

Biometric Attendance Scanner or “Mark of the Beast”? How an Employee’s Unusual Religious Belief Cost the Employer \$600,000.

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A recent case from the Fourth Circuit illustrates the risks for employers posed by the obligation to reasonably accommodate religious objections to workplace rules and practices under Title VII. ***How should an employer handle accommodation requests based on religious beliefs that the employer views as misguided or even crazy?*** A sincere religious belief, even if non-traditional or highly idiosyncratic, must often be reasonably accommodated by the employer, as recently demonstrated in *EEOC v. Consol Energy, Inc.*, Case No. 16-1406, a case decided by the Fourth Circuit on June 12, 2017.

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“The Mark of the Beast”

The case arose out of what defendant Consol Energy surely regarded as a non-controversial upgrade of its attendance monitoring system. The coal mining company began using a biometric hand-scanner to record attendance, believing the system would be more reliable and accurate than an old-fashioned time clock or a requirement to report to a supervisor.

However, one of its miners, Beverly Butcher, who had worked at Consol for 37 years without incident, was a life-long evangelical Christian (and ordained minister) who believed that the biometric scanner would place the “Mark of the Beast” on his hand. The Mark of the Beast (sometimes called the Number of the Beast) is a concept from the Book of Revelation that has been the subject of widely varying interpretations. Mr. Butcher apparently regarded it as a brand possessed by followers of the Antichrist which allows the Antichrist to manipulate them. He maintained that using the biometric scanning system would place the Mark of the Beast on him, even though the system leaves no actual “mark” of any kind. He also insisted that this problem would persist even if he was allowed to use his *left* hand for scanning purposes (the Bible speaks of the Mark of the Beast only on the right hand). Mr. Butcher’s beliefs were certainly idiosyncratic; his own pastor declined to fully endorse them when asked by the company. But they were also **sincere** beliefs; no one questioned that Mr. Butcher actually believed

that the biometric scanner would imperil his salvation.

Butcher sought permission to record his attendance in other ways. After considerable discussion back and forth between Butcher and Consol, Consol simply insisted that he use the scanner or be subject to discipline, which would eventually include termination. Butcher retired instead, even though he would have preferred to continue working.

Subsequently, however, Butcher learned that Consol was willing to allow two other employees to avoid using the scanner. Two employees with hand injuries could not use the scanner, so they were allowed to enter their employee number on a key pad, an accommodation which imposed no cost or inconvenience. Butcher complained of religious discrimination (since accommodations to the scanner were readily available for non-religious reasons). The EEOC brought suit on his behalf, claiming failure to accommodate sincerely held religious beliefs, a violation of Title VII.

Sincere Belief and Reasonable Accommodation

Butcher prevailed at trial and was awarded \$600,000 in compensatory damages and lost wages. His claim for punitive damages was denied, however, on the grounds that Consol's behavior was not egregious enough to warrant that relief. The Fourth Circuit affirmed the verdict on appeal. The court noted that the elements of a religious accommodation claim are (1) the employee holds sincere religious beliefs; (2) the employee informs the employer of the beliefs; and (3) the employer nevertheless takes adverse action against the employee based on the religious beliefs.

As the Fourth Circuit viewed the case, the central problem was that Consol simply **disagreed** with the substance of Butcher's religious beliefs. The company did not think that its scanner placed the Mark of the Beast on Butcher. Consol relied on the fact that the hand scanner system did not make any physical mark on the employee and therefore could not actually brand him with the Mark of the Beast. But that was not what Butcher sincerely believed. Similarly, even though the Bible discusses the Mark of the Beast as something found on the right hand, Butcher sincerely believed that scanning his left hand would cause the same problem. Consol believed he was wrong in his beliefs, but that is not the test. He was sincere.

The court also noted that Consol was perfectly willing to accommodate non-religious inability to use the scanner system; the other two employees with injury issues were allowed to enter their employee numbers on a key pad; and this caused no problems and imposed no costs, as the company itself admitted. Therefore, Butcher had a sincere religious objection, and an easy, effective accommodation was available. The company's refusal to extend this accommodation to the employee based on his religious objections violated Title VII.

Compensatory Damages, Lost Wages, and Punitive Damages

The case also illustrates how Title VII claims can produce substantial damage awards. Butcher found replacement employment after some time and also began drawing his

pension from Consol, since he had technically retired from the company. Consol claimed that the pension should be an offset to his lost wage claim. The court disagreed, finding that the pension was a “collateral” source of income and did not reduce the lost wages portion of the employee’s recovery. Butcher also recovered \$150,000 in “compensatory” damages, which are independent of the direct economic impact of the violation.

However, Consol did prevail on the question of punitive damages. The court found that even though the company violated Title VII by failing to Butcher, it took his concerns seriously, engaging in lengthy discussions in an attempt to find a mutually acceptable accommodation.

Lessons Learned

The case illustrates the following key points:

- The duty of religious accommodation does not depend on the employer’s opinion of the **merits** of the employee’s religious belief. The test is the employee’s **sincerity** in his or her beliefs.
- In virtually any discrimination case, the employer’s inconsistency is likely to be fatal to its defense. Here, Consol readily accommodated employees who had non-religious issues with the scanner. The court thus had no difficulty in concluding that the only reason for the refusal to accommodate Butcher was his religious beliefs.
- When a requested accommodation is extremely simple and inexpensive, courts tend to have little sympathy for an employer unwilling to apply it. Here, the keypad system was already in place for the two other employees and imposed no cost or inconvenience. There was no issue of “undue hardship.”
- Title VII damages can be substantial and can greatly exceed the pure economic loss suffered by the employee. Butcher recovered \$150,000 in “compensatory” damages and was able to recover lost wages even though he was also drawing his company pension for the same time period.