

Battling the 9/11 Backlash

Almost five years since the World Trade Center was attacked, more HR professionals are reaching out to Muslim employees to thwart discrimination and avoid getting sued.

BY BRUCE SHUTAN

As the war on terror approaches a five-year milestone, HR professionals have a historic opportunity to influence the hearts and minds of misunderstood Muslims by helping promote greater tolerance in the American workplace.

Arab-Americans and others tangled in a web of mistaken identities or alliances have faced so-called post-9/11-backlash employment discrimination under Title VII of the Civil Rights Act, according to the U.S. Equal Employment Opportunity Commission.

Since 9/11, the EEOC has received 2,168 complaints of employment discrimination against Muslims—roughly double the number reported from a comparable period between 1997 and 2001. Thus far, 984 charges were filed in the first four years under Title VII, with 140 individuals receiving more than \$3.3 million in monetary benefits, 128 settling through conciliation or negotiation, 97 parties receiving rights to sue and 91 failing conciliation after a finding of discrimination was made. Lawsuits have been filed in federal court in New York, San Francisco, Phoenix, Miami, Chicago, Houston, St Louis, Philadelphia and Dallas.

Some HR departments have put managers through sensitivity training so they don't run afoul of the law. Others have sought to develop an inclusive environment that respects their small segment of the nation's 5-to-7-million Muslim population.

Inaction or indifference could come at a steep price, with the EEOC keeping tabs on companies, prepared to sue for discriminatory practices after first approaching organizations about resolving matter in question without litigation. Legal experts advise HR practitioners to use the Sept. 11, 2006 milestone to reflect on what they have or haven't done to comply with employment law when it comes including and accommodating Muslim-Americans.

"Coming up on this anniversary is a time to assess how sincere and genuine those efforts are, as well as putting the financial resources and expertise into the staff that's hired," says Sunu P. Chandy, a New York-based senior trial lawyer with the EEOC. "We encourage HR professionals to review training programs and policies to help prevent discrimination based on religious beliefs."

Richard Lamond, a senior vice president and chief HR officer for Spherion Corp. in Ft. Lauderdale, Fla., knows what it's like to be in the hot seat, though he avoided being sued in the long run.

Spherion, a staffing firm that employs more than 300,000 people in North America in about 700 locations, was able to resolve a 2005 dispute over prayer in the workplace involving 30 Muslim assembly-line workers who were contracted out for a Dell Inc. facility in Nashville, Tenn.

Published news reports said they left work in February 2005 after being told to make a choice between praying at work and keeping their jobs. Under Islam's devotional requirements, members of the roughly 1,400-year-old Muslim faith are expected to pray five times a day.

After walking off the job, the workers filed a complaint with the Nashville Metro Human Relations Commission, which brokered a peace before legal action was taken. The Council on American-Islamic Relations, publisher of *An Employer's Guide to Islamic Religious Practices*, helped mediate the case. Spherion also involved one of its own executives whose principle responsibility is managing diversity initiatives both internally and on behalf of corporate customers.

Lamond declined to comment on specific terms of the settlement, citing the need to honor client confidentiality agreements.

"Suffice it to say, the matter was settled, and we've had no additional issues since that time," he says. "The workers involved in the incident were reinstated and religious practices are being accommodated at that worksite."

Spherion managers received additional training not only as a preventive measure to stem future conflict but also as a means of reminding the organization's leadership about the policies and procedures they're expected to follow. The effort, Lamond says, includes an emphasis on "how to operate in a fair, legal and consistent manner with religious accommodations and diversity issues."

Lamond describes the role of HR in accommodating religious expression as "paramount and critical," noting the need to follow employment laws and regulations as well as build a culture of fairness and openness among employees without fearing retaliation from management. "It is terribly important that HR takes a proactive approach and is aggressive in any operation with respect to reminding both managers and employees about what is expected from their behavior and how people should be treated in a fair and consistent manner," he says.

When viewing 9/11 backlash claims in a larger context, Lamond believes it's incumbent on American employers to review their obligations. "We're all looking to attract, develop and retain the best workers we can find," he says. "In order to do that, you must have the kinds of programs, cultures and training in place that will draw the best talent. The other side of that coin, of course, is today's worker wants to see a company that is diverse, follows fair and consistent employment practices and provides opportunities for all members of the population."

Understanding Cultures

It certainly helps to have a culture in place conducive to understanding and tolerance. Lectures and training initiatives involving workplace diversity issues help about 2,700 employees of Brookhaven National Laboratory in Upton, N.Y., share and celebrate cultural differences, according to Shirley Kendall, who manages the lab's diversity office.

One of the leading government research centers in the United States, Brookhaven has long drawn from an international talent pool of scientists, including more than 4,000 visiting researchers who investigate the environment, high-energy physics, materials science and nuclear energy.

Annual diversity training for nearly 10,000 managers and executive teams at Sodexo Inc. in Gaithersburg, Md., has been supplemented by a "learning lab" presentation on Muslims in the workplace, which many leaders considered a real eye-opener, according to Rohini Anand, the company's senior vice president and chief diversity officer. Most leaders, she says, are making every attempt not to schedule important meetings during

major religious holidays, including Ramadan. Other efforts in reaching out to this employee base have included making office space available for private prayer.

Anand describes a deep level of commitment to tolerance inside her organization, noting that former CEO Michel Landel won a Top 10 CEO Award for Commitment to Diversity from Diversity Best Practices, an iVillage company.

The company holds its leadership accountable for delivering on diversity promises. For instance, 25 percent of incentive pay for executive team members hinges on an annual progress report while 10 percent to 15 percent of incentive compensation for all bonus-eligible managers is tied to such results. Bonuses are calculated based on a scorecard approach for achieving diversity objectives for hiring, promotion and retention. What may be somewhat surprising is that they're not contingent on business performance.

"Our CEO Richard Macedonia made a commitment in 2004 and 2005 to pay out that bonus regardless of the company's financial performance," Anand says. "We have an extremely robust diversity strategy that is engrained in the fabric of the organization's culture."

While women made up 58 percent of the employee population in 2004, African-Americans accounted for 24 percent and Latinos 17 percent, the number of Muslims is not tracked. Sodexo, whose 110,000 employees work in more than 7,000 locations across the United States, established in the fall of 2003 its own Office of Employment Rights, which has since been credited with helping resolve several complaints. Anand declined to say whether they involved post-9/11 backlash issues or religion in general, citing confidentiality concerns.

Claims on the Rise

Joan Ehrlich, the EEOC's district director in San Francisco, says there has been a sharp increase in charges filed by Muslims, Arabs, Afghani, Middle Eastern and South Asian employees in the United States alleging post-9/11 backlash discrimination or harassment. With regard to the latter issue, she has noticed a pattern of vicious name-calling and disrespectful behavior, lamenting that managers often know about the infractions but refuse to act or prevent such incidents.

"Frankly," she says, "I think there would be many more charges filed if the targets of discrimination were not afraid of retaliation and had more faith in government agencies. We have a big credibility issue on our hands but are working hard to develop relationships with these communities through outreach and collaboration."

In a high-profile case from 2003 that was finally settled last June for \$525,000, the Plaza Hotel and Fairmont Hotel and Resorts Inc. was sued for creating a hostile atmosphere for 12 Muslim, Arab, and South Asian employees who endured taunts of "terrorist," "Osama" and "dumb Muslim."

Other notable developments have involved EEOC lawsuits filed on behalf of individuals whose countries of origin have been invaded by the United States as part of its war on terror. For example, the Worcester Art Museum outside Boston was taken to task in 2002 for firing an Afghan-American Muslim man on the basis of his national origin and religion, and later agreed to pay \$60,000.

Bechtel Corp. was also sued for failing to correct a hostile work environment against an Iraqi employee at its Hackensack, N.J., facility, and agreed to pay the employee

\$90,000. Sahir Kizy of Royal Oak, Mich., whose state is home to the nation's highest concentration of Arab Americans, was subjected to harassing comments and excluded from meetings when he worked as a site acquisition specialist.

Under the current climate of fear, some employees of federal contractors like Bechtel have had their security clearance pulled by the federal agency heading up the contract or the U.S. Department of Justice, according to Ehrlich. She says a number of cases involve seasoned talent for whom there were no reasons to suspect inappropriate activities or question job performance. "We'll be looking into it to see if anything can be done," she reports, adding that one sticking point is the EEOC cannot sue another federal agency.

Debunking Myths

One new weapon in this nascent war against workplace bigotry is a multimedia toolkit called *Active Voice in the Workplace: The Islam Project*. The product is produced by San Francisco-based Active Voice, which has assembled a team of strategic communication specialists who cater mostly to nonprofit and community organizations.

"What we've been hearing from companies is that employees and managers are really hungry for information about Muslims in the workplace and putting a human face to these issues," says Steve Bartz, project director for Active Voice. "Throughout America, I think there's real ignorance about the Muslim faith, culture and practices."

Of the many myths, the most common appears to be that Muslims usually are Arabs, when, in fact, the majority hail from Indonesia, followed by Pakistan, Bangladesh and India, while only about 18 percent live in the Arab world.

Corporate trainer Lobna "Luby" Ismail says average Americans may be surprised to learn that many Arab Americans are fair-skinned with blue eyes. A Muslim American who is president of Connecting Cultures in Silver Spring, Md., which conducts corporate training seminars, she confesses to having a freckled cousin with red hair and another with green eyes and stick-straight hair whose light skinned.

Her talks are filled with various do's and don'ts. For example, one corporate caveat is expecting Muslim employees to feel comfortable during a business lunch or dinner in an environment like the Hooters restaurant chain where waitresses are scantily clad and serve alcohol. Another is failing to stop mass e-mails with religious, political or social overtones deemed offensive to Muslims and a form of subtle or overt harassment.

A recent e-mail blast suggested something sinister associated with the U.S. Postal Service's decision to issue a stamp commemorating the two most important festivals on the Islamic calendar: *Eid al-Fitr* and *Eid al-Adha*. Conspiracy theorists argued that the stamp, known as *Eid*, spells "die" backward. "It's absolutely ludicrous," Ismail says. "It was just a phonetically correct spelling."

Taking the Lead

HR departments have a capacity to set the stage for positive education and inclusive activities, according to Ismail. One suggestion is to extend corporate cafeteria hours during Ramadan so that Muslim employees can share a meal with each other at work. Other accommodations for this holiest period on the Muslim calendar—during which a fast occurs from sunrise to sunset for an entire month—include allowing employees to leave work an hour early to prepare for breaking their daily fast or pray in a conference room, manager's office or even a cubicle.

She praises IBM for having made available to its Muslim employees footbaths to eliminate bathroom water puddles that were forming from the five daily prayer-washing rituals involving both the hands and feet.

At Sodexho, one of the largest contract food-service operators in North America, accommodations are made for traditional Muslim attire such as the *hijab* head scarf so long as the garments do not pose a safety hazard, which means not interfering with cooking or serving activities.

Safety was not the issue for Bilan Nur, a customer-service representative for Alamo Car Rental, who'd been allowed to wear a *hijab* in observance of Ramadan in 1999 and 2000, but was told not to do so in December 2001 because of a new company dress code prohibiting the wearing of a scarf. The company refused her offer to wear an Alamo company scarf and was later sued by the EEOC's Phoenix District Office on September 27, 2002. A summary judgment was made in favor of the plaintiff in March 2005, with a full written decision expected as this issue went to press. EEOC is seeking roughly \$50,000 in lost wages, as well as compensatory and punitive damages.

Sodexho's Anand believes there's still quite a bit more outreach to Muslim employees that must happen in the years ahead. "There's a certain level of discomfort around even discussing religion because it is such a taboo subject in our workplace, and therefore, I'm sure a lot of discrimination cases just go unreported," she says. "I think corporations really are only beginning to scratch the surface around addressing issues of religious accommodation and discrimination in the workplace."

Ismail thought 9/11 would put her out of business, assuming no one would want to hear a sympathetic portrayal of Muslims in view of the emotional climate and figuring some might even think she was trying to defend extremists. But her fear was unfounded and she has been extremely moved by her reception not only in corporate America, but also by the federal government and in schools and houses of worship. Audiences realize her presentations aim to educate employees and managers about both the moral and business imperatives of religious tolerance and legal guidelines under the law, and she's not there to proselytize.

"People in our community have been told, 'Go back to where you belong,'" she says, "but where we belong is Cincinnati, San Francisco, Kansas City, Newark, Washington and Orlando. American Muslims are all around this country and this is our home."

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