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Employer's New Age Training Program Fail to Alter the Consciousness of the EEOC

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In an effort to gain a competitive edge employers have attempted to motivate employees through various types of training programs. Employers may implement training programs with the hope that productivity, creativity, and cooperation will be improved. Recently, employers have been utilizing "new age" training programs in the workplace.[1] Experts in the area say that most of the nation's largest companies have retained new age employee training consultants.[2]

The techniques using new age consultants span a wide range. New age programs can involve meditation, guided visualization, self-hypnosis, mass-hypnosis, therapeutic touch, biofeedback, yoga, walking on fire, and the inducement of altered states of consciousness.[3] Pacific Bell, California's largest utility, required employees to attend seminars based on the teachings of a Russian mystic, George Gurdjieff.[4] Employees of the DeKalb Farmers Market were coerced into attending a six-day seminar that used guided visualization and mass hypnosis.[5] Executives of Sundstrand Corporation were urged to attend lectures on transcendental meditation paid for by the corporate headquarters.[6] The Church of Scientology has moved into management consulting by creating two companies one called WISE and the other Sterling Management. One of the major clients of WISE is Volkswagen.[7]

Critics of new age training programs object to employers forcing employees to attend programs that attempt to bend an individual's mind.[8] They argue that such programs may change a person's view of reality and religious beliefs. Some critics have compared the technique to a form of "brain washing" used on American prisoners during the Korean War.[9] Other critics see such training as an attempt to transplant cultism and mysticism into corporate America.[10] In addition, employees resent employers attempting to invade

[1] Patricia S. Eyres, "Keeping the Training Department Out of Court," *Training*, Sept. 1990, pp. 59-67.

[2] "Gurus Hired to Motivate Workers Are Raising Fears of Mind Control," *New York Times*, April 17, 1987, at A-10.

[3] *Id.*

[4] Pender, "Pac Bell's New Way to Think," *S.F. Chronicle*, March 23, 1987, at A-6.

[5] Brannigan, "Employers' New Age Training Programs Lead to Lawsuits Over Workers' Rights," *W.S.J.*, June 9, 1989, at A-12.

[6] Cianci, "Meditation Class Goal: Easing Executive Stress," *Rockford Register Star*, Jan. 17, 1989, at A-8.

[7] Main, "Trying To Bend Managers' Minds," *Fortune*, Nov. 1987, at pp. 95-106.

[8] *Id.*

[9] See note 2. Richard Watring, the leading critic of new age training programs, asserts such training is dangerous because it seeks to induce a trance-like state of mind. In addition, he believes such programs may change work habits, individual values, and personality.

[10] See note 7. Carl Rasche, an expert in religion and society, sees new age training as a method used to robitize employees by making them more compliant.

their privacy and alter their personal belief system. An independent group surveyed the employees of Pacific Bell after new age training programs had been instituted.[11] The group found hundreds of employees who were furious about the training.

In several cases, employees have filed lawsuits alleging violations of the Civil Rights Act of 1964.[12] Firestone Tire and Rubber Company,[13] Dekalb Farmers Market,[14] and Puget Sound Naval Shipyard[15] are a few employers sued by employees over new age training programs. Employee complaints alleged that either their employer failed to make a reasonable accommodation of their religious beliefs or an atmosphere of religious intimidation existed. The courts have yet to decide a Title VII case involving a new age training program. In a recent case, however, the EEOC decided in favor of employees who alleged the employer's new age training program created an atmosphere of religious intimidation.[16] New age training representatives argue that their programs speed up change, raise productivity, and enhance human potential.[17] In addition, they assert their management training programs are not religious.[18]

This article addresses the topic of discriminatory new age training programs. The first section of this article examines the concept of reasonable accommodation as it applies to new age training programs. The second section will discuss whether or not new age training programs are religious. The third section considers the issue of religious intimidation. The final section concludes by asserting that employers new age training programs may violate Title VII if employees are coerced or intimidated into participating in such programs.

Reasonable Accommodation

The EEOC receives approximately 2,000 complaints of religious discrimination annually. The majority of these claims concern employee requests for time off, prayer break, dietary requirements, refusal to pay union dues, and problems associated with foreign work assignments. In most reasonable accommodation cases the employee has a religious practice that conflicts with the employer's nonreligious job requirements. The employee believes he or she needs the employer's accommodation to avoid transgressing religious beliefs. The courts have upheld Title VII's mandate of reasonable accommodation when a neutral employment requirement conflicts with an employee's religious practice.[19]

New age training cases pose a different accommodation dilemma since it is the religious practices of the employer that the employee wants to be accommodated from. If the employee demands an accommodation because of a conflict with his other bona fide religious belief system, Title VII protection is appropriate.

In *Trans World Airlines, Inc. v. Hardison*,[20] the Supreme Court set the parame-

[11] California Public Utilities Commission, Report on Pacific Bell's Leadership Development Program, June 10, 1987, at pp. 5, 6, and 7.

[12] In Title VII of the Civil Rights Act of 1964, as amended, Section 2000 e(j) requires an employer to reasonably accommodate an employee's religious observances or practices. Section 701(j) established the definition of religion as follows: "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

[13] See note 2 above.

[14] See note 5 above.

[15] See note 2 above.

[16] EEOC Decision 91-1, April 2, 1991.

[17] Friedrich, "New Age Harmonies," *Time*, Dec. 7, 1987, at 69 and 72.

[18] See note 5 above. In the DeKalb Farmers Market litigation the attorney for the defendant asserted that the training programs were not religious or philosophical and did not infringe on an employee's personal beliefs. In EEOC Decision 91-1 (see note 16 above), the employer argued that the training program had no religious content despite the fact that it was developed and marketed by a religious organization.

[19] T. Brierton, "Religious Discrimination in the Workplace: Who's Accommodating Whom"? 39 *Labor L. J.*, No. 5 (May 1988).

[20] 432 US SCt 63 (1977), 14 EPD ¶ 7620.

ters of reasonable accommodation. The Court addressed the issue of the employer's duty to accommodate an employee's religious observances, practices, and beliefs. Larry Hardison was employed as a clerk in the stores department of Trans World Airlines (TWA). Hardison joined the Worldwide Church of God, which required its members to observe the Sabbath by not working from sunset Friday to sunset Saturday. Hardison was required to work on Saturdays and this caused a conflict with his religious convictions.

Hardison informed TWA of the conflict and TWA attempted to make an accommodation. Hardison was subsequently discharged for refusing to work on Saturdays. Justice White, writing for the majority, presented the issue of the case. "In brief, the employer's statutory obligation to make reasonable accommodation for the religious observances of its employees, short of incurring an undue hardship, is clear, but the reach of that obligation has never been spelled out by Congress or by the EEOC guidelines." [21]

The High Court reversed the appellate court in favor of TWA. The Court stated that "[w]e agree that neither a collective bargaining contract nor a seniority system may be employed to violate the statute, but we do not believe that the duty to accommodate requires TWA to take steps inconsistent with the otherwise valid agreement." [22] The Court went on to further reason that to require TWA to pay a substitute worker premium wages or incur a loss of efficiency in other jobs is the bearing of greater than a de minimis cost and undue hardship.

The Court established three principles to help guide employers in their duty to accommodate. First, the employer is not required to violate a collective bargaining agreement in order to accommodate.[23] Second, the employer should not treat other employees unequally as a result of the accommodation.[24] And third, the employer need not incur a loss of efficiency or higher labor cost to accommodate.[25]

The second reasonable accommodation decided by the Supreme Court came nine years after *Hardison*.[26] In *Ansonia Board of Education v. Philbrook*,[27] the Supreme Court affirmed their decision in *Hardison* and further limited the employee's Title VII rights.

The respondent Philbrook was a typing and business teacher at Ansonia High School, and a member of the Worldwide Church of God. The tenets of the Church required an individual to refrain from secular employment on certain designated holy days. The school board's leave policy allowed Philbrook to take unpaid leave for religious holy days. Philbrook proposed to the school board several alternatives to docking him for the days missed. Philbrook asked the school board to use personal business leave for religious observance, pay the full cost of a substitute teacher, or make up for the time missed at other jobs. The school board rejected all of Philbrook's suggested accommodations. The Court held that an employer has fulfilled its obligation under Section 701(j) when it demonstrated that it offered a reasonable accommodation to the employee. The Supreme Court rejected the appellate court ruling that the statute mandates that the employer accept the proposal the employee prefers unless undue hardship is incurred by the employer.

In response to employee complaints, the EEOC has issued a policy statement on new age training programs. The EEOC's *Policy Statement on Training Programs Conflicting with Employee's*

[21] *Id.*, at 75.

[22] *Id.*, at 79.

[23] *Id.*

[24] *Id.*, at 81.

[25] *Id.*, at 84.

[26] See note 20 above.

[27] 107 US SCt 367 (1986). 41 EPD ¶ 36,565.

Religious Beliefs clarifies the nature of the conflict and the employer's duty to accommodate.[28]

The EEOC has taken the position that once an employer has been notified by an employee of a conflict with the employee's religious beliefs concerning a new age training program, the employer must accommodate the employee. According to the EEOC compliance manual, the employer has three options: (1) substitute an alternative technique or method; (2) excuse the employee from the particular offensive part of the program; or (3) excuse the employee from the entire program. The EEOC further states that an employer may not impose any religious requirements on the terms or conditions of employment without discriminating on the basis of religion.[29] Despite the fact that the courts have not addressed a particular new age conflict, the issue can be analyzed by considering some similar Title VII cases.

In *EEOC v. Townley Engineering and Manufacturing Company*,[30] the Ninth Circuit considered an appeal from the district court, which ordered an injunction halting the company's mandatory devotional services. The owners of Townley Engineering required all employees to attend weekly nondenominational devotional services. Employees were paid to attend and were required to sign a statement agreeing to follow all employee handbook policies of which the weekly services were listed. Louis Pelvaz an employee of Townley asked to be excused from the services because he was an atheist. Pelvaz was told by a supervisor that the services were mandatory. Pelvaz continued to attend but subsequently filed a charge with the EEOC. Pelvaz left the company three months after filing his claim with the EEOC, alleging that he was constructively discharged.

The district court ruled in favor of Townley on the constructive discharge issue.[31] The two owners of the Townley Engineering and Manufacturing Company strongly believed in managing their business according Christian principles. The Townleys integrated their religious beliefs into all their business activities. The appellate court affirmed in part and reversed in part, holding that *Townley* violated Title VII's reasonable accommodation mandate by requiring employees to attend devotional services. The court reasoned that *Townley* could have excused employees who had objections to the devotional services without incurring undue hardship.

In response to the Townleys arguments that alleged a violation of their right to exercise free speech, the court reiterated that Congress's purpose to end employment discrimination was compelling and justified the burden on the appellant. The court did strike down the injunction as excessive and stated that only employees who object to the practice needed protection.[32] In addition, the court did not believe that the devotional services needed to be voluntary for all employees.

In *Kentucky Commission on Human Rights v. Lesco Manufacturing & Design Company*,[33] the Kentucky Court of Appeals upheld a violation for religious discrimination, because an employee refused to answer the employer's telephone with the greeting, "Merry Christmas." Harden, an employee of Lesco, was instructed to answer the telephone with the Merry

[28] EEOC's *Policy Statement on Training Programs Conflicting With Employees' Religious Beliefs*, Feb. 22, 1988.

[29] *Id.*

[30] 859 F2d 610 (CA-9 1988), 47 EPD ¶ 38,249. Circuit Judge Noonan filed a dissent in the opinion extensively arguing in favor of Townleys. Judge Noonan asserted that if the court prohibits the company's devotional services through Title VII, it is allowing the government to make a "theological judgment."

[31] The district court issued a permanent injunction prohibiting Townley Engineering from continuing mandatory devotional services at the workplace. See *Townley Engeineering and Manufacturing Company*, 675 FSupp 566 (DC Ariz. 1987), 43 EPD ¶ 37,233.

[32] Cited at note 30 above.

[33] 736 S.W. 2d 36 (Ky. Ct. App. 1987).

Christmas greeting. Harden, a Jehovah's Witness, informed the president that answering the telephone with such a greeting would compromise her beliefs and as a result Harden was terminated the same day.

The court in *Harden* stated that to prove a prima facie case of religious discrimination, one must prove that (1) he has a bona fide religious belief and that compliance with an employment requirement is contrary to his religious faith; (2) he has informed his employer about the conflict; and (3) he was discharged because of his refusal to comply with the employment requirement. The court found that the employer failed to accommodate the religious beliefs of Harden.

In another EEOC decision[34] an employer's new age training program was held in violation of Title VII. Three employees brought charges against their employer alleging the company president discriminated against them because of their religion. A communication consultant, marketing representative, and telemarketing supervisor alleged the employer pressured them into participating in a training program against their religious beliefs. Employees were taught by instructors to adopt the religious philosophy of the training organization. The three employees resigned their positions alleging they were constructively discharged. The company president threatened to withdraw his support of any employee who resisted the training program. He further harassed and degraded a supervisor in front of other employees when the supervisor refused to participate in the training.

The EEOC analyzed the case according to the employer's duty to reasonably accommodate the religious beliefs and practices of the employees.[35] The employer defended such an analysis by alleging that the courses had no religious content and were intended to improve communication skills. In addition, the employer asserted that the employees never requested an accommodation based upon their religious beliefs and that the training was entirely voluntary. The EEOC held that the three employees had established a prima facie case of discrimination and that the employer failed to accommodate their religious beliefs and violated Title VII. The respondent company failed to prove that an accommodation would have caused undue hardship.

In in discussing the first element of an employees' prima facie case, the EEOC stated: "To make out a prima facie case of failure to accommodate, however, it is only necessary that an employee inform the employer of the conflict between his/her religious beliefs and the employment requirement. It is irrelevant that the charging parties did not actually use the term 'accommodation' in making their requests." [36]

The Commission gave little deference to the company's assertion that the new age training courses were voluntary. The Commission perceived the assertions as mere pretext in light of employee allegations concerning intimidation and harassment. The Commission summarily dismissed the employer's assertion that the training programs had no religious content, as being unresponsive to the charges.

Religious Intimidation

In a reasonable accommodation lawsuit brought by an employee, the religion of the employer is irrelevant since only the employee is required to prove a bona fide religious belief. If the employee is alleging religious intimidation, however, he or she must prove the employer's new age training program is religious and that it cre-

[34] EEOC Decision 91-1, April 12, 1991.

[35] *Id.* The Commission analyzed the case of three employees under Section 703(a) of Title VII for failure to accommodate an employee's religious beliefs or practices. The EEOC decided in favor of two of the three employees, remanding the case of the third employee for further investigation.

[36] *Id.*, at 13.

ated a religious atmosphere in the workplace.[37]

Are New Age Training Programs Religious?

New age training programs cannot be directly linked to a particular religion, methodology, or system of belief. Rather, the term new age stands for a conglomeration of philosophies existing outside traditional main-line religions. The Princeton Religion Research Center has defined the term new age to be "an eclectic term for a wide range of beliefs held by some who may call themselves 'new agers' or 'aquarians.' " [38]

The new age philosophy can be more appropriately characterized as a movement receiving its modern start in 1875 with the founding of the Theosophical Society. The new age movement consists of tens of thousands of cooperating organizations with only orthodox, monotheistic religions, such as Judaism, Christianity, and Islam excluded from the classification.[39] The term is more accurately pinpointed by the practices of adherents rather then by a unified system of belief. According to experts, the movement usually operates on the basis of a well-formulated body of underlying esoteric or occult teachings heavily drawing upon all forms of both Eastern and Western mysticism.[40]

The EEOC's *Guidelines on Discrimination Because of Religion* describe the religious nature of a practice or belief as "moral or ethical beliefs as to what is right and wrong, which is sincerely held with the strength of traditional religious views." [41] The EEOC based its definition on the two Supreme Court cases of *United States v. Seeger*[42] and *Welsh v. United States*.[43]

In *United States v. Seeger*,[44] the Supreme Court defined the term "religious training and belief" under the Universal Military Training and Service Act. Seeger was convicted of refusing to submit to induction in the armed forces. Justice Clark, writing for the majority in *Seeger*, stated: "In relation to a Supreme Being is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption." [45]

In *Welsh v. United States*,[46] the Supreme Court affirmed their decision in *Seeger*. The *Welsh* case was a conscientious objector case that attempted to decide which beliefs were religious within the meaning of the statute. Justice Black delivered the majority opinion for the Court. "If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that never the less impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual 'a place parallel to that filled by . . . God' in traditionally religious persons." [47]

Justice Black further clarified the definition by stating: "Because his beliefs

[37] Section 703(a) of Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals' race, color, religion, sex or national origin." As such, the courts have interpreted Section 703(a) to prohibit religious intimidation. Some courts have upheld constructive discharge claims where the employer created an atmosphere of religious intimidation in the workplace. See *Young v. Southwestern Savings and Loan Association*, 509 F2d 140 (CA-5 1975), 9 EPD ¶ 9995; Circuit Judge Thornberry dissenting. Also see EEOC Decision 72-1114, CCH EEOC Decisions (1973).

[38] Spohn, "Many Christians Hold New Age Beliefs, *Sac. Union*, C-5, Jan. 18, 1992.

[39] C. Cumbey, *The Hidden Dangers of the Rainbow*, Huntington House, Inc., (1983) at p. 54.

[40] See D. Groothuis, *Unmasking the New Age*, Intervarsity Press, (1986) pp. 13-26.

[41] *Guidelines on Discrimination Because of Religion*, 29 CFR 1605-1, Religious nature of practice or belief.

[42] 380 US SCt 163 (1965).

[43] 398 US SCt 333 (1970).

[44] Cited at note 43 above, at 165.

[45] *Id.*, at 166.

[46] Cited at note 43 above.

[47] *Id.*, at 337.

function as a religion in his life, such individual is as much entitled to a religious conscientious objector exemption under Section 6(j) as is someone who derives his conscientious opposition to war from traditional religious convictions." [48]

Seeger stated during his trial that his belief and devotion was to goodness and virtue and a religious faith in a purely ethical creed. Welsh had similar convictions based upon his own personal morality, detached from any organized religion. The Supreme Court through *Seeger* and *Welsh* has expansively interpreted the meaning of religious belief. The EEOC has adopted the Supreme Court's definition of religion.[49]

In the only two reasonable accommodation cases decided by the U.S. Supreme Court (*TWA v. Hardison*[50] and *Ansonia Board of Education v. Philbrook*[51]), the issue of a bona fide religious belief was not considered. Although the Second Circuit in *Ansonia* provided a definition for religious belief, Circuit Judge Oakes made the following statement: "We acknowledge that it is entirely appropriate, indeed necessary, for a court to engage in analysis of the sincerity—as opposed, of course, to the verity—of someone's religious beliefs in both the free exercise context, and the Title VII context . . . In *International Society for Krishna Consciousness, Inc. v. Barber*, we outlined several factors that indicate insincerity, noting that an adherent's belief would be sincere if he acts in a manner inconsistent with that belief . . . or if there is evidence that the adherent materially gains by fraudulently hiding secular interests behind a veil of religious doctrine." [52]

The courts and the EEOC have adopted a three-prong test for determining if an individual's beliefs or practices are religious. According to the EEOC, a belief or practice is religious if (1) it is sincerely held by the individual, (2) it functions as a religion in the individual's life, and (3) the belief is moral or ethical concerning right and wrong.[53]

In *Dong Skik Kim v. DeKalb Farmers Market, Inc.*,[54] eight employees brought suit alleging a violation of Title VII. Dong Skik Kim, a supervisor at the DeKalb Market, claimed that he was urged by his boss to attend a training session called the "Forum," which was developed by Werner Erhard. The Forum sessions were designed to produce a breakthrough experience similar to being "born again." Mr. Kim alleged that the sessions required emotional confessions of the participants and were nothing more than psychological conditioning and programming. Forum session instructors urged participants to shed their beliefs. The owner of the DeKalb Farmers Market told Kim to recruit his subordinates, and, when he refused, conditions at work became so difficult Kim quit.

Forum training has been characterized as a combination of Zen Buddhism and Scientology. The content of the programs resembled various Eastern religions that promote the individual as being capable of achieving perfection without a higher authority. The case was settled out of court.

Another highly publicized case was one involving Pacific Bell. Pacific Bell was spending $147 million to send its 67,000 employees through a training seminar called "Leadership Development," which was designed to teach people to "think about thinking." [55] Pacific Bell executives had attempted to create a new corporate culture subsequent to the breakup of AT&T in 1983. Pacific Bell hired consul-

[48] *Id.*

[49] Cited at note 41 above.

[50] Cited at note 20 above.

[51] Cited at note 27 above.

[52] 757 F2d 476, 481 (1985).

[53] Cited at note 41 above.

[54] Civil Action No. 1-88 CV 2767 HTW (Northern District of Georgia, filed Dec. 7, 1988). See Mitchell, "New Age Training Programs: In Violation of Religious Discrimination Laws?," 42 *Labor L. J.*, No. 7, pp. 410, 414 (July 1990).

[55] Rubenstein, "To Be Kroned Is To Be Confused," *S.F. Chronicle*, May 27, 1987.

tants who derived their training sessions from Eastern mystic teachings.

Leadership Development was based upon the teachings of the Russian philosopher, George Ivanouitch Gurdjieff. Gurdjieff's ideas are a mix of psychology, philosophy, Buddhism, and Sufism.[56] Gurdjieff created his own language and taught concepts that have been adopted by training consultants.

As a result of employee complaints, the California Public Utilities Commission investigated Pacific Bell's training program. The Commission concluded that the training created fear, decreased productivity, wasted time, and resulted in a split in the corporate culture and an intimidating environment.[57]

In the case of *EEOC Decision No. 91-1*,[58] the company president stressed that only by practicing the principles of the training program could employees attain professional and personal success. The training program was developed and marketed by a religious organization. The manual for the course instructed the course supervisor to make a convert out of every student by fully applying the religious philosophy. The course taught that the religious philosophy was all powerful and that the founder of the religious organization was a universal force believing in reincarnation.

In *DeKalb Farmers Market, Pacific Bell*, and *EEOC Decision 91-1*, management imposed a type of training upon employees that was founded in a religion. In all three cases the development of the training materials was derived from Eastern religious philosophies. Employees were told to shed their old religious beliefs in exchange for a new one being taught by the instructor. The roots of the training had definite religious content, and in some cases the religious base was concealed from employees until advanced training sessions. In addition, training instructors promoted their programs as life changing, and the principles being taught were presented as essential to the personal and professional success of the employee. The training programs in above-mentioned cases met EEOC's criteria in terms of the three-prong test used to determine if an individual's beliefs or practices are religious. These training programs were taught with sincerity, functioned as a religion, and concerned moral beliefs as to right and wrong.

The *EEOC Policy on Training Programs*[59] mandates reasonable accommodation but also prohibits religious intimidation. The policy statement states that "[t]he employer may also be liable where the training program is explicitly based upon religious beliefs. Under Title VII an employer is obligated to maintain a working environment free of coercion or intimidation based on religion." [60]

Although the courts have not addressed a particular new age training program involving intimidation, in 1972 the EEOC considered a case involving religious intimidation.[61] The case involved an employer who permitted a supervisor to preach religion (while on the job) to two senior control tower operators. The control tower operators complained about the activity to the director of training. The evidence established that the supervisor on occasion did discuss his religious convictions with other employees while on the job.

The Commission held that the employer violated Title VII by discharging Party No. 1 and constructively discharging Party No. 2. The Commission stated that "[t]he Commission has consistently ruled that Title VII obligates an employer

[56] Cited at note 4 above.

[57] Cited at note 11 above.

[58] Cited at note 16 above.

[59] *EEOC's Policy Statement on Training Programs Conflicting with Employee's Religious Beliefs*, Feb. 22, 1988.

[60] *Id.*

[61] EEOC Decision 72-1114, Feb. 18, 1972.

to maintain a working atmosphere free of intimidation based upon race, color, religion, sex, or national origin." [62] The Commission further declared that the employer is responsible for the actions of its supervisors, and the complaining parties had no obligation to inform the management of the supervisor's conduct, which violated Title VII.

In *Young v. Southwestern Savings and Loan Association*,[63] the Fifth Circuit considered an employer's requirement that all employees attend monthly meetings of a religious nature. Young was employed as a teller for Southwestern Savings and Loan, at their Bellaire, Texas branch. Employees were required to attend a monthly staff meeting at the downtown Houston office. The meetings lasted 45 minutes and employees were paid for attending. Mrs. Young, an atheist, attended two meetings, which were started with a short religious talk and a prayer delivered by a baptist minister. Mrs. Young failed to attend any other meetings. Her supervisor subsequently discovered her absence and advised her that attendance at the meeting was mandatory. Young left her job, alleging she had been constructively discharged.

Circuit Judge Goldberg writing for the majority stated: "The general rule is that if the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation, then the employer has encompassed a constructive discharge." The court found that the dispute was solely a product of Mrs. Young's objections to the religious content of Southwestern's staff meetings. The court held that a violation of Title VII's reasonable accommodation provision had occurred.

Conclusion

The EEOC policy manual on training programs requires employers to reasonably accommodate an employees religious beliefs and practices and maintain a work environment free of religious intimidation.[64] The law of reasonable accommodation has for the most part been determined by the U.S. Supreme Court.[65] Failure to accommodate an employee objecting to a new age training program leads to a Title VII violation for the employer, even though the employer has the right to decide what form the accommodation will take.[66] Employers should allow employees to be excused from part or all of the program depending upon what is reasonable considering the nature and extent of the employee's objection.

The EEOC's recent decision involving a new age training program affirms the EEOC policy statement involving training programs.[67] The courts are likely to follow the lead of the EEOC in reasonable accommodation cases, despite the fact that *Townley*[68] is an example of the Ninth Circuit departing from EEOC policy. The *Townley* court upheld mandatory religious services where no employee asserts a religious objection. The EEOC policy statement on the issue declares such practice to be discriminatory against all employees on the basis of religion. How the courts will balance the free exercise issues against the accommodation mandate is an issue yet to be resolved.

New Age training programs have the potential to create an intimidating work environment. According to judicial interpretation, the term religious includes the new age philosophy and new age training programs. Although, new age consultants and employers argue such training pro-

[62] *Id.*

[63] Cited at note 37 above.

[64] Cited at note 28 above.

[65] The Supreme Court has decided two cases involving Title VII's reasonable accommodation mandate, *Hardison* and *Ansonia* The Court has left open a multitude of issues to be decided in the future.

[66] The Supreme Court's decision in *Ansonia* allows the employer to decide what options are reasonable for the employee.

[67] See note 16.

[68] See note 30.

grams are not religious, the courts will likely hold otherwise. Most new age training courses are derived from Eastern religions, such as Buddhism and Hinduism. As in the case of Pacific Bell, a business plan was written in 1987 using the language and philosophy of new age training consultants.[69]

Employers who permit a religious-oriented work environment are in violation of Title VII. New age training programs that are integrated into company policy and promoted by management are likely to be found in violation of Title VII. The courts have generally used a subjective test to determine if an employee was intimidated to the point of resigning. If an employee resigns because the workplace became intolerable due to a conflict with the new age training program, a constructive discharge has occurred.

The courts have placed the burden on employers to guarantee the neutrality of the workplace with regard to religion, and thus employers are excessively protecting employees from any religious entanglement.

[The End]

Government-Ordered Closing May Necessitate WARN Notice

Since a state-ordered closing of a casino may be subject to notice requirements of the Worker Adjustment and Retraining Notification Act (WARN), a casino's motion for summary judgment was denied by a federal district court in New Jersey. If the casino owners remained in control when the state Casino Control Commission ordered the casino closed, the closing was not exempt from WARN's notice requirements *Finkler v. Elsinore Shore Associates dba Atlantis Casino Hotel,* 121 LC ¶ 10,136).

On a motion to reconsider its earlier dismissal of the case brought by employees against the casino owners alleging WARN violations (*Hotel Employees and Restaurant Employees and Bartenders International Union v. Elsinore Shore Associates dba Atlantis Casino Hotel,* 120 LC ¶ 10,956), the court reversed itself. The earlier dismissal was based on the court's determination that the WARN Act notice requirements did not apply in the case of a government-ordered closing.

Relying on an earlier decision in the case (*Finkler v. Elsinore Shore Associates,* 113 LC ¶ 11,800), the court found that the control over the operation of the casino exercised by a conservator and the Commission was far less comprehensive and absolute than that involved in a bank closing. Rather, the record revealed that although the government scrutinized and oversaw the operation of the casino, it left the casino owners in place, ultimately ordering them to take the necessary action to close the casino.

[69] See note 4. Pacific Bell's Business Plan for 1987 was formulated from Leadership Development methodologies. An excerpt from the Plan is illustrative and states that "[w]here individuals and teams are aligned with purpose and standards of achievement which provides them stretch, and are given the free space to generate new capabilities to achieve those higher standards, they gain personal growth and creativity which results in improved personal, team and business success."