

## Why The 'Onionhead' Verdict May Make Employers Cry

By **Barbara Hoey** and **Alyssa Smilowitz**

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In a case we have been monitoring for quite some time, a jury in Brooklyn recently returned a verdict of \$5.1 million against employers United Health Programs, or UHP, and its parent company Cost Containment Group, or CCG,[1] finding that CCG's insistence that its employees follow a practice called "Onionhead" amounted to religious discrimination. After a three-week trial, the federal jury concluded in late April that the company violated federal law.



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Both the earlier summary judgment decision and verdict are illuminating for employers as to how the [U.S. Equal Employment Opportunity Commission](#), the agency that brought the case, and the courts may treat religious discrimination claims going forward.

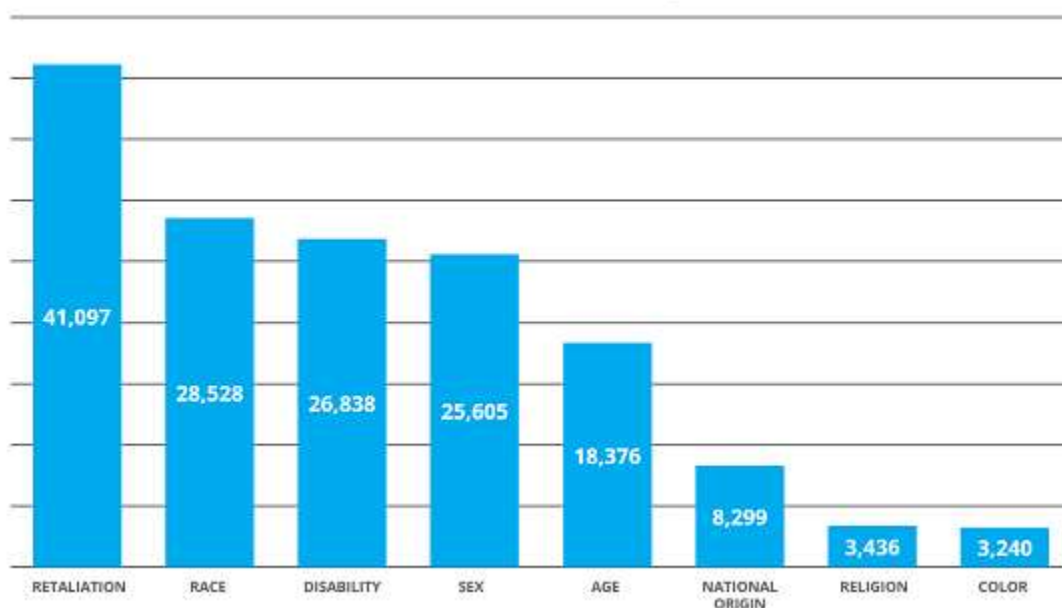
### Religion By the Numbers

In January, the EEOC released its annual breakdown of the charges received by the agency during the preceding fiscal year. The agency received 84,254 charges over the year, with only 3,436 (or 4.1 percent) based on religion.[2]



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### EEOC 2017 Fiscal Year Charges Breakdown



*EEOC Charges Breakdown (Equal Pay Act and Genetic Information charges not included)*

While the number of charges based on religion remains on the lower end of the EEOC's breakdown, the potential monetary exposure for employers is still high. During fiscal year 2017, the EEOC achieved \$11.2 million in monetary benefits due to religious charges, without even accounting for monetary benefits obtained through litigation, such as in the Onionhead case.[3] As that case makes clear, exposure can be high even where the facts do not involve what an employer may consider a "traditional" religion.

### **Peeling Back the Layers of the Onionhead Case**

A brief history of the case: The EEOC originally brought suit back in 2014 on behalf of a class of former employees, claiming in the litigation that the former employees were subject to religious discrimination, in violation of Title VII. At the core of the case was the system called "Onionhead," which the employer asserted was simply a conflict resolution tool. In contrast, the EEOC and certain employees argued it was a religion that was being forced upon them in the workplace.

From the cross-motions for summary judgment, it appears that the EEOC's core inquiry was "whether certain practices and beliefs ... purportedly imposed on employees by supervisors in [the] workplace [i.e., Onionhead] constitute[d] a religion." [4] The defendants, in turn, cross-moved for summary judgment on all claims. Reviewing the specifics of the somewhat unique "practices and beliefs" occurring within the Long Island workplace, the court answered the plaintiffs' question in the affirmative — yes, those practices and beliefs amounted to a religion under federal law.

According to the summary judgment decision, in 2007 CCG, specifically its chief executive officer and chief operations officer, brought in the CEO's aunt, Denali Jordan, to remedy "corporate culture [that] was deteriorating." Before her role with CCG, Jordan had developed a program known as Onionhead (program materials included images of an anthropomorphic onion), which CCG began to use in the workplace. CCG described Onionhead as a "multi-purpose conflict resolution tool." Plaintiffs claimed it was a "system of religious beliefs and practices." In or about 2011, Jordan adapted the Onionhead concepts and principles to make the program more appropriate for use by adults (versus its original audience of children). This new approach was known as "Harnessing Happiness."

Beginning in 2007, Jordan began her work with CCG, visiting the workplace at various points — she was referred to as a "spiritual adviser." The plaintiffs, employed at distinct times, had different experiences with the Onionhead/Harnessing Happiness program. However, most plaintiffs described "effectively mandatory" Onionhead workshops, prayers and meetings, as well as one-on-one meetings with Jordan. Other plaintiffs referred to the use of candles and incense to "cleanse the workplace," while some described required prayer and chanting in the workplace.

All plaintiffs claimed they were terminated either because they rejected the Onionhead beliefs or because they maintained their own non-Onionhead religious beliefs. According to the October 2014 amended complaint filed by the EEOC on behalf of the three plaintiff-intervenors, CCG "subjected [Elizabeth] Ontaneda, [Francine] Pennisi, [Faith] Pabon and other similarly aggrieved employees to a hostile work environment based on religion, failed to accommodate their religious beliefs, terminated them based on religion, and retaliated

against them for opposing coerced religious practices in the workplace.”[5] Specifically, the amended complaint alleged that (1) CCG terminated Pennisi after she refused to participate in the Onionhead practices at work, including telling the COO that she objected to being forced to participate; (2) Ontaneda was told she did not have the “spirit of a team player” and was told not to return to work after objecting to Onionhead; and (3) Pabon was terminated for insubordination following her refusal to take part in certain activities at a spa weekend in which Jordan required employees be together all the time, hold hands, pray and chant. An additional seven claimants were identified after the October 2014 amended complaint, bringing the total number to 10.

The summary judgment decision highlights the staunch disagreement between the parties regarding the use of “Onionhead” in the workplace. Emails in the record included discussions about “God, spirituality, demons, Satan [and] divine destinies.” In addition, CCG used documents in the workplace including one called “Onionhead Keys and Codes to Living Good.” The document contained language referring to the “Divine Plan,” “the state of Heaven on Earth” and souls.

The decision involves an analysis of the multiple claims of reverse religious discrimination and traditional religious discrimination, but the court’s answer to the question of whether Onionhead/Harnessing Happiness constitutes a religion is insightful. To determine whether Onionhead was a religion for Title VII purposes, the court applied a two-part test — (1) whether the beliefs are sincerely held, and (2) whether they are in the believer’s own scheme of things, religious. Reviewing the first factor, sincerity, the court noted that this is a fact-intensive review especially when, like Onionhead, the belief system is nontraditional. For the second factor, the court would look to whether the belief system involved “ultimate concerns.” In its decision, the court rejected CCG’s advocacy for a narrower definition of religion — one employed by courts in other federal circuits.

Applying this broad test to the Onionhead program, the court held that a reasonable jury could find that Jordan, CCG’s CEO and other CCG managers and supervisors held “sincere beliefs” regarding Onionhead. Even more interesting was the court’s decision that the beliefs were religious within the meaning of Title VII. The court looked at various documents related to the Onionhead program and reviewed testimonial evidence about the religiosity of Onionhead (including references to God and directives to pray in the workplace). The court noted that the “Onionhead system of beliefs and practices ... is ‘more than intellectual’” and rejected CCG’s contention that Onionhead was simply a “conflict resolution tool.” Thus, the court considered the plaintiffs’ claims within the latter portion of the decision, allowing some to survive and some to perish.

Fast-forwarding from the court’s fall 2016 decision to April 2018 when the surviving claims reached the jury, there is still more insight to glean. On April 25, 2018, the jury unanimously concluded:

- CCG was legally responsible for creating or maintaining a “hostile work environment” based on religion for multiple plaintiffs; and
- One plaintiff’s termination was motivated, at least in part, due to that plaintiff’s rejection of CCG’s religious practices.

Ultimately, the jury awarded \$4.4 million in damages related to the hostile work environment. The jury awarded an additional \$690,000 in compensatory and punitive damages to the former employee who experienced disparate treatment. Currently, the parties are engaged in briefing regarding damages and injunctive relief. It is possible this verdict could be reduced following post-trial motions.

### **Top Employer Takeaways From the Verdict**

As the Onionhead story sizzles to conclusion, employers can learn much not only from the court’s decision as to what may constitute a religion under federal law, but also how juries may evaluate an employer’s practices when they are asked to weigh the price of employees’ adherence to such practices while at work.

Employers should note:

- Title VII defines “religion” to include “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.”[6] This alone is fairly broad. The CCG decision makes it broader still at least in the Eastern District of New York, where the case was tried.
- Documents and postings in the workplace matter. The content of any office publications which veer into the religious realm can create exposure and must be carefully drafted and reviewed.
- Potential plaintiffs and their lawyers are watching. Following the verdict, employers, particularly those in New York, may see an uptick in religious discrimination claims based on less traditional “religions” or “belief systems.” The court’s decision establishes a broad and expansive reach for what constitutes religion.
- The EEOC has a powerful tool in its arsenal and may pursue similar charges. Employers may find themselves defending agency charges in this arena.

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[1] Verdict Form, Equal Opportunity Employment Comm'n v. United Health Programs of Am. Inc. et al, No. 14-cv-03673-KAM-JO (E.D.N.Y. April 25, 2018, filed April 27, 2018). Cost Containment Group Inc. is the holding company which includes United Health Programs of America Inc. and other entities. Plaintiffs were employed by CCG, UHP or another CCG entity. The various entities will be referred to as "CCG" throughout this article.

[2] EEOC Press Release, 1-25-18, EEOC Releases Fiscal Year 2017 Enforcement and Litigation Data. Note, the EEOC statistics do not include charges filed with state or local Fair Employment Practice Agencies.

[3] Religion-Based Charges (Charges filed with EEOC) FY 1997 – FY 2017, <https://www.eeoc.gov/eeoc/statistics/enforcement/religion.cfm>.

[4] Equal Opportunity Employment Comm'n v. United Health Programs of Am. Inc., 213 F. Supp. 3d 377 (E.D.N.Y. 2016).

[5] Complaint, Equal Opportunity Employment Comm'n v. United Health Programs of Am. Inc. et al, No. 14-cv-03673-KAM-JO (E.D.N.Y. Oct. 9, 2014).

[6] 42 U.S.C.A. § 2000e(j).