

# AN ETHICAL AND EMPLOYMENT QUAGMIRE: THE CASE OF JBS

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## ABSTRACT

*This case describes a hypothetical ethical dilemma involving labor relations at JBS Swift in Greeley, Colorado. The case describes the employment decisions faced by a hypothetical manager working at JBS Swift during the 2008 labor dispute over working conditions for Somali workers during Ramadan. The case provides detailed background information on JBS Swift, current labor relationships in the meat packing industry, applicable labor laws and ethical frameworks. At the end of the narrative the reader is asked to formulate ethically and legally sound recommendations. The suggested audiences for this case study are upper level undergraduate students and graduate students.*

**JEL:** D63; J50; J40; J80

**KEYWORDS:** Business Ethics, Labor relations, Case Study

## INTRODUCTION

**M**att Lelander sits in front of his computer and reads with alarm the continuing news stories reporting on the recent walk out, and subsequent lawsuit of a large portion of JBS's workforce. The report indicates that the employees are disgruntled about working conditions during their religious holiday, Ramadan.

Matt works for the world's largest meat packing firms, headquartered in Brazil. Matt is currently assigned to JBS Swift's, Greeley, Colorado branch. The news reports that most of the Somali workers walked out in protest over the rigid working conditions imposed during Ramadan. In particular, the workers appear to be disgruntled over the difficulties in fulfilling the religious requirements for prayer during the Muslim holy month.

As Matt investigates, he realizes the seriousness of the accusations levied against JBS by several of their Somali and Muslim employees. Accusations include harassment during Ramadan, a pattern of discrimination since 2008, a hostile work environment, failure to accommodate, and retaliatory discharge (<http://www.eeoc.gov/eeoc/newsroom/release/8-31-10.cfm>). After Matt reviews all press releases, he obtains a copy of the claim filed by the Equal Employment Opportunity Commission (EEOC) on behalf of the disgruntled JBS Swift employees (see Exhibit 1 in appendix A). After visiting the EEOC website Matt discovers that religious discrimination claims increased by 100% between 1992 and 2007 (<http://www.eeoc.gov>).

Matt is relatively new to the position of special ethics and legal advisor to the board of directors. He was hired to help investigate, review, modify (if needed), and implement an organizational code of ethics. JBS's board of directors has requested a report outlining recommendations on how to handle the recent labor dispute. As their website and mission statement clearly state, JBS is concerned about treating the community and all employees fairly and ethically. Further, as with any business, the board wants to ensure that they are able to adhere to their values while still maintaining high levels of efficiency in their production capacities (See Exhibit 3 in appendix C).

The board wants Matt to outline how they should handle this dispute both legally and ethically. Further, they want to Matt to ensure that corrective measures will have minimal impact on productivity. The board is concerned that if they give into the demands of the disgruntled employees, production will decrease. Further, the board is concerned that the non-Muslim employees will feel as if the Muslim employees are being given preferential treatment. They want Matt to outline how they should proceed.

In order to properly prepare his report, Matt must educate himself on the background of JBS, the background of the Somali workers, the applicable legal issues and appropriate ethical frameworks. He begins his research with the company background. The remainder of this case is structured as follows, first the company background is presented, next the history of JBS in Greeley and the history of protein production described, followed by a brief introduction to Somalia and Somali workers in Greeley. With the background the case proceeds to describe Ramadan and the ethical and legal frameworks applicable to the presented ethical quagmire at JBS.

## COMPANY BACKGROUND

JBS Swift is a protein production multinational giant with 140 production facilities worldwide and over 120,000 employees, JBS is the largest animal protein processor in the world. JBS is a globally diversified company producing a variety of products including food, leather, pet products and biodiesel. An international industry leader, JBS has production and processing plants in Brazil, Argentina, Italy, Australia, USA, Uruguay, Paraguay, Mexico, China and Russia ([www.jbssa.com](http://www.jbssa.com)).

The story of JBS Swift is one of hard work, aggressive expansion and industry knowhow. The founder of the world's largest protein producer is Jose Batista Sonbrinho (aka Ze Mineiro) from the state of Goias in Brazil. Jose Batista Sobrinho opened his first butcher shop (Casa de Carne Mineira) in 1953 and quickly acquired a deep knowledge of the market for cattle. Within a month of opening his first butcher shop, his products became known in the Anapolis region for their superior quality. Within four years, Sonbrinho saw the opportunity to supply beef to the construction workers who were building the new capital of Brazil (Brasilia). He established a slaughterhouse in the new capital with the aid of five key employees ([www.jbssa.com](http://www.jbssa.com)).

Building on the success of the slaughterhouse in Brasilia, Sonbrinho leased a slaughterhouse in nearby Luziania in 1962. This allowed production capacity to double to approximately 55 animals per day. Expansion continued in Brazil with the acquisition of Formosa Industrial Slaughter house, this investment allowed Sonbrinho to further increase production capacity. In the same year, following the advice of a friend, Sonbrinho renamed the company Friboi with a view to leave the slaughterhouse plant and transition the firm into the meat packing industry ([www.jbssa.com](http://www.jbssa.com)).

Growth continued to be strong for Sonbrinho's company and in 1997; the firm began to export fresh beef. In a significant expansion, Friboi finalized acquisition of Barra do Garcas Plant near Brazil's largest city (Sao Paulo, Population approximately 19 million). This expansion greatly increased the size and visibility of Friboi. The expansion created a need to develop a better transportation system for cattle. Friboi responded with an innovative truck fleet with a capacity to carry up to 42 animals per truck. This truck fleet allowed the company to increase its production while maintaining the quality people had come to expect from Friboi. By 2003, the Andradina Transportation Company was created under the Group's transportation system ([www.jbssa.com](http://www.jbssa.com)). With much of the domestic market consolidated, Friboi began turn its attention toward international expansion. Friboi did not have to look far, in 2005, the firm acquired Swift in neighboring Argentina. The acquisition turned Friboi (renamed to The Group) into Brazil's first multinational company in the meat industry. Shortly after the acquisition of Swift, The Group changed its corporate structure from a limited liability company to a corporation. The newly formed corporation was renamed JBS, taking the initials of its founder--Jose Batista Sobrinho. In March 2007, JBS became the first company in the meat-packing sector to go public on the Brazilian Stock

Exchange. Listing on the Brazilian stock exchange allowed for more efficient methods to raise capital and allowed JBS to continue its international expansion. In July of the same year JBS acquired a 100% ownership stake in the American Swift Foods and Companies (plants in the US and Australia). With this expansion, JBS became the largest Brazilian multinational company in the food-processing sector ([www.jbssa.com](http://www.jbssa.com)).

### JBS in Greeley, Colorado USA

JBS started operations in the United States in 2007. At the time of acquisition, JBS's president made the following quote: "With this acquisition, we become the largest beef company in the world," With the acquisition, JBS estimated that for the year following the acquisition that it would have pro forma total revenue of \$13.2 billion, earnings before interest, taxes depreciation and amortization, of \$730 million and a net debt of \$2.3 billion. At the time of the deal Brazilian investors applauded the acquisition and shares rose 1.5% on announcement of the deal. Prior to the acquisition Swift and Company was the third-largest meatpacker in the U.S. The company sells primarily meat cuts to the U.S. market under the Swift Angus beef brand name and Swift Premium pork. With the purchase, JBS acquired a known global brand name with sales and operations in markets that were relatively new to the company, including Hong Kong, Japan, Mexico, South Korea, mainland China and Taiwan. (<http://www.marketwatch.com/story/brazils-jbs-buys-swift-foods-for-14-bln>).

One of the primary meat packing facilities of the former Swift (now JBS) is in the town of Greeley, Colorado. The following is a brief history of one of America's most interesting western townships. Greeley began as a joint-stock colonization company in 1869 in New York City. The original name was 'Union Colony' to reflect the vision of the founder Nathan Meeker for people to unite for the purpose of sharing common goals. The first colonists were required to have money for the first year and agree to obey the rules of the colony requiring temperance, cooperation, agriculture, irrigation, education, faith and home and family. In 1870, the first 480 settlers arrived in northern Colorado. The town began investment in infrastructure including wells, irrigation ditches with a readily available supply of coal from the nearby coalmines. By 1886, Greeley had sewer lines, an electric plant and manufactured gas ([www.greeleygov.com](http://www.greeleygov.com)).

Greeley benefited from the expansion of the west as railroads brought more settlers, livestock and consumer items. Residents of Greeley built canneries, stockyards, warehouses, tanneries and icehouses. By 1890, over 90,000 acres of land was irrigated and the State Normal School opened. The populations of Greeley had grown to over 8,000 and the local newspaper at the time referred to Greeley as "The Athens of the West". Growth continued in Greeley with the first radio station developed in 1921 (the nation's 5<sup>th</sup> oldest). One of the leading families in Greeley, the Monforts, expanded their family farm into an international, multi-billion dollar feeding, processing and shipping corporation. By 1964, Monfort of Colorado had the most technologically advanced cattle and lamb slaughtering facility in the nation ([www.greeleygov.com](http://www.greeleygov.com)).

Greeley was designated an 'All American City' in 1987. The current population of Greeley is 89,000. An article from the neighboring city of Fort Collins highlights some of the challenges that Greeley is currently facing, much of which is attributed to the meat packing industry. "Greeley didn't always have a 30 percent Latino population. It didn't always have an elementary education system where more than half of the children are Latino. And Greeley didn't always have a slaughterhouse." (<http://www.greeleytribune.com/article/20061226/NEWS/112230087>)

As this quote indicates much of the recent development of Greeley has been due to the employment practices of its largest employer—Swift and after 2007 JBS, the world's largest protein producer. The composition of the workforce at JBS Swift is due to the nature of the industry.

## A BRIEF HISTORY OF PROTEIN PRODUCTION

The slaughterhouse has always been a challenging place to earn a living in the USA. At the beginning of the 19<sup>th</sup> century, most of the production was localized due to lack of industrialized refrigeration. During the period of when production was localized, butchers were considered to be skilled labor and earning a good living. Following the innovations in transportation and refrigeration in the 1860's the meat packing industry grew and plants developed in major cities and Americans consumed more beef. Major centers in the late 1800's were in Chicago, Kansas City and Omaha (<http://www.greeleytribune.com/article/20061226/NEWS/112230087>).

Since the advent of large slaughterhouses the industry relied on immigrant workers. The first immigrants to make up the workforce in America's early slaughterhouses were primarily from Lithuania and Poland. In the 1960's an innovative company called the Iowa Beef Processor (now Tyson Foods) changed the way Americans produce beef. The company was founded on a simple idea: that the way meat was processed at the time was antiquated. Their goal was equally simple: to revolutionize the industry by creating "meat factories" that could process meat more efficiently and economically ([www.fundinguniverse.com/company-histories/IBP-Inc-Company-History.html](http://www.fundinguniverse.com/company-histories/IBP-Inc-Company-History.html)). One of the key components to this strategy was to move meatpacking away from urban centers and to more rural areas like Greeley. This strategy made sense for several reasons, first it reduced transportation costs by locating production closer to the raw materials and second it reduced the reliance on unionize labor and therefore cut production costs. The industry shift from urban production to rural production also changed the composition of the labor force utilized in meatpacking. Many communities offered tax breaks and other incentives to attract a meatpacking plant in their city. The problem is that many of the townships which were successful in attracting production facilities did not have a large enough labor force. As a result, the companies had to find workers to staff the facility. This often resulted in a largely immigrant, largely Hispanic workforce and in some instances a large illegal workforce.

Currently, the meatpacking industry is considered a "point of entry" job for new immigrants to the United States (<http://www.greeleytribune.com/article/20061226/NEWS/112230087>). Another issue Matt must consider is the public perception that meat packing plants don't pay or treat their employees fairly. As can be seen in the above figures, meat processing plants often provide a substantial economic stimulus for the local community (see Figures 1 & 2).

Figure 1: Iowa Employee Average Earnings



Figure 1: This chart displays the relative income levels of traditional entry level jobs as compared to those of a meat processing plant. As can be seen a meat processing position has a comparatively strong salary. Employees in meat processing plants on average earn more than \$29,000 per year plus benefits, and employees in meat packing plants earn \$26,400 per year plus benefits, for jobs in rural areas with a low cost of living. Source: MeatAMI.com

Figure 2: Colorado Comparative Salaries



Figure 2, in contrast to Figure 1, depicts the relative weakness of meat packing salaries when compared to local Colorado professional salaries. It is this distinct lack of salary growth which ensures this industry will remain a high turnover profession.

### BACKGROUND ON SOMALIA

In recent years, a large portion of the meatpacking workforce has come from migrant workers from a little known country located in the ‘Horn of Africa’, Somalia. Matt was unaware about the details of this country and looked up some relevant information about the current economic and political aspects of Somalia. Below is a summary of Matt’s research, beginning with a map of the nation.

Figure 3: Map of Somali



Figure 3, shows a detailed map of the nation of Somalia (US State Department). The capital of the nation is Muqdisho. Somalia's land area is slightly smaller than Texas (637,657 sq. km). Somalia is located in 'horn' of Africa near along one of the busiest corridors of marine international trade. However, given its location Somalia is a tragic story of government corruption and civil strife. According to the US State Department, more than the half the population is illiterate, infant mortality rates are greater than 10% and life expectancy is below 50 years. On almost all quality of life indicators, Somalia ranks at or near the bottom globally. Despite having large untapped reserves of iron ore, tin, gypsum, bauxite, uranium, copper, salt; likely petroleum and natural gas reserves, Somalis GDP per capita was only \$600 in 2008 (US State Department) . Somalia's economy is pastoral and agricultural, with livestock--principally camels, cattle, sheep and goats--representing the main form of wealth (US State department). Somalis are recognized throughout the world for their superior ability in raising and slaughtering livestock.

The following quote from the U.S. state department illustrates the lack of control the central government has over its territory in Somalia: "U.S. citizens considering travel by sea near the Horn of Africa or in the southern Red Sea should exercise extreme caution, as there has been a notable increase in armed attacks, robberies and kidnappings for ransom at sea by pirates. Merchant vessels continue to be hijacked in Somali territorial waters, while others have been hijacked as far as 1,000 nautical miles off the coast of Somalia, Yemen, and Kenya in international waters."

Somalia has been without an effective central government since President Siad Barre was overthrown in 1991(British Broadcasting Corporation).The absence of functioning central government in Somalia allowed outside forces to become more influential by supporting various groups and persons in Somalia, particularly Djibouti, Eritrea, Ethiopia, Egypt, Yemen, and Libya, all of which have supported various Somali factions and transitional governments. In January 2009, Ethiopian forces completely withdrew from Somalia. Near the same time the United States designated one of the leading power brokers in the nation as a terrorist organization. The name of the organization is al-Shabaab. Al-Shabaab and other extremist forces garnered power in subsequent years through their effective fighting of the Ethiopians, intimidation and harsh implementation of Shari'a law.

Insurgent forces now control most of south-central Somalia and parts of Mogadishu, significantly hampering the transitional federal governments' ability to provide public services as well as affecting the delivery of humanitarian aid to vulnerable Somali populations. The lack of rule of law in Somalia has led to mass killings and significant migration of Somalis to refugee camps in neighboring countries. The turmoil in Somalia has led to many Somali families relocating to Western Europe and the United States.

### Somalis in Greeley, Colorado USA

The United States has a long history of accepting refugees from war torn countries. In fact, the US is one of only ten countries in the world that accepts unrestricted refugees. The vast majority of Somali population in Greeley is refugees. Very few (if any) of the Somalis currently residing Greeley arrived directly from refugee camps, but rather they arrived in major US cities, such as Denver or New York. After arrival in the US, refugees are allowed free movement across the US. The initial waves of Somalis to move to Greeley were single men following job opportunities at JBS Swift. According to a representative from the East African Community of Colorado, in 2007-2008 there were less than 40 Somali families living in Greeley. However, after this initial wave of immigrants to Greeley, the second wave of Somali immigration has been a combination of families and single men. In 2010, East African Community of Colorado estimated the number of Somali families in Greeley to be in excess of 400 and growing very rapidly. Current estimates approximate that JBS Swift employs 50% of Somalis currently working in Greeley.

The majority of Somali refugees residing in Greeley have spent in excess of a decade living in Kenyan refugee camps. Some Kenyan refugee camps have in excess of 80,000 people in them. Approximately ten percent of Somalis in refugee camps are resettled annually. Prior to arrival in the US, Somali refugees are required to take 8 hours of cultural orientation and are given comprehensive health and background screenings. Upon arrival, they receive food stamps and Medicaid for a limited time. Refugees are required to reimburse the US government for the cost of their air ticket to the US. The majority of Somalis in Greeley are from the majority culture of Somali. Most Somalis are pious Muslims with strong family values. (Source-Lutheran Family Services of Colorado)

### Background on Ramadan

In order to better understand their point of view and why so many of JBS's Somali workers walked out during the holy month of Ramadan, Matt investigated the origins and customs of this religious holiday. Below is a brief summary of his research. The ninth month of the Islamic calendar is known as Saum, or fasting and is considered the fourth pillar of Islam (Emerick, 2004). During this month (Ramadan), Muslims seek forgiveness for sins, pray for guidance and learn spirituality, compassion, patience and modesty via fasting. Ramadan is a time of religious devotion and a time of self-denial. The form of self-denial is evidenced from the denial of food, drink, profanity, lying, sex and fighting between sunrise and sunset. Typically Muslims eat a meal prior to sunrise and after sunset (Emerick, 2004).

The purpose of Ramadan for Muslims is to master one's body. The Qur'an explains the purpose of fasting: "You who believe! Fasting is prescribed for you, as it was prescribed for those before you, so you can gain more spiritual awareness." (Qur'an 2:183) According to the Qur'an, fasting is the status of a religious duty. The desire to eat is one of the most powerful motivations anyone must face. Emerick suggests that when people forget God's good laws and the advice of the prophets, they can easily fall prey to any self-destructive impulses. Therefore, strengthening the soul and bringing the body along in step are crucial to spirituality. According to Emerick, people can become better enlightened only when they rise above the flesh and recognize the force of their spirit. All Muslims over the age of puberty must observe Ramadan. Those who are exempted include the very young, the sick and the elderly who are too weak. Women in their menses or in labor or after childbirth are given temporary exemptions (Emerick, 2004).

### **ETHICAL FRAMEWORK AND IMPLICATIONS**

Prior to making recommendations to the board of directors at JBS, Matt decides to review the pertinent ethical and legal frameworks beginning with the responsibility of a multinational corporation as an ethical agent. Increasingly, corporations are viewed not merely as profit-making entities but also as moral agents that are accountable for their conduct to their employees, investors, suppliers, and customers. Companies are more than the sum of their parts or participants. Because corporations are chartered as citizens of a state and/or nation, they generally have the same rights and responsibilities as individuals.

Through legislation and court precedents, society holds companies accountable for the conduct of their employees as well as for their decisions and the consequences of those decisions. Viewed as moral agents, companies are required to obey the laws and regulations that define acceptable business conduct. Laws and regulations are necessary to provide formal structural restraints and guidance on ethical issues. However, as Matt knows, simply complying with the law is not enough.

### Organizational Ethics

One reason ethics programs are important for an organization is to help make employees aware of the potential legal and ethical issues within their work environments. The headlines are replete with daily scandals. Companies such as Enron or Tyco have thrust the need for organizational codes of conduct into the forefront of the collective corporate mindset. New legislation, such as the Sarbanes-Oxley Act of 2002 (107 P.L. 204), the Dodd-Frank Wall Street Reform, and the Consumer Protection Act (Pub.L. 111-203) have significantly increased oversight for organizational behavior. Understanding the factors that influence the ethical decision making process can help companies encourage ethical behavior and discourage undesirable conduct. An organization needs to realize that personal decision making and ethical behavior does not exist in a vacuum. As one commentator highlights, “decision making within a firm will be influenced, limited, shaped, and in some cases virtually determined by the corporate culture of the firm.” (DesJardins, 2009, pg. 83) In fact, it is this realization that led to the hiring of Mr. Lelander.

To promote legal and ethical conduct, industry analysts suggest an organization such as JBS develop an organizational ethics program by establishing, communicating, and monitoring ethical values and legal requirements that characterize its history, culture, industry, and operating environment (Ferrell, 2011). Without uniform standards and policies of conduct, it is difficult for employees to determine what behaviors are acceptable within a company. As Matt reviews the laundry list of accusations (see Exhibit 2 in appendix B) he begins to see the effects of lax controls. If these accusations are true, how was this cultural mindset created?

Matt wonders if he should revise his company’s ethics program. Matt ponders what frameworks should be used as the foundation any ethics program. What are JBS’s primary goals and values? Matt realizes a strong ethics program includes a written code of conduct, an ethics officer to oversee the program, care in the delegation of authority, formal ethics training, and auditing, monitoring, enforcement, and revision of program standards. He begins to wonder if JBS should hire an ethics officer, to assist in the governance and implementation of any ethics program. Further, he wonders what changes should be implemented to fairly and ethically treat all members of such a diverse workforce. Matt clearly has a lot of work ahead of him!

### Legal Frameworks

After several hours of research, Matt realized that he had overlooked several of the very important legal aspects of JBS’s labor issue, which will need to be included (or at least contemplated) prior to making his recommendations. The labyrinth of legal regulations a human resource manager must be able to navigate in order to avoid potential liability certainly is daunting. However, while this area of law is still evolving, there are a few well established legal principles that need to be reviewed prior to Matt making his recommendations to the board of directors. Matt dusts off his Equal Employment Opportunity Commission guidelines to review the myriad of relevant federal statutes. He compiles the following list presented in Figure 4.

With regard to the filed claim, Title VII of the Equal Employment Act (42 USC § 2000e *et seq* (2000)), is the most concerning regulation in Matt’s view. Traditionally, employees bring discrimination suits alleging that they have been discriminated against on the basis of a few legally protected categories. Liability is assigned when a plaintiff can prove they were intentionally discriminated against (this is referred to as disparate treatment). Further, liability will be assigned if the plaintiff can prove employer policies have had an adverse impact (even if unintentional) on members of a protected group (this is disparate impact). These suits are generally based on state or federal legislation which specifically prohibits discrimination (whether disparate treatment or impact) based on certain protected classifications. Most of the claims in the filed suit involve disparate treatment.



Figure 4: Listing of Federal Laws Which Prohibit Employment Discrimination

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- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
  - The Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
  - The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
  - Title I and Title V of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
  - Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government;
  - Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information about an applicant, employee, or former employee; and
  - The Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.
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*This Figure lists the main U.S. Federal legislation which is aimed at preventing or limiting employment discrimination. This list does not include state specific legislation, which may include additional protections. \*compiled from [www.eeoc.gov](http://www.eeoc.gov) and other sources.*

The main piece of federal legislation used to combat employment discrimination or protect against potential liability is Title VII of the Civil Rights Act of 1964. Title VII theoretically only prohibits employer (defined as employers who have 15 or more employees) discrimination on the very limited categories of sex, race, religion, color or national ancestry. Employees, who believe they have been discriminated against on a basis which does not fall under the umbrella of Title VII or one of the above listed statutes, are essentially left unprotected.

However, creative uses of Title VII or some unique state protections for employees have expanded employee protections, especially for failure to accommodate sincerely held religious beliefs. These claims are often easy to bring against an employer because the courts only require that the religious beliefs be strongly or sincerely held as opposed to nationally recognized. In most cases, a history of religious practices, or a history of behavior based on religious beliefs is sufficient to raise a claim. Typically, the employer has to attempt to accommodate the employee's religious based request, but is not required to hire additional workers, inconvenience other workers, or pay only a minimal (de minimis) cost of accommodation. Trans World Airlines v. Hardinon, 432 U.S. 63, 81 (1977).

As mentioned, Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Specifically, Title VII also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer (see Exhibit 2 in appendix B). This essentially means that employers may not treat employees more or less favorably because of their religion; employees cannot be required to participate, or refrain from participating, in a religious activity as a condition of employment; employers must reasonably accommodate employees' sincerely held religious practices unless doing so would impose an undue hardship on the employer; employers must take steps to prevent religious harassment of their employees; and finally, employers may not retaliate against employees for asserting rights under Title VII. Hardinon, 432 U.S. 63, 82.

However, an employer is not obligated to provide the specific or requested accommodation. If the employer reasonably accommodates the employee's religious needs (such as a change in schedule for religious observance), the employer need not consider the employee's preferred accommodation even if this preferred accommodation does not cause an undue hardship. Ansonia Board of Education v. Philbrook, 479 U.S. 60, 70 (1986).

The preventative measures aspect (as mention in the *Hardinon* case) catches Matt's attention. Title VII places an affirmative responsibility on employers to maintain a work environment free of harassment, intimidation, and repeated insults. The concept of a hostile work environment traditionally applies to

sexual discrimination claims; however, the same concepts apply to religious discrimination claims as well. The Supreme Court in Harris v. Forklift Systems, 510 U.S. 17, 21 (1993), defined a hostile or abusive work environment as one in which the “challenged conduct must be severe or pervasive enough “to create an objectively hostile or abusive work environment -- an environment that a reasonable person would find hostile or abusive.” Matt distinctly remembers from his previous HR courses that an employer can be liable if fellow employees create a hostile work environment and the employer knew or should have known of this environment and failed to correct the situation. Matt wonders if this is indeed the case with JBS.

Religious employees often confront conflicts between their employment obligations and their religious obligations; federal law (and many state and local laws for that matter) require employers to try to accommodate those obligations. Title VII provides that an employer must *reasonably accommodate* an employee's religious beliefs and practices unless doing so would cause “undue hardship on the conduct of the employer's business.” (Prekert, 2006) However as Chief Justice Rehnquist has noted, what constitutes a reasonable accommodation or an undue hardship is not clearly articulated in the statute. (Ansonia Board of Education v. Philbrook), 479 U.S. 60, 63 (1986). To date the generally accepted definition is still the *de minimis* standard as set by the Supreme Court in the Hardinson case.

A reasonable accommodation is one that eliminates the employee’s conflict between his religious practices and work requirements and that does not cause an undue hardship for the employer (Civil Rights Act). Requested accommodations obviously will vary; an employee may need a particular day off each year for a religious holiday, to refrain from work every week on his or her Sabbath, to wear religious garb, or to have a place to pray to name a few accommodations. An employer must try to allow the employee to meet these religious obligations so long as the accommodation does not create an undue business hardship.

Matt has considered several potential accommodations including shift swaps between employees, shorter but more frequent breaks, voluntary assignment substitutions, flexible scheduling (allowing an employee to work on Sundays, Christmas or other national holiday in place of the day he or she needs off), lateral transfers to other positions in the company, and use of lunch time in exchange for early departure. Matt could allow an employee who needs to observe a religious holiday to work longer hours on Monday through Thursday to enable the employee to leave early. An employer may require an employee to use their paid time off, such as personal or vacation days, to meet an employee’s required accommodation.

Courts employ a two-step framework to analyze claims of religious discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e *et seq.* Initially, a plaintiff must establish a prima facie case by demonstrating (1) she had a bona fide religious belief, the practice of which conflicted with an employment duty; (2) she informed her employer of the belief and conflict; and (3) the employer threatened her or subjected her to discriminatory treatment, including discharge, because of her inability to fulfill the job requirements (Pruszynski citing, E.E.O.C. v. Alamo Rent-A-Car, 432 F. Supp. 2d 1006, 1011 (D. Ariz. 2006)) If the plaintiff establishes her prima facie case, the burden shifts to the employer to show one of two things: (1) that it initiated good faith efforts to accommodate reasonably the employee's religious practices; or (2) that it could not reasonably accommodate the employee without undue hardship. If negotiations between employee and employer do not produce a proposal by the employer that would eliminate the religious conflict, the employer must either accept the employee's proposal or demonstrate that it would cause undue hardship were it to do so (Alamo, at 1012-1013). Consider the Hardinson case in which the Court held that an employer need not adapt to an employee's special worship schedule as a reasonable accommodation where doing so would conflict with the seniority rights of other employees. It should be noted, however, that the ultimate responsibility for proving that any reason (or claimed occupational qualification) is a pretext for discrimination lies with the employee. McDonnell Douglas v Green, 411 U.S. 792, 802 (1973).

Despite the volumes nature of employee initiated religious discrimination claims, there are several examples of employers successfully fighting a religious discrimination claims. An example is the Second Circuit's ruling in favor of the employer who refused an employee's request to wear a beard for religious reasons. The individual came to work unannounced with a beard and had never previously indicated to his employer that he held such religious beliefs. The court did not believe he had substantiated the existence of a strongly held belief, (Rosenberg ,J 2002). Similarly a court upheld the company's attempt to have an employee cover up a tattoo depicting a hooded figure and a burning cross which the employee alleges resulted from his religious beliefs in the KKK, Swartzentruber v. Gunit Corporation, 99 F.Supp. 2d 976, (D.C. 2000). In another highly publicized case, Cloutier v CostCo., 390 F. 3d 126, 128. (1<sup>st</sup> Cir. 2004) an employee who belonged to the Church of Body Modification refused to remove an eyebrow ring during work to comply with the employer's jewelry prohibition. The court held that the employer had a valid interest in its work forces appearance and public image, and allowing the employee to wear the eyebrow ring could be considered an undue hardship. As a result, the stores policy prohibiting facial jewelry did not violate the employee's freedom of expression or religion.

As mentioned above, an employer is not required to provide an accommodation that causes it an undue hardship. The U.S. Supreme Court has ruled that this means that an employer need not incur more than minimal costs in order to accommodate an employee's religious practices. Matt begins to contemplate whether shift swaps and his other suggestions would create an undue hardship. The EEOC has interpreted this to mean that an employer can show that a requested accommodation causes it an undue hardship if accommodating an employee's religious practices requires anything more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation. For example, an employer probably does not have to train a part-time employee at substantial cost in order to cover for another employee who is unable to work on Saturdays (see [http://www.adl.org/religious\\_freedom/resource\\_kit/religion\\_workplace.asp](http://www.adl.org/religious_freedom/resource_kit/religion_workplace.asp)).

Matt looks at this requirement and ponders if special schedules for Islamic employees would meet this threshold. He is aware that although Islam is certainly a sincerely held belief by his employees, the undue hardship standard creates quite a loophole. In fact, legal commentators often note that this standard may be overused in favor of employers (Prenkert and Magid 2006).

## **CONCLUSIONS**

Still sitting at his computer, Matt considered the long successful history of JBS Swift and the partnership between the largest meatpacking firm and the city of Greeley. Matt has several questions to ponder over the next three days prior to making his recommendations. First, how can a labor policy be designed to satisfy all existing stakeholders in a fair and legal manner? Second, what accommodations, if any should be given to the Somali workers? Third, how will other employees respond if special treatment is provided to just this segment of the workforce? Finally, what items should an ethics policy/program contain at JBS to help avoid future problems? Matt went out to the lobby to get a refill on his coffee as he pondered the answers to these tough questions.

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## APPENDICES

Appendix A: Exhibit 1-General Allegations as detailed in EEOC v. JBS USA, LLC d/b/a JBS Swift & Company, 10-CV-02103 PAB-KUM (D. Colo.) This is only a portion of the allegations and complaint as filed by the EEOC. For a complete copy, please reference the filed complaint as listed above.

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### **According to the Muslim religion, Muslims must pray five (5) times a day according to the Muslim prayer calendar.**

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1. Throughout their employment, the Charging Parties and other aggrieved Muslim, Somali and Black employees were subjected to a hostile work environment because of their race, national origin, and/or religion.
  2. Throughout their employment, the Charging Parties and other aggrieved Muslim individuals were denied and continue to be denied the ability to pray.
  3. Muslim employees at the Facility were harassed and continue to be harassed when they attempted to pray during scheduled breaks.
  4. Muslim employees at the Facility were harassed and continue to be harassed when they attempted to pray during their bathroom breaks.
  5. Muslim employees' requests to pray during bathroom break were denied.
  6. Charging Parties, other immigrants from Somalia ("Somali employees"), and Muslim, employees were subjected to harassing comments on the basis of their race (Black), national origin (Somali) and/or religion (Muslim)
  7. Managers, supervisors, and other employees regularly threw blood, meat, and bones at the Somali and Muslim employees. Somali employees were regularly called names such as {names have been redacted}
  8. There was offensive anti-Somali, anti-Muslim and anti-Black graffiti present in the restrooms. For example, employees saw graffiti such as "Somalis are \_\_\_\_\_," "\_\_\_\_\_ Somalians, redacted, redacted, redacted, and "redacted."
  9. The Somali and Muslim employees were offended by the above comments and actions.
  10. Somali and Muslim employees were discriminatorily denied bathroom breaks.
  11. Some of the Charging Parties complained about harassment based on religion, race and national origin, but Defendant failed to correct the hostile work environment.
  12. Somali and Muslim employees were disciplined and continue to be disciplined more harshly than non-Somali and non-Muslim employees, or were disciplined for conduct that others were not.
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**The Events Relating to Ramadan 2008**

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13. The requirement stated in the Qur'an that Muslims pray five (5) times a day is especially important during the holy month of Ramadan, when Muslims also fast during the day and only break their fast at sundown during their fourth prayer of the day.
14. Fasting during Ramadan requires no intake of either food or water before sunset.
15. The first day of the 2008 Ramadan holiday on which the charging parties reported to work was Tuesday, September 2, 2008.
16. On September 2, 2008, at the conclusion of the B shift, at 11:45 p.m., between 40 and 100 Muslim employees went to the Superintendent's office (Juan Palacios) to request that the meal break be moved from 9:15 p.m. to 7:30 p.m., so that the Muslim employees could pray in accordance with the requirements of their religion and break their fast within 15 minutes of sunset.
17. For the next two shifts, Wednesday and Thursday, September 3 and 4, 2008, Swift accommodated the Muslim employees and had the lunch break occur midway through the shift, at 7:30pm. From Friday, September 5, 2008 and thereafter, Swift refused to accommodate the Muslim employees and instead moved the break to 8:00 p.m. on Friday and to 8:30 p.m. thereafter. Muslim employees had suggested numerous ways their need to pray during the workday could be accommodated, but their suggestions were rejected.
18. On Friday, September 5, 2008, shortly before the Muslim employees believed their 7:30 p.m. break would occur, Swift decided to move the break to 8:00 p.m.
19. On September 5, 2008, at around 7:30 p.m., Swift stationed management employees at all of the exits and refused to allow the Muslim employees to leave the line and told them to return to their lines.
20. Swift shut off the water fountains and/or tagged them with red tags and yellow tape.
21. Red tags are usually used in the Swift facility to indicate rotten or spoiled meat.
22. Because the water fountains were unavailable for use, the Muslim employees were prevented from getting a drink of water, a drink they needed after fasting all day for Ramadan.
23. Because of Swift's actions, the Muslim employees were also prevented them from washing up, a religious requirement before prayers.
24. At 8:00 p.m., the employees were allowed to take their break.
25. During the break, Swift management told the Muslim employees to go outside the facility. When the Muslim employees attempted to re-enter the facility at the conclusion of the break, Swift told them they could not return to work.
26. On Monday, September 8, 2008, Swift informed the Union those employees who had left The plant Friday evening had engaged in an "unauthorized work stoppage" and would be placed on an indefinite suspension.
27. On Tuesday, September 9, 2008, Swift decided that employees who had left the facility Friday evening would be allowed to return to work and given a final written warning with Friday and Monday being treated as unpaid suspensions, provided they returned to work that day.
28. Swift did not contact each of the affected Muslim employees to tell them they were expected to return to work that day.
29. On Wednesday, September 10, 2008, Swift terminated all of the Muslim employees who had not returned to work on Tuesday, including employees who attempted to return to work on Wednesday and who told Swift that they did not know they were to return the previous day.

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**Pattern or Practice Of Discriminatory Treatment Because of Race, National Origin, Religion, and/or Retaliation**

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30. Plaintiff re-alleges all of the foregoing paragraphs.
  31. Since at least December 22, 2007, Defendant has engaged and continues to engage in a pattern or practice of unlawful discriminatory employment practices at its facility in Greeley, Colorado, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by discriminating against Charging Parties and other aggrieved individuals with respect to the terms and conditions of their employment because of their race, Black, national origin, Somali, religion, Muslim, and/or retaliating against employees who requested a reasonable accommodation for their religion.
  32. The pattern or practice of discriminatory treatment includes, without limitation, harassment, disparate treatment, denial of religious accommodation, retaliation against individuals who seek religious accommodation, and disciplining and discharging Somali Muslim employees because of their religion, national origin, and in retaliation for requesting religious accommodation or having religious accommodation requested on their behalf.
  33. The effect of the practices complained of above has been to deprive the Charging Parties and other aggrieved individuals of equal employment opportunities and otherwise adversely affect their employment status because of their race, national origin, religion, and/or because they sought religious accommodation.
  34. The unlawful employment practices complained of above were and are intentional.
  35. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of Charging Parties and other aggrieved employees.
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**Second Claim: Failure to Accommodate Religion**

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36. Plaintiff re-alleges all of the foregoing paragraphs.

37. Since at least December 22, 2007, Defendant has engaged and continues to engage in unlawful employment practices at its facilities in Greeley, Colorado, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by failing to reasonably accommodate its Muslim employees' religious practices and/or beliefs.

38. The unlawful employment practices complained of above were and are intentional.

39. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of Charging Parties and other aggrieved Muslim and/or Somali employees.

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**Third Claim: Retaliation For Requesting Accommodation**

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40. Plaintiff re-alleges all of the foregoing paragraphs.

41. Since at least September 2008, Defendant has engaged and continues to engage in unlawful employment practices at its facilities in Greeley, Colorado, in violation of Section 704 of Title VII, 42 U.S.C. § 2000e-3 by disciplining and/or terminating Charging Parties and other Muslim employees in retaliation for their requests for religious accommodation.

42. The effect of the practices complained of above has been to deprive the Charging Parties and other aggrieved individuals of equal employment opportunities and otherwise adversely affect their employment status because of their requests for religious accommodation.

43. The unlawful employment practices complained of above were and are intentional.

44. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of Charging Parties and other aggrieved Muslim and/or Somali employees.

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**Fourth Claim: Hostile Work Environment/Harassment**

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45. Plaintiff re-alleges all of the foregoing paragraphs.

46. Since at least December 22, 2007, Defendant has engaged and continues to engage in unlawful employment practices at its facility in Greeley, Colorado, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by harassing Charging Parties and other aggrieved individuals, and/or because of their race, Black, national origin (Somali), and/or religion (Muslim).

47. The harassment of Black Somali and Muslim employees was sufficiently severe or pervasive as to alter the terms and conditions of their employment.

48. Management employees participated in the harassment of Black Somali and Muslim employees.

49. Management employees knew or should have known of the harassment of Black Somali and Muslim employees.

50. Management employees failed to take appropriate action to prevent or promptly correct the harassment of Black Somali and Muslim employees.

51. The effect of the practices complained of above has been to deprive the Charging Parties and other aggrieved individuals of equal employment opportunities and otherwise adversely affect their employment status because of their race, national origin, and/or religion.

52. The unlawful employment practices complained of above were and are intentional.

53. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of Charging Parties and other aggrieved Muslim and/or Somali employees.

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**Sixth Claim: Discriminatory Discipline And Discharge**

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54. Plaintiff re-alleges all of the foregoing paragraphs.

55. Since at least September 2008, Defendant has violated and continues to violate Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by disciplining and discharging Charging Parties and other aggrieved individuals because of their national origin, religion and/or in retaliation for requesting religious accommodation.

56. Muslim and Somali employees were disciplined and discharged for allegedly engaging in a work stoppage, while non-Somali, non-Muslim employees were not disciplined for similar conduct.

57. Somali employees were directed not to come to work and/or were not allowed to return to their shift because of their religion, national origin, and/or because they had requested or needed a religious accommodation. Defendant disciplined and discharged Somali employees for allegedly engaging in an unauthorized work stoppage when they failed to report to work as directed. The effect of the practices complained of above has been to deprive the Charging Parties and other aggrieved individuals of equal employment opportunities and otherwise adversely affect their employment status because of their national origin, religion, and/or because they requested religious accommodation.

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**Sixth Claim: Discriminatory Discipline And Discharge**

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58. The unlawful employment practices complained of above were and are intentional.

59. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of Charging Parties and other aggrieved employees.

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Appendix B: Exhibit 2

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**Title VII of the Civil Rights Act of 1964: 42 U.S.C. 2000e**

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Title VII makes it unlawful to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, **religion**, sex, or national origin." 42 U.S.C. § 2000e-2(a).

In certain instances, differential treatment is allowed for religion, sex, or national origin if it is a bona fide occupational qualification. Sexual harassment is also prohibited under this law as are all forms of harassment based on membership in a protected class.

Under Title VII an employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

§ 2000e. Definitions

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, United States Code, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954 [26 USCS § 501(c)] except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972 [enacted March 24, 1972], persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(j) 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.

**Title VII of the Civil Rights Act of 1964: 42 U.S.C.: 2000e-2 Unlawful Employment Practices**

§ 2000e-2. Unlawful employment practices

(a) Employer practices. It shall be an unlawful employment practice for an employer—

(1) 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 individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religions. Notwithstanding any other provision of this title [42 USCS §§ 2000e et seq.], (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices. Except as otherwise provided in this title [42 USCS §§ 2000e et seq.], an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

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### APPENDX C: Exhibit 3

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#### JBS Greely Mission Statement/Values

Mission: "To be the best at what we set out to do, totally focused on our business, ensuring the best products and services for our customers, solidity for our suppliers, satisfactory profitability for our shareholders and the certainty of a better future for all our employees."

#### VALUES

**Planning:** Think before you act. Look to the future. Always be prepared.

**Determination:** Never give up. Be involved. Drive to meet your goals and objectives.

**Discipline:** Each day, be organized and prompt. Focus on details.

**Availability:** Be supportive and accessible. Take initiative.

**Sincerity:** Be true. Disagree when necessary. Recognize when to say no; however, be positive and offer solutions.

**Simplicity:** Simplify. See things clearly. Make improvements.

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# AN ETHICAL AND EMPLOYMENT QUAGMIRE: THE CASE OF JBS

## TEACHING NOTE

Michael Martin, University of Northern Colorado

Joseph J. French, University of Northern Colorado

## CASE DESCRIPTION

*The setting for this case is the JBS Swift Corporation in Greeley, Colorado. Specifically, this case describes the hypothetical employment decisions Matt Lelander, a fictional manager, must confront as the result of a labor dispute over working conditions for Somali workers during Ramadan. Mr. Lelander is presented several ethical, legal, and employment dilemmas. The board of directors for JBS has requested that Mr. Lelander evaluate these dilemmas and present a report with recommendations on how to proceed. The claims involve a series of accusations levied against JBS by several of their Somali and Muslim employees. These claims include assertions of harassment during Ramadan, a pattern of discrimination since 2008, a hostile work environment, failure to accommodate, and retaliatory discharge. The dispute and allegations can be found in Appendix A. The case provides detailed background information on JBS Swift, current labor relationships in the meat packing industry, applicable labor laws and an ethical discussion. Students are asked to formulate ethically and legally sound recommendations to the board of directors. The suggested audiences for this case study are upper level undergraduate students and graduate students.*

### Learning and Teaching Objectives

This case has several learning objectives;

1. Identify and evaluate any potential ethical lapses in the treatment of JBS employees.
2. Analyzes the potential issues (both legal and ethical) presented by treating employees differently based on their religious beliefs.
3. Explore the various potential responses available for an HR manager presented with these allegations.
4. Contemplate what provisions an organizational code of conduct and corporate governance plan should contain for this organization.
5. Discuss what procedures and policies an organization could or should implement to avoid these types of issues.

### CLASS USE

An effective method for teaching this case involves allowing students to read the actual EEOC compliant filed by the JBS workers. Combining this reading with a video clip (such as a clip investigating the meat processing industry); will help set the stage as to what the working environment and conditions are like in the meat processing industry. There are several clips available on publicly web broadcast systems such as YouTube. Generally, this case should be presented towards the end of a semester at the culmination of a business ethics course or legal environment course. Conversely, this case can also serve as an introduction to the topic of business ethics or employment discrimination. If this is the preferred use, the professor may wish to avoid the suggested assignment described above as the students may not yet be equipped to complete it.

The overall discussion of this exercise usually takes about 50-75 minutes in a class of 35-40 students. This discussion can be structured in three parts; brainstorming and listing all the ethical and legal issues,

narrowing the list, and constructing a feasible proposal to be presented in front of the class (hypothetical board of directors).

An alternative approach is to discuss and narrow all the potential legal and ethical issues and then assign the students (as groups or individuals) the task of preparing and turning in a well written report (usually by the next class period). You can also assign several groups to present their proposals. If they are to present proposals, we stress that they assume they are actually presenting to JBS' board of directors and advise instructing them to act accordingly.

As there are a multitude of business ethics course books and approaches, this case is designed so it can accompany any business ethics text. We cite an ethical framework, published in the Ferrell et al. text, (Ferrell, O.C., Fraedrich,J, and Ferrell, L, 2011, *Business Ethics, Ethical Decision Making and Cases*, Mason, OH, Cengage),however, the case can be completed using any established business ethics framework.

Time permitting, and to further encourage a robust discussion, a role play scenario can be used. Divide the students into groups to represent various stakeholders including the Somali employees, the Greeley JBS management, the non-Muslim employees, the board of directors, etc. Have the students in groups discuss the business, legal, and ethical issues facing their assigned stakeholder and devise negotiating positions. Then have the entire class engage in discussion in which the professor moderates. If time does not permit simply divide the class into two groups. One group should represent the Somali employees and the other JBS' management.

## **DISCUSSION QUESTIONS**

Before any meaningful class discussion is attempted it is imperative that the class read the entire case study including Appendixes. Appendix A: Exhibit 1 lays out the actual claims and complaints as filed by the EEOC in the District of Colorado. This exhibit describes several instances of alleged harassment and failure to accommodate such as those described in allegations 3, 4, 5, and 10, as listed below:

3. Muslim employees at the Facility were harassed and continue to be harassed when they attempted to pray during scheduled breaks.
4. Muslim employees at the Facility were harassed and continue to be harassed when they attempted to pray during their bathroom breaks.
5. Muslim employees' requests to pray during bathroom break were denied.
10. Somali and Muslim employees were discriminatorily denied bathroom breaks.

The allegations in Appendix A, Exhibit 1, lay out in detail the alleged treatment which is the crux of this case. It should be noted that these are only allegations and not established facts. However, whether or not these claims have merit, they do provide an excellent foundation for discussing the imperative for organizational codes of conduct and well as corporate governance programs. Further, this case sets up the fundamental business ethics principle that the laws and regulations established by our government set *minimum* standards for responsible behavior. These laws do not delineate what is ethical nor do they establish organizational values.

## RECOGNIZING ETHICAL ISSUES

Students will need to identify the ethical issues present in this case. An ethical issue is a situation, a problem, or even an opportunity that requires thought, discussion, or investigation to determine the moral impact of the decision. Stakeholders, who include employees, define a business's ethical issues.

Further, it is important for students to understand that new ethical issues are emerging all the time. As presented, JBS seems to have an optimization issue (see Ferrell text. pg 63) which is the tradeoff between equity (equality or fairness) and efficiency (that is, maximum productivity). Allowing some employees to take more frequent breaks to pray may affect overall meat processing capacity. Further, if JBS grants the Muslim employees special prayer breaks, they may get backlash from the non-Muslim employees who are not allowed such breaks and feel they are not being treated fairly.

Abusive behavior, whether perpetrated by the employer or fellow employees, is another potential ethical issue. The claims filed by the EEOC suggest that abusive and intimidating behavior is a common ethical problem. Abusive and intimidating behavior includes anything from physical threats, false accusations, annoying, profanity, insults, yelling, harshness, ignoring someone, to unreasonableness in accommodations. If the students read Appendix A Exhibit 1, they should be able to identify several instances of alleged abusive behavior. Some examples include allegations 7, 8, and 10, as listed below:

7. Managers, supervisors, and other employees regularly threw blood, meat, and bones at the Somali and Muslim employees. Somali employees were regularly called names such as {names have been redacted}

8. There was offensive anti-Somali, anti-Muslim and anti-Black graffiti present in the restrooms. For example, employees saw graffiti such as "Somalis are \_\_\_\_\_," "\_\_\_\_\_ Somalians, redacted, redacted, redacted, and "redacted."

10. Somali and Muslim employees were discriminatorily denied bathroom breaks.

Laws regulating business conduct are passed because certain stakeholders believe that business cannot be trusted to do what is right in certain areas, such as consumer safety and environmental protection. Civil law defines the rights and duties of individuals and organizations. Criminal law not only prohibits specific actions, such as fraud or theft but also imposes fines or imprisonment as punishment for breaking the law.

Violations of Title VII generally constitute a civil law violation (although based on the allegations, criminal charges also may be present). Title VII of the Equal Employment Act was designed to ensure that all employees are treated fairly and equally. Specifically, employees should not suffer adverse employment actions as a result of their sincerely held religious beliefs. Clearly, based on the allegations by the EEOC, Muslim employees suffered detrimental effects as a result of their religious beliefs. If the court accepts these allegations as true, JBS could face severe penalties and several of the fired employees will be entitled to damages.

## SUGGESTED ASSIGNMENT QUESTIONS

1. What are the ethical and legal problems described in the article? Using one page, delineate the three most troubling ethical concerns well as the three most concerning legal issues.
2. Who are the stakeholders? Who is affected by this issue and how? How is each stakeholder harmed or benefited by the proposed actions?
3. What are the most important values of each stakeholder?
4. How did this problem develop and what are the underlying causes? Do you believe there are cultural conflicts at issue?

5. How could JBS have avoided these issues?
6. If you were Matt Lelander, how would you advise the Board? Write a three page memo detailing your suggestions.

If students are having trouble when identifying issues or developing their suggestions, the professor can suggest students consult the U.S. Sentencing Commission Guidelines for Organizations (available at <http://ftp.uscc.gov/corp/Murphy1.pdf>), as well as the *EEOC's Best Practices for Eradicating Religious Discrimination in the Workplace* (available at [http://www.eeoc.gov/policy/docs/best\\_practices\\_religion.html](http://www.eeoc.gov/policy/docs/best_practices_religion.html)) (last visited May 12<sup>th</sup>, 2011).

The U.S. Sentencing Commission Guidelines for Organizations (FSGO) create incentives for firms to aim at ethical performances rather than simply maintain legal compliance. Taking the high road can be both cost efficient and important for satisfying basic objectives of the firm. Federal Sentencing Guidelines for Organization mandate that top management and board members are responsible for maintaining an ethical organizational culture. Given these guidelines, organizations such as JBS need to define an organizational culture, relate it to their risk areas and establish mechanisms, program and policies to manage their risks and define their culture.

Further, the EEOC's *Best Practices for Eradicating Religious Discrimination in the Workplace*, clearly articulates some simple and pragmatic recommendations for employers when dealing with potential religious discrimination claims. A few of the suggested accommodation and tips are listed below:

- Employers should inform employees that they will make reasonable efforts to accommodate the employees' religious practices.
- Employers should train managers and supervisors on how to recognize religious accommodation requests from employees.
- Employers should train managers to gauge the actual disruption posed by religious expression in the workplace, rather than merely speculating that disruption may result. Employers should also train managers to identify alternative accommodations that might be offered to avoid actual disruption (e.g., designating an unused or private location in the workplace where a prayer session or Bible study meeting can occur if it is disrupting other workers).
- Employers should incorporate a discussion of religious expression, and the need for all employees to be sensitive to the beliefs or non-beliefs of others, into any anti-harassment training provided to managers and employees.
- Employers should consider developing internal procedures for processing religious accommodation requests.
- Employers should individually assess each request and avoid assumptions or stereotypes about what constitutes a religious belief or practice or what type of accommodation is appropriate.
- Employers and employees should confer fully and promptly to the extent needed to share any necessary information about the employee's religious needs and the available accommodation options.
- An employer is not required to provide an employee's preferred accommodation if there is more than one effective alternative to choose from. An employer should, however, consider the employee's proposed method of accommodation, and if it is denied, explain to the employee why his proposed accommodation is not being granted.
- Managers and supervisors should be trained to consider alternative available accommodations if the particular accommodation requested would pose an undue hardship.
- When faced with a request for a religious accommodation which cannot be promptly implemented, an employer should consider offering alternative methods of accommodation on a temporary basis, while a permanent accommodation is being explored. In this situation, an

employer should also keep the employee apprised of the status of the employer's efforts to implement a permanent accommodation.

## ETHICAL FRAMEWORK

To appropriately evaluate and respond to potential ethical issues, it is often helpful for a manager (or students) to adopt an ethical decision making framework. A framework for ethical decision making is a set of questions that managers can use clarify the relevant business issues. The chart below provides one such popular framework. As previously suggested, there are several other such frameworks used in various texts which will work equally as well.

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**One potential framework for ethical decision making suggests the evaluating of several organizational elements including ethical issue intensity, individual factors, and organizational factors, such as corporate culture and opportunity.**

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1. **Ethical Issue Intensity:** The intensity of an ethical issue relates to its perceived importance to the decision maker.
2. **Individual Factors:** Although a personal moral compass is important, it is not sufficient to prevent ethical misconduct in an organizational context
3. **Corporate Culture:** Corporate culture as a set of values, beliefs, goals, norms, and ways of solving problems shared by the members (employees) of an organization of any size (for profit or nonprofit).
4. **Recognizing an Ethical Issue:** An ethical issue is a situation, a problem, or even an opportunity that requires thought, discussion, or investigation to determine the moral impact of the decision.

Ferrell, Fraedrich, and Ferrell: *Business Ethics: Ethical Decision Making and Cases*, 7th Edition.

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## BIOGRAPHY

Michael W. Martin is an Assistant Professor of Business Law at the University of Northern Colorado. He received his LL.M, taxation from the University of Washington. Prior to receiving his LL.M., he earned his MBA and J.D. from the University of Creighton. His research interests involve Business Law, Ethics, Real Estate, Federal Policy, Estate Planning, and Taxation His work has been published and presented and several leading journals and conferences including the Academy of Legal Studies in Business and the Rocky Mountain Academy of Legal Studies. He teaches Ethics, Business Law, and Real Estate courses at University of Northern Colorado's Monfort College of Business.

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