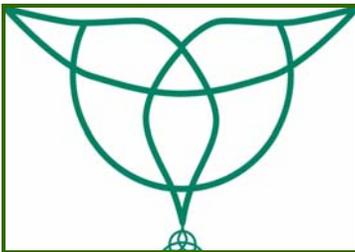




# Triquetra Law

*Dedicated to justice, Responsive to you.*

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## Basic Principles of Religious Discrimination in Employment

*By Andrea C. Farney, Esq.*

In Fiscal Year 2007, the [Equal Employment Opportunity Commission](#) recovered \$6.4 million in religious discrimination claims.

Religious discrimination in employment is illegal under state ([Pennsylvania Human Relations Act](#)) and Federal law ([Title VII of the Civil Rights Act of 1964](#)). **Basically, an employer can not consider a person's religion for purposes of hiring, firing, or other terms and conditions of the job, such as promotions and benefits.**

Religious discrimination claims generally fall into three sometimes overlapping legal theories: (1) disparate treatment; (2) failure to accommodate; and (3) hostile work environment.

A religious disparate treatment claim requires a person to show that they:

- ⇒ have a sincerely held religious belief known to the employer;
- ⇒ Were qualified for the job
- ⇒ Treated less favorably or terminated under circumstances giving rise to an

*Continued on page 4*

## Race Against Racism

This year was the 10th anniversary of the YWCA of Lancaster's Race Against Racism. The YWCA's one imperative is to "To thrust our collective power towards the elimination of racism wherever it exists and by any means necessary." This year 2,856 ran the race. Andrea Farney and Sharon López joined the enthusiastic walkers and runners for the morning. Visit the YWCA web site for the official results.

Sharon López started her professional career at the YWCA as a Youth Director. Later she joined the Board of Directors and served on the Racial Justice Committee. Sharon worked with other committee members to raise the profile of racial justice work in Lancaster County. A

"Community Conversation on Racism" served as

a catalyst for new racial justice projects in Lancaster. Some of the projects include, the Race Against Racism, the Racial Justice Award and the Day of Commitment. Learn how you can help promote racial justice by calling the YWCA!



**Andrea Farney & Sharon López at YWCA Race Against Racism**

The Lawyers of Triquetra Law focus our practice on ACE:

Appeals  
Civil Rights  
Employment  
Law & Policy

## *Freedom of Speech: How we protect democracy.*

*By Sharon R. López, Attorney at Law*

My fourteen year-old daughter asked for help with her homework. She was studying the Bill of Rights. Her assignment was to read and explain the First Amendment to the Constitution; the first amendment in the Bill of Rights. After reading it out loud she asked me, “Is this amendment the first one because it’s the most important one?” I answered “yes.” Without the ability to freely state popular and unpopular opinions, the voice of our democratic society is silenced.

The First Amendment’s protection of speech is an essential component of our free society. The ability to speak critically about our government allows us to change our leaders and our national agenda. Government may only limit the time place and manner of speech, not the content. Generally speaking, police officers who arrest citizens for expressing an unpopular political opinion, may only do so under limited circumstances. The Supreme Court said it

this way, “The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.” *FCC v. League of Women Voters*, 468 U.S. 364, 382 (1984).

Free speech is not limited to the spoken word. Signs and placards are also protected under the First Amendment. A local example of signs and protected activity is the *Frock v Borough of Littlestown Borough* case. The Frocks were cited for posting signs in their yard. The signs expressed objection to the Borough’s water bill. Although the Borough did allow political signs for a short period before an election, other signs were prohibited. The Frocks sued the borough to stop enforcement of the ordinance. They were successful.

Local ordinances that curtail an individual’s ability to engage in free speech activity on a door

to door basis may also violate the First Amendment. In 2002, the United States Supreme Court found an Ohio town ordinance overbroad. The ordinance required anyone who went door-to-door for the purpose of explaining or promoting any cause, to register for a permit. Violating the ordinance resulted in a misdemeanor. The village’s stated interests in preventing commercial fraud, protecting the privacy of residents, and preventing crime were not sufficient to uphold the ordinance.

The Supreme Court found that the ordinance overbroad in several ways. First, the registration requirement limited spontaneous speech. Second, the registration requirement prevented the speaker from maintaining anonymity. Justice Stevens recognized the important role the First Amendment plays in our society. “The value judgment that then motivated a united democratic people fighting to defend those very freedoms from totalitarian attack is un-



changed. It motivates our decision today.” *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150 (2002).

Public protests are protected by the First Amendment. The government cannot lawfully convict protestors for merely holding a demonstration. *Gregory v. Chicago*, 394 U.S. 111 (1969). However, it is lawful to arrest a speaker where speech is not protected activity. For instance, an arrest is lawful when the speech and conduct physically obstructs an officer’s investigation. *Colten v. Kentucky*, 407 U.S. 104 (1972).

Democracy depends on the free expression of ideas. For help protecting your First Amendment rights contact Triquetra Law Offices at 717-299-6300.

## Legal Notes:

### *When Does a Public Employee have Free Speech Rights?*

Employers may limit their employees' speech. However, when the employer is a public employer, i.e., a municipality, a school district or a police department, the [First Amendment](#) may protect the employee's right to speak.

First Amendment claims arise in a variety of contexts, but this article focuses on retaliation for public employee speech. An individual has a viable claim against his employer when he is able to prove the employer took action against him in retaliation for the exercise of his First Amendment rights. See *Anderson v. Davila*, 125 F.3d 148 (3d Cir. 1997). Early courts rejected public employee claims of freedom of speech. These courts found that the employees waived their constitutional rights when they accepted public employment. However, in 1968, the [U.S. Supreme Court](#) changed course when it decided *Pickering v. Board of Education*,

a case where a public school teacher publically criticized his employer.

The Supreme Court noted that Mr. Pickering's letter to the local newspaper involved important matters of "public concern." The Court ruled in the employee's favor after balancing his right of free speech with his employer's interest in an efficient workplace. However, the Court did not set a general standard as to what comments the First Amendment allowed a public employee to make.

A later case, *Mt. Healthy v. Doyle*, added another requirement for First Amendment retaliation cases. The Supreme Court held that protected speech must be a "substantial or motivating factor" in the employer's decision to fire or demote a public employee for the employee to prevail.

In 2006, the Supreme Court further limited public employee speech. In *Garrett v. Ceballos*, a district attorney claimed his employer transferred and denied him a promotion because he criticized the

credibility of statements made in a deputy sheriff's search warrant affidavit. The Court held that the First Amendment does not protect public employees' "statements made pursuant to their official duties." The assistant D.A. was fulfilling his responsibilities to advise his supervisor about how to proceed with a pending case, so his statements were made as part of his official duties. The *Garrett* opinion is less likely to apply to general workers, and many courts have limited the holding by examining the "official" duties of the employee asserting her rights. Furthermore, a public employer cannot restrict an employee's rights by creating an overly broad job description for a position. Complaining about job conditions or public waste is likely still protected activity for most workers. If you are a public employee and you believe your employer is retaliating against you because of your public comments, contact Triquetra at 717-299-6300 for assistance with a disability accommodation.

### *What Pennsylvania Public Employees Need to Know about Whistle blowing.*

Public employees who are fired for reporting misuse of public funds may have a cause of action under the **Pennsylvania Whistleblower Law, 43 P.S. § 1421 et seq.**

This law protects public employees who report suspected violations of state, local or federal law.

The law also protects public employees who participate in hearings, investigations, legislative inquiries or court actions.

The public employee must make a good faith report of her or his employer's **waste** or **wrongdoing** to the appropriate authorities in order to fall under this protective act.

The Act's purpose is to enhance **openness** in government and compel government compliance with the law by protecting whistleblowing employees.

If you are a public employee and you want to report waste or wrongdoing, contact

**Triquetra Law Offices at (717) 299-6300.**

# Triquetra Law Offices

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Lancaster Attorneys at the PBA Minority Bar Conference: Sharon López, MBE Chair Prince Thomas, Andrea Farney, Beverly Rampaul, Brian Wilson, Osvaldo Espinosa, Sam Encarnacion

Triquetra Law Offices made another trip to the [U.S. Supreme Court](#) on April 23, 2008. We heard argument in an age discrimination case, [Meacham v. Knolls Atomic Power Laboratory](#). This was a day for “firsts and lasts.” It was Stacey Snovel’s first time at the High Court and it was the Court’s last day of oral argument for the term.

Andrea Farney & Sharon López attended the PBA [20th Annual Minority Attorney Conference](#) in Philadelphia on April 24th. At the Conference, Andrea & Sharon saw Lancaster colleagues Beverly Rampaul and Sam Encarnacion deliver an excellent panel presentation on the Criminal Implications of Exercising Civil Rights.

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Watch for updates on our web site [News & Resources](#) Section. The attorneys at [Triquetra Law](#) concentrate on appeals, civil rights, and employment law and policy. Call 717-299-6300 to set up a thorough case assessment.

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## **Discrimination-cont. from p. 1—Andrea C. Farney**

inference of religious bias. *Abramson v. William Paterson College of New Jersey* (3d Cir. 2001).

Religion includes “all aspects of religious observance and practice” and the [EEOC](#) and Courts have interpreted this broadly to include moral and ethical beliefs, as long as they are sincerely held. Thus, religious discrimination can occur to atheists, agnostics and non-church members.

A failure to accommodate claim arises in situations where an employee holds a religious belief that conflicts with a job requirement, the employer has “fair warning” (actual) notice of the conflict, and the employee suffers an adverse

action for failing to comply with the conflicting requirement. In some situations an employer may not have to accommodate an employee’s religious belief where the employer can demonstrate “undue hardship” to their business.

Religious hostile work environment claims are approached in a similar manner as sex, race, and national origin hostile work environment claims. A key aspect to this type of claim is showing severe or pervasive harassment and that the employer should be held responsible.

While employers with 4 or more employees are subject to the religious non-discrimination laws, there are important exceptions for religious organizations such as



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churches, religious educational institutions, and associations. Recently, the [Lancaster Jewish Community Center Association](#) was determined to be exempted in the case of *LeBoon v. Lancaster Jewish Community Center Association*.

Contact Triquetra Law at 717-299-6300 for an assessment.