

What Is a Sincere Religious Belief? The Fifth Circuit Weighs In On a Religious Discrimination Claim

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In a 2-to-1 decision written by Judge Edward Prado, the Fifth Circuit Court of Appeals recently chimed in on an employee's claim that her employer failed to accommodate a religious observance, for which "she believed strongly that she 'needed' to be at church . . . as a religious matter."

In a 2-to-1 decision written by Judge Edward Prado, the Fifth Circuit Court of Appeals recently chimed in on an employee's claim that her employer failed to accommodate a religious observance, for which "she believed strongly that she 'needed' to be at church . . . as a religious matter." The court in [Davis v. Fort Bend County](#) overturned summary judgment where the district court had found that the employee's absence on a Sunday to attend a ground breaking ceremony for her church was not a religious practice. As the district court found and Fort Bend County argued before the Fifth Circuit:

being an avid and active member of church does not elevate every activity associated with that church into a legally protectable religious practice.

Instead, the majority opinion focused on the judiciary's historical reluctance to delve too deeply into an individual's professed religious belief:

This court has cautioned that judicial inquiry into the sincerity of a person's religious belief "must be handled with a light touch, or judicial shyness." . . . "[E]xamin[ing] religious convictions any more deeply would stray into the realm of religious inquiry, an area into which we are forbidden to tread." . . . Indeed, "the sincerity of a plaintiff's engagement in a particular religious practice is rarely challenged," and "claims of sincere religious belief in a particular practice have been accepted on little more than the plaintiff's credible assertions."

Judge Jerry Smith, politely, but vigorously disagreed with the court's limited view:

In its well-written opinion, the majority errs in holding that our inquiry is limited to the sincerity of an employee's alleged religious belief; we must also consider whether that belief is "religious" in nature or merely a personal preference or a secular social or economic philosophy.

Employers should not be surprised if this case is reheard *en banc* or perhaps reaches the Supreme Court of the United States. Perhaps, at least in the Fifth Circuit, the question of what qualifies as a religion will soon (if it has not already) be answered by *Davis*.

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