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Wisdom of the Crowd: Implications of US Supreme Court's Kennedy Decision for US Employers

Compliance and Ethics



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The US Supreme Court's decision in [Kennedy v. Bremerton School District](#) presents a plethora of issues for in-house counsel, said participants in ACC's Wisdom of the Crowd event, which took place on July 19.

During this virtual roundtable, participants discussed several implications for US employers.

Religious displays/rituals in the workplace

Some companies provide an accommodation for the practice of religious beliefs, for example, by providing a separate space for prayer. Employers should keep in mind there are many different religions, and any practice of religious beliefs in the workplace must be balanced with the impact on the workplace. An example of that is if an employee burns incense as part of a religious ritual, but other employees complain about the smell of the incense. A business does not need to allow for any exercise of religion that interferes with business operations, and a private company has a right to set some boundaries.

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Prayers at meetings

Allowing a manager to open a meeting with a prayer is not a good idea. Some suggest that if employees want to open a meeting with a prayer, it would be helpful to allow employees to take turns offering a prayer before a meeting starts, so that it does not appear that one religion is being endorsed by the employer. Even then, given that the manager is in a position of influence toward the group, the mere fact that a prayer takes place may be viewed as imposition by employees, for example by employees who are atheists.

Business limits for communications

There are many different religions and there is the need to balance the needs of all. For example: Some companies do not allow employees to include a religious-connoted phrase such as “have a blessed day” in email signature blocks.

US Civil Rights Act Title VII

[Title VII of the US Civil Rights Act](#) gives employees the right to seek an accommodation for their religious practices, but the costs of providing the accommodation through something such as a separate room in the workplace falls on the employer. Private employers are generally not required to accommodate an employee’s religious beliefs if the requested accommodation would cause an undue hardship on the business. The Kennedy decision may make it more difficult for employers to refuse a request for religious accommodation by an employee.

Workplace culture

Many employers provide cultural sensitivity training for employees and take into consideration that employees have different religious beliefs. Organizations’ codes of conduct can be tools to create an inclusive culture. Some believe the US Supreme Court’s decision will not have a major impact for those companies that already focus on inclusivity and are used to adapting and making accommodations.

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However, in-house counsel also deal with the impact of US state laws that restrict certain aspects of cultural sensitivity training programs. Florida recently enacted a law banning employers covered by the Florida Civil Rights Act from subjecting employees, as a condition of employment, to any [training](#)

that “espouses, promotes, advances, inculcates, or compels the employee to believe” certain concepts relating to race, color, sex, or national origin.

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The US Supreme Court’s decision thus raises a host of questions. It will probably take time for courts to work through the concrete implications in terms of balancing the respective interests of the employer and of the employee.

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