

# Employment Law Notes

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## RELIGIOUS DISCRIMINATION

### Court Upholds Termination Where Religious Observance Conflicted with Anti-Discrimination Policy

*The US Court of Appeals for the Third Circuit held that an employer acted properly in terminating an employee who refused on religious grounds to remove Confederate flags in his workplace. The case is Storey v. Burns International Security Services, decided December 9, 2004; available on [www.dehnlaw.com](http://www.dehnlaw.com).*

#### Legal Background

Among other things, Title VII of the Civil Rights Act of 1964 forbids discrimination based on religion, and requires employers to provide reasonable accommodations for an employee's sincerely-held religious beliefs that conflict with a job requirement.

#### The Case

Curtis Storey worked as a security guard for Burns International for 10 years. He was fired for refusing to remove confederate flag stickers from his lunchbox and pickup truck, after being warned by supervisors that the flags might offend other employees and were prohibited by the company's anti-discrimination policy. Mr. Storey sued, claiming that he was discriminated against based on his religion, which is "Confederate Southern-American." The trial court dismissed the case on grounds that Confederate Southern-American is not a valid religion.

The appeals court upheld the dismissal, but on different grounds. The court accepted Storey's claimed religion for the sake of argument, but held that he had not suffered an adverse employment action. The court noted that Storey was not fired for his beliefs but rather because he refused to remove the flags, which could reasonably be interpreted as a racist symbol. Permitting the flags to be displayed in the workplace could expose an employer to a claim of hostile work environment under Title VII.

The basis for the court's decision was that although Storey claimed the flags were an important religious expression for him, he had not argued that his religion required him to display the flags. Therefore, there was no basis for Storey to argue his employer had failed to provide a reasonable accommodation for his religious beliefs.

#### Conclusion

An employer's duty to avoid religious discrimination sometimes requires delicate balancing so that one employee's religious observance does not form the basis of another employee's harassment claim. The duty to provide reasonable accommodations might require, for example, an employer to permit a Muslim woman to wear a head scarf even though it might be a violation of a dress code. In a case where the religion does not positively require the employee to engage in the disputed conduct, however, the employer is not required to accommodate the conduct even though it may constitute an important religious observance. ✍

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