and she can transform those blossoms into anything from a Disney cartoon character to a tractor, a choir of angels to a quilting bee.

Everybody enjoys that kind of creativity, but only a handful can really *appreciate* it ... bringing their own sixth sense of understanding to just how delicate or witty or carefully crafted the work of the artist really is. That's why Barronelle and her friend Rob Ingersoll hit it off so well. He wasn't just one of her best customers. He really understood how much of herself she pours into the floral arrangements she weaves so well.

Barronelle had put together all kinds of wonderful creations for the special events and occasions important to Rob, and so it nearly broke her heart the day he came in and asked her to come up with something original for the most important occasion of all – the one occasion she could not, in good conscience, help him celebrate. Rob said he was marrying another

man, and Barronelle's Christian faith is grounded in Scripture that teaches marriage as the union of one man and one woman.

She broke it to him as gently as she could, and he said he understood, even hugging her as she told him. His partner, though, did not. The outrage he shared on Facebook drew attention from those attempting to push same-sex marriage on Americans ... including the state's new attorney general, Bob Ferguson.

Ferguson determined to make an example of Barronelle. He filed a consumer protection lawsuit against her, charging her with illegally discriminating against Rob on the basis of his sexual orientation. It was an unusual course of action, given that neither Rob nor his partner had filed a formal complaint. They got flowers for their ceremony, so that was hardly an ongoing problem. The state Human Rights Commission, charged with instigating action in such matters, hadn't pursued a claim. But Ferguson made it a personal priority, not only filing the lawsuit but denouncing Barronelle from political stumps all over the state. (Taking his lead, Rob and his partner, with the ACLU, have since filed their own lawsuit, which is now combined with the state's.)

In the months following the lawsuit and a barrage of media coverage, Barronelle's shop was deluged by phone calls and buried in hate mail from people who knew very

little about what really happened between Barronelle and Rob and who denounced her decision and mocked the faith that inspired it. But over time, those calls thinned out ... to be replaced, more and more, by countless letters and cards and emails of support from people all over the world who'd read of her situation and admired her courage.

With her case still pending – in a legal system that has been increasingly hostile in recent years, to choices of conscience from people of faith – she is drawing a lot of encouragement from these fellow believers. The way ahead may be difficult, but she will stand by her beliefs and trust her Lord, no matter what the court rulings may be. Barronelle is a wonderful florist, but she'd be the first to tell you: no one promised her a rose garden.



WATCH
Barronelle's
Story

alln.cc/Barronelle



SECTION III

An Employer's Guide to

Company Benefits

Q Do I Have to Provide Employees with Health Insurance that Covers Medication and Procedures that I Find Objectionable?

A | Possibly not, depending on what coverage the employer objects to and what governmental entity is requiring it. The Supreme Court has determined that religious people who own closely held businesses cannot be forced by the federal Affordable Care Act (Obamacare) to cover certain items – such as abortion, contraception, and sterilization products, that violate the owners' sincerely held religious beliefs. For example, Conestoga Wood Specialties Corp. and Hobby Lobby Stores are not required to pay for health insurance that covers, among other items, early abortion-causing drugs, such as the “morning after pill.” The Supreme Court found the families that own these businesses are protected by federal RFRA, which ensures the right to freely exercise religion.⁶⁹ There are also federal laws prohibiting certain state law insurance mandates for coverage of activities like abortion or doctor-assisted suicide drugs, though some states are attempting to challenge those protections.⁷⁰

But it is still unclear how much religious liberty protection employers have from state laws as well as other mandates of insurance coverage. Those matters might require additional litigation and could vary based on different state religious freedom laws. If an employer is uncertain whether the government is violating the employer's religious freedom by requiring the employer to provide health coverage for morally objectionable items, the employer should contact ADF or a local attorney.

Q Do I Have to Provide Insurance, Health, and Retirement Benefits for Same-Sex Marriages?

A | There is no universal answer to this question, and the law is changing rapidly in this area since the Supreme Court struck down the federal definition of marriage in 2013 and found a constitutional right to same-sex marriage in 2015.⁷¹ Whether your company is required to provide benefits to same-sex spouses of employees will depend on several factors, such as whether the company is self-insured, whether the benefit is federally required, and whether state law addresses the issue. Business owners should consult with an attorney to get information on the current status of the law. ADF may also be able to refer employers to an ADF allied attorney for assistance.

Q Can I Take Steps to Support Marriage and Family in My Business?

A | Business owners can support marriage and family, as well as demonstrate allegiance to their statement of faith, by providing family-friendly employee benefits. With the redefinition of marriage by the Supreme Court, businesses may find it difficult to provide marriage benefits that do not extend to government-recognized same-sex relationships.⁷² Notwithstanding the issues surrounding government-recognized same-sex relationships, companies can nevertheless distinguish between marriage and cohabitation and decline to provide benefits to cohabiting couples.

Q With So Much Uncertainty in the Law, Is It in My Best Interest to Promote Marriage and Family?

A | Yes. Abundant research supports the proposition that employee benefits that support healthy marriages and family are good for business:

- Married employees tend to have a healthier lifestyle than singles because they engage in less risky behaviors such as drug and alcohol abuse, they eat healthier, and they are more likely to exercise.⁷³
- Married men generally make higher wages than single, divorced, or widowed men because they are more productive. In addition, they work longer hours, have lower “quit rates,” and are more likely to choose higher pay, even if it involves less pleasant work or less control over working hours.⁷⁴
- A benefit of marriage unique to women is that married women suffer less domestic violence than single women.⁷⁵

- Marriage reduces depression and other mental health problems⁷⁶ (depression costs businesses billions of dollars annually⁷⁷).
- And married employees with children have fewer distractions than single parents because there are two people to share in child care responsibilities, and children raised by their own married parents do better in a broad array of areas.⁷⁸

On the other hand, employees going through dissolution of marriage cost businesses billions of dollars a year.⁷⁹ The most direct research estimates that divorce and family distress cost businesses \$6.8 billion per year.⁸⁰ The greatest financial impact comes not from absenteeism, but from lack of productivity when present.⁸¹ Interestingly, divorce affects the productivity of men more than women, with the greatest impact on men who have been married 10 years or less.⁸² Although divorce is not as likely to affect women's productivity as much as men's, it does increase the risk of domestic violence spilling over into the workplace.⁸³ The impact of divorce may last up to seven years, and it tends to reduce the productivity of co-workers as well.⁸⁴

The benefits to a business of employees with healthy marriages, and the detriments of divorce, suggest that it is in a company's best interest to promote healthy marriages. The purpose of promoting healthy marriages is to help married employees, or those who are planning to marry, develop stable marriages and avoid divorce.

Q How Can I Promote Strong and Healthy Marriages and Families?

A | Offering generous employee benefits is a good starting point for putting faith into practice in one's business.⁸⁵ Although not focused directly on marriage, generous benefits support healthy marriages by reducing stress in the lives of all employees. Examples of such benefits include childcare, adoption subsidies, paid leave for adoptive parents, and expanded Family and Medical Leave Act benefits.

Employee Assistance Programs (EAPs) are an additional tool for promoting healthy marriages (which also leads to healthy families⁸⁶). EAPs often offer counseling services, and there are numerous proposals for using EAPs to alleviate the financial stress experienced by employees going through a divorce.⁸⁷ While offering financial assistance may diminish the financial stress of a divorce, it would be far better to offer programs that could prevent the divorce.

There are a multitude of programs designed to help couples avoid divorce, from online assessment tools,⁸⁸ to couples' retreats,⁸⁹ to telephone counseling,⁹⁰ to sophisticated counseling programs.⁹¹ Christian business owners are free to offer programs that are biblically based, but they should also offer a menu of other options that any employee can choose. One such option is PREPARE/ENRICH, a program with a proven track record that can be facilitated by clergy, licensed counselors, social workers, or lay counselors.⁹² The PREPARE aspect of the program is for premarital counseling, and the ENRICH portion is for already-married couples.⁹³

Perhaps the best way to support healthy marriages for employees is to make premarital counseling available.⁹⁴ Research shows that premarital counseling programs like PREPARE, which emphasize relational skills, improve overall marital satisfaction and reduce the risk of divorce by 30 percent.⁹⁵ A church-based program called Marriage Savers that uses the PREPARE couple assessment has been highly effective.⁹⁶ Marriage Savers' founder, Michael J. McManus, tracked 288 couples from his church who received premarital counseling from a mentor couple over the first 10 years of the program. Eighteen percent of the couples dropped out or broke up before the marriage. But of the 229 who married, only seven divorced or separated – a divorce/separation rate of only 3.1 percent.⁹⁷ Since the average divorce rate after five years of marriage is 23 percent,⁹⁸ the pilot program reduced divorce by 86 percent!⁹⁹ Encouraging employees to participate in such a program prior to marriage not only promotes healthy marriages and families, but also benefits the employer by making workers more productive.¹⁰⁰

Despite the well-established benefits of premarital counseling and the fact that many churches and synagogues provide it, less than one-third of engaged couples receive any premarital counseling at all.¹⁰¹ Therefore, it may well be in an employer's best interest not only to pay for premarital counseling, but to offer incentives for couples to complete a premarital program.



faith

IN THE WORKPLACE

Blaine Adamson | *Hands on Originals*

Blaine Adamson's professional interests seem to suit people to a "tee"—or, more specifically, to a t-shirt. He has a gift and an enthusiasm for helping others convey messages on shirts of all kinds — as well as hats, bags, blankets, bottles, cups, and mugs. Working alongside other people who share that enthusiasm, he has invested many years making Hands On Originals, Inc. one of the most successful promotional printing companies in Lexington, Kentucky.

Yet — understandably — not every slogan someone comes up with is the kind Adamson wants to put on his merchandise. Periodically, he has to tell folks that the message they had in mind is not something his company will print or design. When he does that, Adamson always makes it a point to refer the potential customer to another local business.

When the Gay and Lesbian Services Organization (GLSO) called him, though, they wouldn't take "no, thank you" for an answer. The group wanted Hands On Originals to print shirts promoting its upcoming "Pride Festival." When Adamson respectfully declined the job, the organization filed a complaint with the city's Human Rights Commission, alleging that the company engaged in illegal discrimination based on sexual orientation.

There's nothing in Adamson's life to support this charge. He has regularly printed, and will continue to print, materials for customers who identify as gay or lesbian. And over the years, he has hired — and developed great relationships with — a number of employees who identify as gay or lesbian. They'd be among the many in Lexington willing to tell you how honest, fair, and compassionate Adamson is.

Sadly, Adamson hasn't received that same kind of tolerance and understanding from certain activist groups. After the GLSO filed its complaint, its members widely publicized their version of the situation, and a campaign began encouraging people to boycott Adamson's business. That smear campaign resulted in his losing a number of longtime clients.

In 2014, the commission ruled that Adamson had to print messages that violate his conscience. But Alliance Defending Freedom attorneys representing Adamson appealed that ruling to the Fayette Circuit Court, which in April 2015 reversed the commission's decision.

"Hands On Originals and its owners have a constitutional right to refrain from speaking, just as much as they enjoy the constitutional right to speak freely," the court said. "It is

their constitutional right to... not be compelled to be part of the advocacy of messages opposed to their sincerely held Christian beliefs."

It was a crucial legal victory. But even better — even amid all the turmoil — Adamson says he has truly experienced what the fellowship of Christ is all about, as members of his church have come around him to pray and encourage him in his stand. There is a very hands-on message of love and support, but more than that ... he knows they would give him the shirt off their backs.

 **WATCH**

Blaine's Story

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SECTION IV

Specific Guidance for

Businesses Whose Products or Services Are Expressive in Nature

Q What Do You Mean by “Expressive in Nature”?

A | An expressive business would include any type of work in which you create artistic expression, print or disseminate messages on signs, shirts, or other products, publish a newspaper, or provide any other product or service that is expressive.

Would you paint a nude portrait? Print messages on signs or t-shirts promoting Planned Parenthood? Design and create an artistic product that celebrates atheism? Run or create an advertisement for a local X-rated videostore? Most likely not. And the First Amendment protects your right to decline to create, promote, and disseminate expression to which you object. This is called the right to be free from compelled speech. It protects individuals and businesses from being forced to engage in expression that is contrary to their beliefs. (For an explanation of compelled speech protections, see the answer to “Q: What Can I Do to Structure My Expressive Business to Support a Free Speech Defense?” on p. 21.)

Q What Are Sexual Orientation, Gender Identity (SOGI) Laws?

A | You may not meet much resistance if you exercise this right in the above scenarios. But you can expect far more resistance – and maybe even legal challenges – if you decline to create, promote or disseminate expression that conflicts with your religious beliefs concerning marriage and sexual morality. If your state or local government has adopted a sexual orientation, gender identity (SOGI) law, you could be at risk. Left-leaning social activists often use SOGI laws to attempt to compel Christians, under threat of penalties, to communicate ideas and messages favorable to same-sex marriage and homosexuality in violation of their religious beliefs.

SOGIs elevate sexual special interests over our cherished fundamental freedoms, especially religious freedom. These ordinances place terms like “sexual orientation” or “gender identity” in the same category as race or religion. But they are not designed for the innocent purpose of ensuring all people receive basic services. Rather, their primary effect is to legally compel Christians to accept, endorse, and even promote messages, ideas, and events that violate their faith.

Those promoting these ordinances use public sympathy – gained through misleading rhetoric about “discrimination” – to silence dissenting voices.

A SOGI law may already apply to your business. Twenty-two states currently have these laws and hundreds of cities and counties across the nation have enacted them as well. Further, following the Supreme Court’s decision to impose same-sex marriage on the nation, activists have committed their time, money, and influence to pressure states and localities lacking SOGI laws to adopt them. So even if no SOGI law currently applies to your business, one could soon.

Q Can SOGI Laws Force Me to Use My Business to Engage in Expression that Conflicts with My Faith?

A | Over the past few years, activists have increasingly been trying to use SOGI laws to coerce Christian business owners to speak or act in ways that conflict with their faith regarding marriage and sexual morality. A quick look at some of our clients’ stories confirms this. Constitutional protection should be strongest for business activities that indisputably involve speech and should apply broadly to businesses whose products or services are expressive in nature. Such businesses should be protected by the First Amendment from the imposition of SOGI penalties for deciding not to create, promote, or disseminate expression that violates the owners’ beliefs. Nevertheless, some courts have declined to recognize the First Amendment as a defense in the SOGI context. Business owners may also find protection against SOGI enforcement in a federal or state RFRA statute, as well as through state constitutional protections or state judicial decisions. This is still a rapidly evolving area of the law, and currently there are no ironclad protections for businesses. Yet, there are many advisable steps business owners can take to increase the likelihood of success, several of which are discussed below.



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**More Stories
of Business
Owners**

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Q What Can I Do to Structure My Expressive Business to Support a Free Speech Defense?

A Businesses whose services involve expression should be, as a matter of proper constitutional principles, protected from being compelled to communicate a message against their will.¹⁰² The constitutional right to free speech, under the First Amendment, “includes both the right to speak freely and the right to refrain from speaking.”¹⁰³ The United States Supreme Court has upheld the right not to communicate an objectionable message even in the context of sexual orientation nondiscrimination laws.¹⁰⁴ It has repeatedly affirmed that the right against compelled speech is “enjoyed by business corporations generally.”¹⁰⁵

Given these well-established principles, businesses whose products or services are expressive in nature (such as writers, printers, photographers, painters, florists, cake artists, and many more) should need no special policies to defeat a SOGI discrimination claim, assuming that the discrimination claim is based on the business’s refusal to engage in or create objectionable expression. However, as described above, businesses that provide wedding-related services have, so far, fared poorly in the few SOGI lawsuits brought to date because the courts have concluded that they were offering services or merchandise rather than engaging in expression. For example, the New Mexico Supreme Court ruled that a photographer’s creative expression was not protected speech;¹⁰⁶ a Washington court ruled that a florist’s artistic flower arrangements were not protected speech;¹⁰⁷ and a Colorado Appeals Court ruled that a cake artist’s creation of a wedding cake was not protected speech.¹⁰⁸ And other SOGI claims have been brought against other business owners. For instance, a New York administrative law judge ruled that a private farm violated a SOGI statute when its owners declined to host and participate in a same-sex ceremony,¹⁰⁹ and a Hawaii court summarily ruled that a bed and breakfast owner violated a SOGI statute when she declined to rent a single room in her home to a same-sex couple.¹¹⁰ On the positive side, however, a Kentucky court recently ruled that a Christian printer was not required to print a message promoting the local gay pride festival.¹¹¹ And after months of threatening to enforce a SOGI law if two ordained ministers did not perform same-sex marriages at their wedding chapel business, the City of Coeur d’Alene, Idaho backed off of those threats after the ministers sued to prevent enforcement, although the suit continues.¹¹² Most of these cases continue to be litigated, and eventually one of them may reach the United States Supreme Court, which will hopefully provide clearer guidance and greater protection in this area.

While there is no way to guarantee victory if you decline to create, promote, or disseminate expression that violates your beliefs and are faced with a SOGI lawsuit, the following are five steps you should take now to assess your risk and strengthen your ability to invoke your First Amendment rights:

1. Find out if there are SOGI laws in the state, county, or city where your business is located and where you solicit and conduct business.
2. Include a statement of faith and religious purpose in your bylaws or corporate policies. This provides clear evidence that you operate your business in accordance with your religious beliefs if that fact is ever questioned in court.
3. Adopt a policy statement on company expression that states that your business engages in its own expression through the services it provides. This policy should state that your business creates, promotes, or disseminates messages that are consistent with your Christian faith and that you reserve the right to decline to engage in expression and activities that violate your beliefs.
4. On your company website, include language that describes the expressive nature of the services your company provides (*e.g.*, a photographer could refer to her services as “the art of storytelling” and explain that she uses photography to tell her client’s stories).
5. Implement a personnel policy that requires employees to review and understand your statement of faith, religious purpose, and statement on company expression. This policy should require employees to refer any request that might involve expressing a message contrary to your faith to you.

Model policy statements and personnel policies that you can adapt to meet your business’ needs are provided in Appendices 1 and 3-6. *A model “Statement Of Faith And Religious Purpose” is provided in Appendix 1; a model “General Policy Statement on Company Expression” is provided in Appendix 3; a model policy statement for businesses that provide expressive services in the wedding context is provided in Appendix 4; a model personnel policy for how to treat all customers is provided in Appendix 5; and a model personnel policy for customer relations in an expressive business is provided in Appendix 6. Before relying upon any of these policies, call ADF at 1-800-835-5233 for assistance or for a referral to an ADF allied attorney.*

faith

IN THE WORKPLACE

Conclusion

Given the rapidly changing moral climate in our country, God's people are uniquely positioned to make a profound impact as faithful witnesses to His love and truth. The freedom to live out and exercise our faith allows us to engage a hostile social and political culture in ways that offer clear light and enduring hope amid spiritual darkness.

That's what this guide is all about – giving you confidence as you run your business for the glory of God; and knowing that Alliance Defending Freedom is here for you if you have any questions or encounter a situation along the way.

Adopting the action steps in this guide cannot insulate your business from all attacks, or guarantee victory in legal challenges that may come. But acting upon this content will provide stronger support for constitutional and religious freedom defenses should your business face a lawsuit.

More than that, preparing yourselves legally will give your company greater freedom to honor God in your everyday work – and that freedom may well make an eternal difference for lost and hurting souls all around you.

Appendices

Please consult an attorney before relying upon any of the policies contained in these Appendices. Each business is unique, and decisions about whether and how to implement these policies should not be made without seeking appropriate professional advice.

Appendix 1

Statement of Faith and Religious Purpose

1. The owners of _____ are [followers of Jesus Christ] [practicing Roman Catholics].
2. The owners believe that Jesus Christ requires that all His followers strive to live their lives in a manner that is consistent with the precepts and doctrines of their faith, [which are grounded solely in the Bible] [as taught by the Catholic Church].
3. The owners therefore seek to operate _____ in accordance with the principles of their faith and strive to make all business decisions according to [biblical principles] [the teaching of the Catholic Church].
4. In light of the owners' faith, _____ exists to bring glory to God and share His truth with its employees, customers, and community by serving them according to principles that honor and glorify Him.
5. To this end, _____ seeks always to fulfill Jesus' command to love our neighbors as ourselves and to do unto others as we would have done unto us by serving our customers with love and excellence.
6. _____ wants its service to the community to bear witness to its owners' faith in Christ, and also to Christ's Lordship over its owners' lives. [For expressive businesses add: Therefore, as _____ engages in expression, it intentionally communicates messages that promote aspects of its owners' beliefs, or at least messages that do not violate those beliefs. For this reason, _____ reserves the right to deny a request for services that would require it to engage in or host expression that violates its owners' religious beliefs.] [For Christian service businesses add: Therefore, while _____'s primary function is to deliver excellent biblical {resources} {counseling} {editing} to the Christian community, it also seeks to evangelize non-believers who desire its {products} {services}.]
7. The owners of _____ will [the board of _____ is authorized to] prioritize the above religious, ethical, and moral principles regardless of the impact on profit.

Appendix 2

Statement on the Sanctity of Human Life

We believe that all human life is sacred and created by God in His image. Human life is of inestimable worth in all its dimensions, including babies in the womb, the aged, the physically or mentally challenged, and every other stage or condition from conception through natural death. We are therefore called to defend, protect, and value all human life. (Psalm 139.)

Appendix 3

General Policy Statement on Company Expression

_____ engages in its own expression through many of the services it provides. In so doing, _____ intentionally expresses public messages that promote aspects of its owners' Christian faith, or at least that do not violate those beliefs. For this reason, _____ reserves the right to deny a request for services that would require it to engage in or host expression that violates its owners' religious beliefs.

Appendix 4

Policy Statement on the Message a Wedding-Related Service Communicates

The owners of _____ believe that marriage is a holy institution that reflects the relationship between Jesus Christ and His church (Ephesians 5:21-32). The wedding ceremony itself pictures the joining together of the church with Christ for eternity (Revelation 19:7). Accordingly, the owners of _____ believe that, regardless of the intent of the couple, a wedding between a man and a woman communicates a sacred message about the relationship between Jesus Christ and the church, and those who facilitate the wedding participate in communicating that message. [For a florist: In addition, the floral designers at _____ pour their hearts, minds, artistic talents, and creative abilities into designing and creating unique floral arrangements that communicate that the marital union is good, honorable, and worthy of celebration.] [For a baker: In addition, the cake artists at _____ pour their hearts, minds, artistic talents, and creative abilities into designing and creating unique wedding cakes that communicate that the marital union is good, honorable, and worthy of celebration.] For this reason, _____ reserves the right to decline a request for services that would express or facilitate an inconsistent message.

Appendix 5

General Customer Relations Policy

The owners of _____ operate the business according to the principles of their faith. In keeping with those principles, employees must treat every person with compassion, kindness, respect, and dignity while at work. Each employee must verify in writing that they have reviewed this policy and agree to follow it.

Appendix 6

Customer Relations Policy for Expressive Businesses

The owners of _____ operate the business according to the principles of their faith. Each employee must review and understand the owners' Statement of Faith and Religious Purpose. In keeping with those principles, employees must treat every person with compassion, kindness, respect, and dignity while at work.

In the event a customer requests a service that would or might involve expressing a message contrary to the owners' statement of faith, the employee must politely defer an answer until he or she has consulted with the owners or their designee. If instructed to decline the service, the employee must explain that the requested service would communicate a message that _____ is unwilling to express. [For owners who do not object to providing a referral: The employee should also offer to refer the customer to one or more businesses that are willing to provide the expressive service.] [For owners who do not object to providing a facilitated referral: The employee should also offer to directly connect the customer to one or more businesses that are willing to provide the expressive service.]

Each employee must verify in writing that they have reviewed this policy and agree to follow it.

Appendix 7

Personnel Policy for Christian Service Businesses

The owners of _____ operate the business according to the principles of their faith. Each employee must review and understand the owners' Statement of Faith and Religious Purpose. In keeping with those principles, employees must treat every person with compassion, kindness, respect, and dignity while at work.

Consistent with the religious purpose of _____, employees who interact with the public as part of their job description must be prepared to counsel customers on [biblically] [ecclesiastically] based resources and be sufficiently conversant with the Gospel message to evangelize unbelievers. Accordingly, employees who interact with the public must sign a statement that they agree with the owners' Statement of Faith and Religious Purpose.

Appendix 8

Quick Reference Guide to Religious Exemptions for Religious Organizations, by State

(This area of the law is rapidly changing. This material is provided as a starting point for research only.)

STATE	CODE SECTION	TYPE OF EXCEPTION
Alabama	Ala. Code § 25-1-20 (age discrimination only)	None given
Alaska	Alaska Stat. § 18.80.300(5)	Religious org. / non-profit
Arizona	Ariz. Rev. Stat. Ann § 41-1462	Religious org. / edu. institution
Arkansas	Ark. Code Ann. § 16-123-103(a)	Religious org.
California	Cal. Gov't Code § 12940(j)(4)(A) Cal. Gov't Code § 12926 Cal. Gov't Code § 12926.2	Religious org. / non-profit
Colorado	Colo. Rev. Stat. § 24-34-401(3)	Religious org.
Connecticut	Conn. Gen. Stat. Ann. 46a-81p	Religious org. / edu. institution
Delaware	19 Del. Code § 710(6)	Religious org.
Dist. Columbia	D.C. Code Ann. § 2-1401.03	Religious org. / charitable
Florida	Fla. Stat. Ann. § 760.10(9)	Religious org. / edu. institution
Georgia	Ga. Code Ann. § 45-19-22(5) (only applies to gov. employers)	None needed
Hawaii	Hi. Rev. Stat. § 378-3	Religious org. / edu. institution
Idaho	Idaho Code § 67-5910	Religious org. / edu. institution
Illinois	775 Ill. Comp. Stat. 5/2-101(B)(2)	Religious org. / edu. institution
Indiana	Ind. Code Ann. § 22-9-1-3(h)	Religious org. / edu. institution
Iowa	Iowa Code Ann. § 216.6(6)(d)	Religious org. / edu. institution
Kansas	Kan. Stat. Ann. § 44-1002(b)	Non-profit fraternal / social assoc. or corp.
Kentucky	Ky. Rev. Stat. Ann. § 344.090	Religious org. / edu. institution
Louisiana	La. Rev. Stat. Ann. §§ 23.302(2) & 23.332	Religious org. / edu. institution
Maine	Me. Rev. Stat. Ann. tit. 5 §§ 4553(4) & 4573-A	Religious org. / edu. institution

STATE	CODE SECTION	TYPE OF EXCEPTION
Maryland	Md. Code Ann. § 20-604	Religious org. / edu. institution
Massachusetts	Mass. Gen. Laws. Ann. ch. 151B § 4	Religious org. / edu. institution
Michigan	Mich. Comp. Laws. § 37.2101 et seq	None given
Minnesota	Minn. Stat. Ann. 363A.20	Religious org. / service org.
Mississippi	Miss. Code Ann. § 25-9-149 (only applies to gov. employers)	None needed
Missouri	Mo. Stat. Ann. § 213.010(7)	Religious org.
Montana	Mont. Code Ann. § 49-2-101(11)	Religious org.
Nebraska	Neb. Rev. Stat. Ann. § 48-1103(1) & 48-1108(2)	Religious org./ edu. institution
Nevada	Nev. Rev. Stat. §§ 613.320 & 613.350	Religious org./ edu. institution
New Hampshire	N.H. Rev. Stat. Ann. § 354-A:2	Religious org.
New Jersey	N.J. Stat. Ann. § 10:5-12	Religious org.
New Mexico	N.M. Stat. Ann. § 28-1-9	Religious org.
New York	N.Y. Exec. Law 296(11)	Religious org. / edu. institution
North Carolina	N.C. Gen. Stat. § 143-422.2 (no state remedies apart from Title VII)	Title VII exemption applies
North Dakota	N.D. Cent. Code 14-02.4-08	General
Ohio	Ohio Rev. Code Ann. § 4112.02	Religious org. / edu. institution
Oklahoma	25 Okla. Stat. Ann. §§ 1307-1308	Religious org. / edu. institution
Oregon	Or. Rev. Stat. § 659A.006	Religious org. / edu. institution
Pennsylvania	43 Pa. Cons. Stat. Ann. § 954(b)	Religious org.
Rhode Island	R.I Gen. Laws § 28-5-6(7)(ii)	Religious org. / edu. institution
South Carolina	S.C. Code § 1-13-80(l)(5)	Religious org. / edu. institution
South Dakota	S.D. Codified Laws Ann. § 20-13-18	Religious org.
Tennessee	Tenn. Code Ann. § 4-21-405	Religious org. / edu. institution
Texas	Texas Code Ann. Lab. § 21.109	Religious org. / edu. institution
Utah	Utah Code Ann. § 34A-5-102(8)(b)	Religious org. / edu. institution
Vermont	Vt. Stat. Ann. tit. 21 § 495(e)	Religious org.
Virginia	Va. Code Ann. § 2.2-3900	No private right of action apart from federal remedies. Va. Code Ann. § 2.2-3903; <i>Ennis v. National Ass'n of Bus. & Educ. Radio</i> , 53 F.3d 55 (4th Cir. 1995); <i>Lamb v. Qualex, Inc.</i> , 28 F. Supp. 2d 374 (E.D. Va. 1998)
Washington	Wash. Rev. Code § 49.60.040(11)	Religious org. / non-profit
West Virginia	W.V. Code § 5-11-9	None given
Wisconsin	Wis. Stat. Ann. § 111.337	Religious org. / non-profit
Wyoming	Wy. Stat. § 27-9-102(b)	Religious org.

Appendix 9

Quick Reference Guide to States with Lowered Number of Employee Requirements

(This area of the law is rapidly changing. This material is provided as a starting point for research only.)

STATE	# OF EMPLOYEES	CODE SECTION
Alabama	20	Ala. Code § 25-1-20(2) (age discrimination only)
Alaska	1	Alaska Stat. § 18.80.300(5)
Arizona	15 1 (sex harassment only)	Ariz. Rev. Stat. Ann. § 41-1461
Arkansas	9	Ark. Code Ann. § 16-123-102(5)
California	5 1 (harassment)	Cal. Gov't Code § 12926 Cal. Gov't Code § 12940(j)(4)(A)
Colorado	1	Colo. Rev. Stat. § 24-34-301(5)& 401(3)
Connecticut	3	Conn. Gen. Stat. Ann. 46a-51(10)
Delaware	4	Del. Code Ann. tit. 19 § 710(6)
Dist. Columbia	1	D.C. Code Ann. § 2-1401.02(10)
Florida	15	Fla. Stat. Ann. § 760.02(7)
Georgia	15	Ga. Code Ann. § 45-19-22(5) (only applies to gov. employers)
Hawaii	1	Haw. Rev. Stat. § 378-1
Idaho	5	Idaho Code § 67-5902 (6)
Illinois	15 (1 in limited circumstances)	775 Ill. Comp. Stat. 5/2-101(B)(1)(b)
Indiana	6	Ind. Code § 22-9-1-3(h)
Iowa	4	Iowa Code § 216.6(6)(a)
Kansas	4	Kan. Stat. Ann. § 44-1002(b)
Kentucky	8 (15 for disability)	Ky. Rev. Stat. Ann. § 344.030(2)
Louisiana	20	La. Rev. Stat. Ann. § 23.302(2)
Maine	1	Me. Rev. Stat. Ann. tit. 5 §§ 4553(4)
Maryland	15	Md. Code Ann. § 20-602(d)(1); but see <i>Molesworth v. Brandon</i> , 341 Md. 621, 672 A.2d 608 (1996) (subject to wrongful discharge claim based on public policy only, not enforcement provisions of Md. Ann. Code 49B @ 14, et seq.)
Massachusetts	6	Mass. Gen. Laws ch. 151B, § 1(5)
Michigan	1	Mich. Comp. Laws § 37.2201(a)

STATE	# OF EMPLOYEES	CODE SECTION
Minnesota	1	Minn. Stat. § 363A.03(16)
Mississippi	n/a	Miss. Code Ann. § 25-9-149 (only applies to gov. employers)
Missouri	6	Mo. Stat. Ann. § 213.010(7)
Montana	1	Mont. Code Ann. § 49-2-101(11)
Nebraska	15	Neb. Rev. Stat. Ann. § 48-1102(2)
Nevada	15	Nev. Rev. Stat. §§ 613.310(2)
New Hampshire	6	N.H. Rev. Stat. Ann. § 354-A:2(VII)
New Jersey	1	N.J. Stat. Ann. § 10:5-5
New Mexico	4	N.M. Stat. Ann. § 28-1-2
New York	4	N.Y. Exec. Law 292(5)
North Carolina	15	N.C. Gen. Stat. § 143-422.2
North Dakota	1	N.D. Cent. Code § 14-02.4-02(8)
Ohio	4	Ohio Rev. Code Ann. § 4112.01(A)(2)
Oklahoma	1	Okla. Stat. Ann. tit. 25, § 1301(1)
Oregon	1	Or. Rev. Stat. § 659A.001(4)
Pennsylvania	4	43 Pa. Cons. Stat. Ann. § 954(b)
Rhode Island	4	R.I. Gen. Laws § 28-5-6(8)
South Carolina	15	S.C. Code § 1-13-30(e)
South Dakota	1	S.D. Codified Laws Ann. § 20-13-1(7)
Tennessee	8	Tenn. Code Ann. § 4-21-102(5)
Texas	15	Texas Code Ann. Lab. § 21.002(8)
Utah	15	Utah Code Ann. § 34A-5-102(1)(h)
Vermont	1	Vt. Stat. Ann. tit. 21, § 495d(1)
Virginia	6	Va. Code Ann. § 2.2-3903
Washington	8	Wash. Rev. Code Ann. § 49.60.040(11)
West Virginia	12	W.V. Code § 5-11-3(d)
Wisconsin	1	Wis. Stat. § 111.32(6)(a)
Wyoming	2	Wy. Stat. § 27-9-102(b)

End Notes

- 1 Austin Carr, *The Inside Story of Starbucks's Race Together Campaign, No Foam*, Fast Company (July/August 2015), <http://www.fastcompany.com/3046890/the-inside-story-of-starbucks-race-together-campaign-no-foam>.
- 2 *Vote the Environment*, Patagonia, <http://www.patagonia.com/us/patagonia.go?assetid=100525> (last visited Sept. 8, 2015).
- 3 Carr, *supra* note 1.
- 4 *EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 621 (9th Cir. 1988).
- 5 *Id.*
- 6 *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).
- 7 *Id.* at 2766.
- 8 *Meltebeke v. Bureau of Labor & Indus.*, 903 P.2d 351, 355, 362-63 (Or. 1995) (evangelical Christian employer did not violate state law prohibiting employers from making “[u]nwelcome religious advances” by witnessing to his employee and inviting him to church).
- 9 *Townley*, 859 F.2d at 620.
- 10 *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1021 (4th Cir. 1996). See also *Bodett v. CoxCom, Inc.*, 366 F.3d 736 (9th Cir. 2004) (employer was justified in firing supervisor for telling homosexual subordinate that homosexuality is a sin, praying with her to receive salvation, and inviting her to church).
- 11 *Taylor v. Nat'l Grp. of Cos.*, 729 F. Supp. 575 (N.D. Ohio 1989) (employer's gift of a book endorsing secular humanism to new employees on their first day of work did not rise to the level of religious discrimination against a Christian employee).
- 12 *Brown Transp. Corp. v. Pa. Human Relations Comm'n*, 578 A.2d 555 (Pa. Commw. Ct. 1990).
- 13 *Id.*
- 14 *Young v. Sw. Sav. & Loan Assoc.*, 509 F.2d 140 (5th Cir. 1975).
- 15 *Brown v. Polk Cnty.*, 61 F.3d 650, 656-57 (8th Cir. 1995).
- 16 *Kolodziej v. Smith*, 588 N.E.2d 634, 638 (Mass. 1992).
- 17 *Johnson v. Halls Merch.*, 49 Fair Empl. Prac. Cas. (BNA) 527 (W.D. Mo. 1989) (retail business justified in firing sales associate who often began her conversations to customers with the phrase “in the name of Jesus Christ of Nazareth”); *EEOC v. Sambo's of Georgia, Inc.*, 530 F. Supp. 86 (N.D. Ga. 1981) (restaurant could require all employees to shave beards to protect its public image); *Knight v. Conn. Dep't of Pub. Health*, 275 F.3d 156 (2d Cir. 2001) (employer not required to accommodate employees' religious beliefs that they evangelize clients).
- 18 Private employers should be aware that employee statements regarding illegal activity of employers may be protected under “Whistle Blower” statutes. See, e.g., Fla. Stat. Ann. § 448.102 (2005).
- 19 See *supra* note 17. The fact that the speech to customers actually adversely affects business is vital. A company could not prevent its employees from saying “God Bless You” and “Praise the Lord” to its food service customers because there was no evidence that it had actually caused business to be affected. *Banks v. Service Am. Corp.*, 952 F. Supp. 703 (D. Kan. 1996).
- 20 Title VII is codified at 42 U.S.C §§ 2000e et seq. (2005).
- 21 *Wilson v. U.S. West Commc'ns*, 58 F.3d 1337 (8th Cir. 1995). But see *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599 (9th Cir. 2004) (termination of employee for posting Bible passages in his workspace condemning homosexuality was not religious discrimination under Title VII).
- 22 *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486 (M.D. Fla. 1991); *Andrews v. Philadelphia*, 895 F.2d 1469, 1475 & 1485-86 (3d Cir. 1990).
- 23 *Weiss v. United States*, 595 F. Supp. 1050 (E.D. Va. 1984). See also *Abramson v. William Paterson College of N.J.*, 260 F.3d 265 (3d Cir. 2001) (supervisor's criticism of Orthodox Jewish belief not to work on Sabbath could create hostile work environment); *Chalmers*, 101 F.3d 1012 (employer did not have to accommodate employee's letter to co-worker stating that he needed to repent of his sin).
- 24 *Minn. Dep't of Highways v. Minn. Dep't of Human Rights*, 241 N.W.2d 310, 313 (Minn. 1976), *cert. denied*, 429 U.S. 863 (1976).
- 25 *Id.*
- 26 *Brown v. Polk Cnty.*, 61 F.3d at 657 (quoting *Burns v. S. Pac. Transp. Co.*, 589 F.2d 403, 407 (9th Cir. 1978), *cert denied*, 439 U.S. 1072 (1979)). See also EEOC Dec. No. 76-98, EEOC Dec. ¶ 6674 (1976) (a prison's decision to terminate an Orthodox Muslim because he “cannot be persuaded to tone down his religious practices on the job and continually gets wrapped up in conversations with the inmates” was unlawful because there was no evidence that the employee's conduct had made him unable to perform his duties or hampered the efficient operation of the workplace).
- 27 See *supra* note 17.
- 28 *Gunning v. Runyon*, 3 F. Supp. 2d 1423, 1428-29 (S.D. Fla. 1998).
- 29 See *infra* Section II, *Hiring, Firing, and Religious Accommodations*, What Is an Employer's Obligation to Employees Who Have Religious Obligations or Objections to Certain Work Requirements?
- 30 EEOC Dec. No. 82-1, 28 Fair Empl. Prac. Cas. (BNA) 1840 (1982). See also *Bhatia v. Chevron USA, Inc.*, 734 F.2d 1382 (9th Cir. 1984); *Sambo's*, 530 F. Supp. 86 (restaurant could require all employees to shave beards to protect its public image).

- 31 EEOC Dec. No. 71-779, 3 Fair Empl. Prac. Cas. (BNA) 172 (1970). *See also* EEOC Dec. No. 71-2620, 4 Fair Empl. Prac. Cas. (BNA) 23 (1971) (where an employer could not fire employee for wearing traditional Islam garb because there was no evidence that requiring employees to wear traditional office attire was “necessary to the safe and efficient operation of [the] business”); *Carter v. Bruce Oakley, Inc.*, 849 F. Supp. 673 (E.D. Ark. 1993) (employer could not demonstrate that beard imposed safety risk, so there was no undue burden); EEOC Dec. 81-20, 27 Fair Empl. Prac. Cas. (BNA) 1809 (1981) (employer required to permit employee to wear skirt instead of pants, as required by her religious beliefs).
- 32 As previously mentioned, Title VII is codified at 42 U.S.C. §§ 2000e *et seq.* (2005). It applies to virtually all employers with fifteen or more employees.
- 33 *EEOC v. Ithaca Indus., Inc.*, 849 F.2d 116, 118 (4th Cir. 1988).
- 34 42 U.S.C. § 2000e(j).
- 35 *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987); *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993); *Turpen v. Mo.-Kan.-Tex. R.R. Co.*, 736 F.2d 1022, 1026 (5th Cir. 1984).
- 36 *EEOC v. Union Independiente De La Autoridad De Acueductos Y Alcantarillados de Puerto Rico*, 279 F.3d 49, 55-56 (1st Cir. 2002). *C.f. Miss. Emp’t Sec. Comm’n v. McGlothlin*, 556 So. 2d 324 (Miss. 1990) (employee’s belief was sincerely held even though she was not an active member of her religious group and wore her head wrap only occasionally).
- 37 *Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1378-79 (6th Cir. 1994).
- 38 *EEOC v. Univ. of Detroit*, 701 F. Supp. 1326, 1331 (E.D. Mich. 1988), *rev’d on other grounds*, 904 F.2d 331 (6th Cir. 1990).
- 39 42 U.S.C. 2000e(j). The courts and the EEOC have interpreted this provision very liberally. Donald T. Kramer, *Validity, Construction, and Application of Provisions of Title VII of Civil Rights Act of 1964* (42 U.S.C.A. § 2000e *et seq.*) and *Implementing Regulations, Making Religious Discrimination in Employment Unlawful*, 22 A.L.R. Fed. 580 § 4[a] (1975).
- 40 EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.1.
- 41 *Heller*, 8 F.3d at 10438-39 (summarizing authorities); *see also Redmond v. GAF Corp.*, 574 F.2d 897, 900-01 (7th Cir. 1978); 22 A.L.R. Fed. at 601-03.
- 42 EEOC Dec. No. 71-2620, 4 Fair Empl. Prac. Cas. (BNA) 23 (1971); EEOC Dec. No. 71-779, 3 Fair Empl. Prac. Cas. (BNA) 172 (1970); EEOC Dec. No. 72-1301, 4 Fair Empl. Prac. Cas. (BNA) 715 (1972); *Young*, 509 F.2d 140.
- 43 EEOC Dec. No. 79-6, 26 Fair Empl. Prac. Cas. (BNA) 1758 (1978); *Brown v. Pena*, 441 F. Supp. 1382 (S.D. Fla. 1977), *aff’d*, 589 F.2d 1113 (5th Cir. 1979).
- 44 *Heller*, 8 F.3d at 1439.
- 45 *Brown v. Polk Cnty.*, 61 F.3d at 654-55.
- 46 *Chrysler Corp. v. Mann*, 561 F.2d 1282, 1285-86 (8th Cir. 1977); *Chalmers*, 101 F.3d 1012.
- 47 *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2032 (2015).
- 48 *Id.*
- 49 *Id.* at 2031.
- 50 Ralph Gerstein & Lois Gerstein, *Prosecution or Defense of Action Alleging Employment Discrimination on Basis of Religion*, 135 Am. Jur. Proof of Facts 3d 183 (2013); *Townley*, 859 F.2d at 614 n.5.
- 51 *Trans World Airlines v. Hardison*, 432 U.S. 63, 73-74 (1977); *EEOC v. READS, Inc.*, 759 F. Supp. 1150, 1155 (E.D. Pa. 1991); EEOC Guidelines on Discrimination Because of Religion, 29 C.F.R. § 1605.2(c).
- 52 *See Trans World Airlines*, 432 U.S. at 84.
- 53 *Riley v. Bendix Corp.*, 464 F.2d 1113, 1115 (5th Cir. 1972) (the fact that a particular policy is applied uniformly to all employees does not lessen the discriminatory effect upon a particular employee’s religious beliefs).
- 54 *Young*, 509 F.2d 140; *Minn. Dep’t of Highways*, 241 N.W.2d at 313.
- 55 42 U.S.C. § 2000e-2(a) (prohibiting discrimination on the basis of race, color, religion, sex, or national origin).
- 56 42 U.S.C. § 2000e-2(e).
- 57 *Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 203 (1991) (internal citations omitted).
- 58 *See infra* note 62 for a list of states that prohibit sexual orientation discrimination by employers, and note 63 regarding municipalities.
- 59 *See* discussion of BFOQs above.
- 60 *See, e.g. Terveer v. Billington*, 34 F. Supp. 3d 100, 115-16 (D.D.C. 2014) (sexual orientation); *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, No. 14-13710, 2015 WL 1808308 (E.D. Mich. Apr. 21, 2015) (gender identity); *Smith v. City of Salem, Ohio*, 378 F.3d 566, 571-75 (6th Cir. 2004) (gender identity).
- 61 *Baldwin v. Dep’t of Transp.*, EEOC Appeal No. 0120133080 (July 15, 2015) (sexual orientation); *Macy v. Dep’t of Transp.*, EEOC Appeal No. 0120120821 (Apr. 20, 2012) (gender identity).
- 62 Cal. Gov’t Code §§ 12920, 12940; Colo. Rev. Stat. Ann. § 24-34-402; Conn. Gen. Stat. § 46A-81C; D.C. Code Ann. § 2-1402.11; 19 Del. Code Ann. § 711; Haw. Rev. Stat. § 378-2; 775 Ill. Comp. Stat. Ann. 5/1-102; Iowa Code Ann. § 216.6; Me. Rev. Stat. Ann. Tit. 5, § 4572; Md. Ann. Code State Gov’t § 20-606; Mass. Gen. Laws Ch. 151B, §§ 3, 4; Minn. Stat. § 363A.08; Nev. Rev. Stat. Ann. § 613.330; N.H. Rev. Stat. Ann. §§ 354-A:6, 354-A:7; N.J. Stat. Ann. §§ 10:5-4, 10:5-12; N.M. Stat. Ann. § 28-1-7; N.Y. Exec. Law § 296; Or. Rev. Stat. Ann. § 659A.030; R.I. Gen. Laws § 28-5-7; Utah Code Ann. § 34A-5-106; Vt. Stat. Ann. Tit. 21, § 495; Wash. Rev. Code Ann. §§ 49.60.010, 49.60.030; Wis. Stat § 111.36.

- 63 Some organizations publish online lists of municipalities that prohibit sexual orientation discrimination by private employers. However, mistakes are frequently found in these lists and citations can sometimes not be confirmed because of the difficulty of obtaining copies of each municipality's code. Employers should always check the code of each municipality and state where they have business operations and rely on published lists (including those in this publication) only as a starting point for research.
- 64 *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).
- 65 42 U.S.C. 2000e-1.
- 66 *Spencer v. World Vision, Inc.*, 633 F.3d 723, 729 (9th Cir. 2011) (internal quotation marks omitted).
- 67 See *Tyndale House Publishers, Inc. v. Sebelius*, 904 F. Supp. 2d 106, 119 n.13 (D.D.C. 2012) (for-profit Bible publishing company that donates its profits to charity might qualify as a "religious corporation" under Title VII); see also Judge Kleinfeld's test in *Spencer*, which does not require an organization to be non-profit to be a religious corporation. *Spencer*, 633 F.3d at 748 (Kleinfeld, J., concurring).
- 68 42 U.S.C. §§ 2000e-2 & 2000e(b).
- 69 *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).
- 70 See, e.g., Consolidated Appropriations Act, Pub L. No 113-76, 128 Stat. 5, Div. H, § 507 (Jan. 17, 2014) (states may not receive certain federal funding if they require abortion coverage in health insurance); 42 U.S.C. § 18113(a) (governments may not require assistance in or coverage of doctor-assisted suicide or euthanasia).
- 71 *United States v. Windsor*, 133 S. Ct. 2675 (2013); *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).
- 72 Government-recognized relationships include marriages, civil unions, and domestic partnerships.
- 73 Carol Miller-Tutzauer, et al., *Marriage and Alcohol Use: A Longitudinal Study of Maturing Out*, 52 J. of Studies on Alcohol No. 5, 434 (1991); Jerald G. Bachman, et al., *Smoking, Drinking and Drug Use in Young Adulthood* 120-22, 141-43 (1997); David H. Olson & Amy K. Olson, *Empowering Couples: Building on Your Strengths* at 4 (2000).
- 74 Robert I. Lerman & W. Bradford Wilcox, *For Richer For Poorer: How Family Structures Economic Success in America* at 32-35, American Enterprise Institute for Family Studies (2015), http://www.aei.org/wp-content/uploads/2014/10/IFS-ForRicherForPoorer-Final_Web.pdf (last visited April 30, 2015); W. Bradford Wilcox, *Don't Be a Bachelor: Why Married Men Work Harder, Smarter and Make More Money*, Wash. Post (April 2, 2015) (describing research), <http://www.washingtonpost.com/news/inspired-life/wp/2015/04/02/dont-be-a-bachelor-why-married-men-work-harder-and-smarter-and-make-more-money/?postshare=9791427975978392>; Sanders Korenman & David Neumark, *Does Marriage Really Make Men More Productive?*, 26 J. of Human Resources 282, 283 (1991); Linda J. Waite & Maggie Gallagher, *The Case for Marriage: Why Married People Are Happier, Healthier, and Better Off Financially* 99-103 (2000).
- 75 Ronet Bachman & Linda E. Saltaman, *Violence Against Women: Estimates from the Redesigned Survey*, National Crime Victimization Survey Special Report, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics at 3-4, Table 4, NCJ 154348 (Aug. 1995); Lawrence Sherman, et al., *Policing Domestic Violence: Experiments and Dilemmas* 4, ch. 7 (1992); Patrick F. Fagan & Kirk A. Johnson, Ph.D., *Marriage: The Safest Place for Women and Children*, The Heritage Foundation Background Paper No. 1535 (April 10, 2002).
- 76 Allan V. Horowitz, et al., *Becoming Married and Mental Health: A Longitudinal Study of a Cohort of Young Adults*, 58 J. of Marriage & Family 895, 900 (1996); Waite & Gallagher, *supra* note 74, at 72; Linda J. Waite & Mary Elizabeth Hughes, *At Risk on the Cusp of Old Age: Living Arrangements and Functional Status Among Black, White, and Hispanic Adults*, 54B J. of Gerontology No. 3, S136, S143 (1999); Nadine F. Marks & James D. Lambert, *Marital Status Continuity and Change Among Young and Midlife Adults: Longitudinal Effects on Psychological Well-Being*, 19 J. of Family Issues 652, 672-74 (1998).
- 77 Matthew D. Turvey & David H. Olson, *Marriage & Family Wellness: Corporate America's Business?* at 6, A Marriage Commission Research Report (2006), <http://www.healthymarriageinfo.org/resource-detail/index.aspx?rid=2687> (last visited March 26, 2015).
- 78 Timothy J. Biblarz & Greg Gottainer, *Family Structure and Children's Success: A Comparison of Widowed and Divorced Single-Mother Families*, 62 J. of Marriage & Family No. 2, 533, 534 (May 2000); Ronald L. Simons, et al., *Explaining the Higher Incidence of Adjustment Problems of Children of Divorce*, 61 J. of Marriage & Family 1020, 1028 (Nov. 1999); Andrew Cherlin, et al., *Effects of Parental Divorce on Mental Health Throughout the Life Course*, 63 Am. Soc. Rev. 239 (1998); Paul R. Amato & Alan Booth, *A Generation at Risk: Growing Up in an Age of Family Upheaval* 219-224 (2000); Susan S. Lang, *Children from Divorced Families Less Likely to Attend Selective Colleges*, 24 Human Ecology No. 3, 2 (1996); Ollie Lundberg, *The Impact of Childhood Living Conditions on Illness and Mortality in Adulthood*, 36 Soc. Sci. & Med. 1047 (1993); Robert L. Flewelling & Karl E. Bauman, *Family Structure as a Predictor of Initial Substance Use and Sexual Intercourse in Early Adolescence*, 52 J. of Marriage & Family 171, 175 & Table 2 (1990).
- 79 See Turvey & Olson, *supra* note 77, at 6-9; Donna Tosky & Jason Krausert, *Onto Death as We Part: The Impact of Divorce on Employee Wellness*, Corporate Wellness Magazine.com (Jan. 29, 2014), <http://www.corporatewellnessmagazine.com/others/impact-of-divorce-on-wellness/>; JoAnne Donner, *Impact of Divorce on the Workplace*, Donner Mediation and Coaching (May 4, 2011), <http://mediationandcoachingllc.com/impact-of-divorce-on-the-workplace/>; Amy Wirtz & Lee Daun Williams, *An Overview of the Cost of Divorce to Employers* at 1, The Center for Principled Family Advocacy (Sept. 2010), <http://www.skirbuntlaw.com/pdf/DivorceCoststoEmployers.pdf>.
- 80 Melinda S. Forthofer, et al., *Associations Between Marital Distress and Work Loss in a National Sample*, 58 J. of Marriage & Family No. 3, 597, 602 (1996).
- 81 *Id.* at 599. This phenomenon is sometimes designated *presenteeism*, although the term actually refers to being present but not productive because of an illness. Paul Hemp, *Presenteeism: At Work – But Out of It*, Harv. Bus. Rev. (Oct. 2004), <https://hbr.org/2004/10/presenteeism-at-work-but-out-of-it>.
- 82 *Id.* at 603-04.
- 83 Wirtz & Williams, *supra* note 79, at 4 & n. xxix.
- 84 Donner, *supra* note 79; Rosemary Frank, *The Cost of Divorce to Employers*, Nashville Business Journal Blog (Mar. 10, 2014), <http://www.bizjournals.com/nashville/blog/2014/03/the-cost-of-divorce-to-employers.html?page=all>; Turvey & Olson, *supra* note 77, at 24-25.

- 85 See Hercules Industries Receives Top Company Award, Distribution Center (Sept. 25, 2014), <http://www.distributioncentermag.com/articles/85040-hercules-industries-receives-top-company-award> (honored as 2014 Top Company in Manufacturing by Colorado Biz Magazine).
- 86 See *supra* note 78.
- 87 See, e.g., Rosemary Frank, *Employee Productivity Program for Employers*, Dollars of Divorce, www.dollarsofdivorce.com/employee-productivity-program-for-employers/ (last visited April 6, 2015) (recommending training on financial information and insight); Harry Siegal, *The 2013 Divorce: An Employer's Guide to Employee Productivity* The Business Monthly (January 2, 2013), www.bizmonthly.com/the-2013-divorce-an-employer%E2%80%99s-guide-to-employee-productivity/ (recommending paying for mediation to alleviate the financial burden); Wirtz & Williams, *supra* note 79, at 5 (recommending giving “employees a bonus for completing their divorce within an alternative dispute methodology like collaborative divorce because it will save the employer money.”).
- 88 See Couple Checkup, www.couplecheckup.com.
- 89 See Marriage Encounter, www.preventingdivorce.com/marriage%20encounter.htm; Weekend to Remember, www.familylife.com/wtrfall14?gclid=COWUhZ3k4sQCFZBafgodpmwAGw.
- 90 See Divorce Busting, www.divorcebusting.com.
- 91 See Prepare-Enrich, www.prepare-enrich.com.
- 92 *Id.*
- 93 David H. Olson, Amy K. Olson, Peter J. Larson, *PREPARE-ENRICH Program: Overview and New Discoveries about Couples*, 25 J. of Family & Community Ministries 30 (2012), www.prepare-enrich.com/pe/pdf/research/newdiscoveries.pdf (last visited April 7, 2015).
- 94 Forthofer, et al., *supra* note 80, at 603-04. Because the biggest impact of marital distress in the workplace occurs in the first ten years, offering premarital counseling also has a positive impact on work productivity. *Id.*
- 95 David H. Olson, Peter J. Larson, & Amy Olson-Sigg, *Couple Checkup: Tuning Up Relationships*, 8 Journal of Couple & Relationship Therapy 129, 130 (2009), https://www.prepare-enrich.com/pe/pdf/research/2011/couplecheckup_tuningup.pdf (last visited April 7, 2015).
- 96 Marriage Savers, www.marriagesavers.org.
- 97 Catherine Latimer & Michael J. McManus, *How to Give Marriage Insurance to Premarital Couples* at 10 (2002), marriagesavers.org/sites/Resourses/Articles/Art005MarriageInsurance.htm (last visited April 7, 2015). The authors concluded that “any church which does not have a rigorous premarital program prompting 10% to 20% of couples to break up, is not offering meaningful marriage preparation.”
- 98 Maria Blackburn, *The Marriage-Go-Round*, John Hopkins University Arts & Sciences Magazine (2010) (Stats from *The Merry-Go-Round* by Andrew J. Cherlin), krieger2.jhu.edu/magazine/f09/f1.html (last visited April 7, 2015).
- 99 The program has had similar or even better success in other churches. Latimer & McManus, *supra* note 97, at 10; see also *Churches Virtually Eliminate Divorce*, www.marriagesavers.org/sites/Resourses/Articles/Art004ChurchesEliminateDivorce.htm (last visited April 7, 2015). The church programs appear to be far more effective than the Community Marriage Policy programs that Marriage Savers has established nationally. “So far, more than 200 cities and towns in 43 states have created Community Marriage Policies and divorce rates have fallen an average of 17.5%, and cohabitation by a third.” Welcome to Marriage Savers, www.marriagesavers.org (last visited April 7, 2015).
- 100 Forthofer, et al., *supra* note 80, at 603-04.
- 101 Olson, Larson, & Olson-Sigg, *supra* note 95, at 130.
- 102 *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (government may not require a newspaper to include a third party's writings in its editorial page); *Pac. Gas & Elec. Co. v. Pub. Util. Comm'n of Cal.*, 475 U.S. 1 (1986) (plurality) (government may not require a business to include a third party's expression in its billing envelope); *Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (government may not require citizens to display state motto on license plate).
- 103 *Wooley*, 430 U.S. at 714.
- 104 *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 572-73 (1995) (government may not require a public-accommodations parade organization to facilitate the message of a GLBT-advocacy group). See also *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 659 (2000) (government may not apply a public-accommodations law to force the Boy Scouts to accept a scoutmaster who identifies as gay and expresses messages about human sexuality that conflict with the organization's views).
- 105 *Hurley*, 515 U.S. at 574; see also *Citizens United v. FEC*, 558 U.S. 310, 342 (2010) (collecting cases).
- 106 *Elane Photography, LLC v. Willock*, 309 P.3d 53, 64-65 (N.M. 2013).
- 107 *Washington v. Arlene's Flowers, Inc.*, Case Nos. 13-2-00871-5, 13-2-00953-3, slip op. at 38-40 (Wash. Super. Ct. Feb. 18, 2015).
- 108 *Craig v. Masterpiece Cakeshop, Inc.*, 2015 WL 4760453 at *11 (Col. Ct. App. Aug. 13, 2015).
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