

Biblical Foundations for Employee Rights

by D'vorah Yaffah, Batya, daCosta

The Religious Freedom Restoration Act was recently ruled unconstitutional by the Supreme Court. Nevertheless, there is still powerful law available to defend religious beliefs and practices in the workplace — especially Title VII of the Civil Rights Act of 1964.

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She believes and teaches that, contrary to popular opinion, management is ill-served by ignorant, apathetic employees who neither know nor enforce their rights. Instead, both managers and employees must better understand their rights and duties in the “employment relationship” since those rights and duties are mutually beneficial for both sides.

Biblical foundations in the workplace? One might well wonder if such foundations exists anywhere in the corporate world. With so much attention focused on the negative aspects of the workplace (and society in general), a spiritual or religious person might feel that folks who believe in God are in such a minority as to be powerless to protect themselves from abuse and oppression. But this is far from true, since we have laws to protect minorities — including *religious* minorities.

According to Title VII of the Civil Rights Act of 1964, regardless of whether a person has a specific religious affiliation (or none at all), his rights to religious practices and observances cannot be discriminated against or harassed in the workplace. This legislation has been used since the 1960's to fight racial, and then sexual discrimination and/or harassment. While only a few persons have used Title VII to fight against religious discrimination, this is an increasingly common form of litigation against employers who ignore religious discrimination in the workplace — mostly caused by their manager's ignorance of the law.

For example, people must

be allowed to observe their Sabbath — no matter what day of the week it is commemorated. Unless a company informed a prospective employee that he must be available for work 24 hours per day and 7 days per week, it is assumed that the normal workweek is five days and forty hours (for salaried people) and that a company **MUST** accommodate the religious practices of their employees regarding Sabbath observance. The Biblical foundation for this Sabbath “right” is the Ten Commandments and it's hard to imagine any manager who would consciously deny a person this right. But in case there's any doubt, before they're hired, prospective employees may give potential employers a “constructive notice” of their intent to observe a Sabbath when they will not be available to work or even take beeper calls.

While God doesn't punish us directly for disobedience, He created us and knows the consequences of our disobedience, since He gave us His commandments in order for us to be blessed. For example, consider the command to observe the Sabbath: Even though the Sabbath commemorates God's cre-

ation of the world and the fact that He rested on the seventh day, it is not commanded to us just to remember God as Creator, but also so we can be blessed by resting one day in each week from the hectic pace of our lives. The consequences for not observing the Sabbath include exhaustion, "work-aholism", addiction to money and material possessions, or the loss of family and friends for never having time to nurture those relationships. If an employer compels us to violate God's commandments, he might also be depriving us of God's blessings.

A less commonly understood Biblical foundation for employee rights is the performance review — a "feedback" process used in most large corporations. The word "feedback" comes from control systems technology and is used to describe the process whereby a computer monitors the trajectory of a rocket to see if it is "on course" to its intended target. If "feedback" indicates the rocket is "off course", the control system causes an automatic, in-flight adjustment to correct the rocket's trajectory. "Feedback" is similarly used in performance reviews — i.e. to describe "data" that an employee can use to see

if he is "off course" from hitting his performance goals and, if so, to make the necessary personal corrections.

Managers and supervisors are expected to give their subordinates regular performance feedback to be used by the employee to change their workplace behavior to fix a problem or improve an already satisfactory performance. However, if management abuses the performance review process, employees of all religions (or no religion) have a Biblically-based recourse at law.

The Biblical foundation for the performance review process is called "repentance". When we get good feedback (i.e. data that might indicate we're "off course" from God's expectations), we can turn away from "sin" (which New Testament called "haMartia" or "missing the mark") and return to behaving according to God's Law. If we make the proper correction, we will be forgiven and returned to right relationship with God. The repentance covenant (contract) binds both man and God. If man doesn't repent, he suffers. If he does repent, God must forgive.

The same thing occurs in the workplace. If an employee uses his performance review (feedback) about "missing the mark" to improve his perfor-

mance (repent), then the employer must also forgive him (continue employment) and the relationship is healed and reconciled. But if the employee does not take the personal initiative to improve (repent), negative consequences may follow and the courts will uphold the employer's right to discipline or terminate that employee for "just cause".

However, some employers don't compel their supervisors to give employees feedback on a regular basis. Instead, they allow negative information previously unknown to the employee to suddenly appear in an unexpected "performance review". Here, "performance review" is a misnomer, since the employee never had a chance to "correct course". If this "performance review" is used as grounds for termination, it is abusive (a form of oppression) and the employee can seek recourse in a "wrongful discharge" suit for not being given a "chance to succeed".

Therefore, most good companies have a progressive discipline procedure to make sure that employees are given every possible chance to succeed. Companies without a progressive discipline procedure run the risk of being sued if their supervisors violate the rights of



employees who are *within the protected groups* under Title VII of the Civil Rights Act of 1964.

Title VII protects employees from discrimination and/or harassment under six categories: "race, color, sex/gender, ethnic background, citizenship and religion." Most of the early Title VII litigation was based on racial discrimination. Recently (since the Clarence Thomas/ Anita Hill and Bill Clinton/ Paula Jones incidents), we're seeing more cases based on sexual discrimination and/or harassment. Similarly, we now need a major, "media-celebrated" case based on religious discrimination for this form of harassment to be widely exposed and then reduced. Until then, the current religious harassment in the workplace will probably continue.

Nevertheless, employers must be very careful. The anti-discrimination legislation of Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA) cover almost 80% of all employees. Poor performance is the best grounds for "just cause" termination, but it must be handled properly to prevent a wrongful discharge suit. Quality and timely *feedback* is essential for this entire process to work so employees are informed of their faults and allowed to make necessary corrections.

Unfortunately, most employees are unaware of their right to timely and quality feedback from their supervisors, nor are they aware that feedback in a "surprise" performance review is not feedback but a form of *punishment* if there is no opportunity to correct the problem. Employees may feel instinctively that the "surprise" review is wrong, but without understanding the underlying Biblical principles and legal issues, they

typically say nothing, and accept discipline or termination without trying to correct the process.

Some employers incorrectly believe that employees who give feedback (primarily complaints) to their supervisor on their supervisor's performance are insubordinate. True insubordination is the refusal to carry out a duty or responsibility that is well within the employee's job description. Most employees have never been taught "how" to give their supervisor constructive, non-belligerent feedback. This is unfortunate for the employer, since unless the supervisor gets quality feedback from the employee (i.e., the performance review process is unfair and unlawful) and can also "correct course" (implement proper performance reviews), ruinous litigation may result. Only when more employees start to "push back" and stand up for their workplace rights (the right to be successful on behalf of their employer), will we restore right relationships between employers and employees.

But if an errant supervisor does "repent" and improve his behavior, employees are also bound by God's law to forgive and be reconciled to him. The concepts of repentance and performance review are two-way streets that are intended in both the Bible and business to serve both sides of the relationship. We are on this earth to help one another — in work, family, and friendship. God gave us this system of feedback, repentance, forgiveness and reconciliation (restoration of the relationship) so that we would always have the ability to see if we were "off-course" and exercise our free will (self-control) to repent and get back "on the mark" in our relationships.

Moreover, if we are "work-

ing as unto the Lord," we should seek the feedback that will help us to "repent", improve our performance, and meet our employer's expectations. Even though it is primarily the employer's responsibility to ensure his supervisors give employees feedback on a regular and timely basis, we can facilitate this process by being the type of employees who easily accept even critical feedback.

One form of religious harassment that can cause litigation is called "proselytizing" — the attempt to change another's beliefs. Proselytizing is an overt act that usually takes the form of humiliating another individual for their beliefs, denigrating, mocking, belittling, or telling them they are headed for damnation if they don't change their beliefs. "Bait and switch" proselytizing can occur when one individual asks another to explain his religious or spiritual beliefs. The "bait" is providing another person with an opportunity to explain his religion or beliefs. The "switch" comes after the discussion begins, and the first person (who asked for the explanation) "takes over" and begins to explain all the reasons why second person's beliefs are wrong and even dangerous.

This form of proselytizing is not only offensive, but if the second employee complains to their employer about being harassed in this manner, the employer must try to stop this conduct or face a potential Title VII lawsuit. Given a proper performance review and opportunity to correct his behavior, the employee who is harassing (proselytizing) can be terminated for "just cause" for causing a disruption in the workplace.

It's important to distinguish between "proselytizing" and "evangelizing" which many

Christians regard as a Biblical duty. The best form of evangelizing is "lifestyle witnessing" wherein one allows their personal example to be the primary witness to their relationship with the Creator. If that example causes others to ask questions, then *1 Peter 3:15* exhorts us to "evangelize", i.e. provide an answer:

". . . Always be prepared to give an answer to everyone who asks you to give the reason for the hope that you have. But do this with gentleness and respect."

If one uses this verse as their guide, there isn't much chance of an evangelical discussion turning into proselytizing since proselytizing is very disrespectful. Further, "evangelizing" means a "sharing of good news" and since it is a *sharing*, one generally assumes that the person with whom we are sharing has *asked* for our information or is, at least, interested. If they're not interested and say so, then continuing against their wishes could constitute proselytizing.

As we approach the "magic year" 2000, the incidence of disrespectful religious discussions (i.e. proselytizing) seems to be rising in the workplace. Some folks think they must "force changes" on others to get them ready for "end times". Employers are so nervous about this increased proselytizing and resultant Title VII lawsuits, that they are overreacting by violating their employee's rights to free expression of their own religious beliefs or practices in the workplace. For example, some employees have been told they can't wear any religious symbols in the workplace, have an unshaven face for religious reasons or have a picture of a reli-

gious figure in their office.

Employers must be very careful to strike a balance that does not violate an individual's right to express his personal religious beliefs (which are protected under Title VII) and yet not allow any employee interaction that demeans other employees for their beliefs and practices—that's proselytizing, and a form of harassment that's prohibited under Title VII.

Just as few employees understand the fundamental principles of the performance review process, few employees know how to resolve an issue through proper "escalation protocol" into higher management levels if the immediate supervisor does not "repent". It's important that offended employees: first, tell the individual that is offending them how they feel; and second, give "constructive notice" to their employer about the offensive conduct before filing a lawsuit under Title VII. Just as the employee should be afforded feedback and an opportunity to correct his faults, the employer should also have a chance to solve the problem. Likewise, it is also required that the employer give notice (feedback) to the proselytizing employee since he may not realize his conduct is personally offensive

and contrary to the antidiscrimination laws. In the end, it's to everyone's benefit when employees stand their ground and make sure employers do not oppress us or deny our rights.

It's ironic that modern corporations seem reluctant to allow (let alone support) Biblical principles since those principles will probably increase the corporation's efficiency, profits, and employee incomes. In every case, it is not only important that employers understand and avoid violating Biblical principles, it is likewise important that employees understand and resist any violations of their rights. When either side fails to know and defend its rights or embrace its duties, it's often only a question of time before one or both sides wind up in secular "hells" of civil or bankruptcy courts.

The argument that mutual benefits accrue when both sides know and enforce their rights and duties in the workplace could also be applied in the political arena. Just as employers are placed in jeopardy by ignorant employees, so governments are also ultimately imperiled by citizens who neither know nor enforce their rights. ■



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If Only You'd Have Cared

by Thelen Paulk

I could have seen the sunshine,
I could have known the spring.
I could have watched the robins fly,
I could have heard them sing.
I could have smelled the flowers,
I could have felt the snow.
The things you take for granted are things I'll never know.

You could have heard my laughter,
you could have dried my tears.
You could have watched me playing,
and growing through the years.
You could have shown me rainbows,
GOD painted in the sky.
You could have held me in your arms,
instead you made me die.

I might have been your daughter,
I might have been your son.
I might have learned to crawl,
and stand, and walk, and even run.
I might have felt you hug me,
as your milk began to fill me.
I might have called you "Momma,"
but instead you chose to kill me.

They say "Have an abortion,
it is your legal right."
They say I'm not a person,
I can't put up a fight.
They say that I'm not born yet,
I haven't drawn a breath.
My heart beats in my mother's womb,
as they sentence me to death.

If only you'd have loved me,
like only mothers do.
If only you'd have given me what your mother gave to you.
The gift of life, the gift of love,
with me you could have shared.
I could have seen the sunshine,
if only you'd have cared.

If there is a God, America can't continue killing its children
and still evade a spiritual catastrophe.