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Rights of Rastafarian Employees and Inmates

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❖Introduction

The [Rastafarian](#) religion is associated with Haile Selassie, the late Emperor of Ethiopia. Also known as the “Lion of Judah,” Selassie was deposed in 1974 and murdered in 1975. Rastafarians are named after Ras (Prince) Tafari, Selassie’s title before being crowned Emperor in 1930. The movement later was influenced by Jamaicans. There are estimates that there are as many as one million adherents to the religion worldwide. In the U.S., most adherents are African-Americans.

Rastafarians engage in the spiritual use of cannabis, wear their hair in dreadlocks and are generally opposed to cutting their hair. The Ital vegetarian diet is one of the main tenets of the Rastafari movement. Those who adhere to it abstain from all meat and flesh whatsoever, asserting that to touch meat is to touch death. Some Rastafarians, however, do eat some meat nevertheless, but no pork or shellfish.

The First Amendment guarantee of the free exercise of religion extends its protections to sincere religious beliefs, including unorthodox or minority religion. Additionally, in recent years, Congress and 22 state legislatures have enacted the federal [Religious Freedom Restoration Act](#) (RFRA) 42 U.S.C. 2000bb et seq. (now applicable solely to the federal government and its agencies by U.S. Supreme Court decision, see [City of Boerne v. Flores](#), #95-2074, 521 U.S. 507 (1997)), the [Religious Land Use and Institutionalized Persons Act](#) (RLUIPA), 42 U.S.C. 2000cc et seq. (applicable in relevant part to the religious rights of prisoners in state and local facilities that receive federal funds, but not to correctional employees), and [state Religious Freedom Restoration Acts](#), which vary in their scope but which in many and increasing instances cover public employees.

The point of these federal and state statutes is to give greater protection to religious freedom free exercise rights than the Supreme Court has ruled are afforded by the First Amendment standing alone. In many contexts, the Court has ruled that religious freedom can be burdened so long as there is a rational relationship to a legitimate governmental interest and the law is a neutral law of general applicability, not enacted for the express purpose of interfering with religion.

But the statutes in question generally adopt the test that government actions which substantially burden the free exercise of religion must serve a compelling governmental interest and be able to show that the least restrictive means available is utilized to attempt to achieve it, a far more difficult burden to meet.

This article takes a brief look at some of the appellate court cases in which the legal rights of Rastafarian employees and inmates are examined, especially in the area of dreadlock hairstyles, but briefly touching on some other issues, such as use of marijuana. At the conclusion, there are some suggestions to consider, along with a listing of some useful resources and references.

❖ **Rastafarian Employees**

When it comes to public safety employees, a department or agency has some interest in promoting certain hair grooming standards based on safety concerns and appearance conformity. Some courts have upheld such rules and their enforcement, declining to impose liability, even in the face of religious objection. In [*Booth v. State of Maryland*](#), #08-1748, 337 Fed. Appx. 301, 2009 U.S. App. Lexis 15965 (4th Cir.), for instance, a warden who demoted a Rastafarian acting lieutenant because he wore dreadlocks was entitled to qualified immunity. The right to wear one's hair to conform to one's religious beliefs was not clearly established, the court concluded.

In an earlier decision in the case, we can see some of the factors that caused the claim to go forward, and the federal appeals court to revive the suit brought by a Rastafarian corrections officer who was repeatedly disciplined for wearing deadlocks. [*Booth v. Maryland Dept. of Corr. Serv.*](#), #02-1657, 327 F.3d 377 (4th Cir. 2003), a

The agency's regulations provided:

“a. Hair shall be neatly groomed. Hair in front shall be groomed so that it does not fall below the band of the properly worn uniform headgear. Hair on the back of the head may not extend further than one quarter inch onto the collar. Hair on the side of the head may touch but shall not extend onto the collar. In no case shall the bulk,

length, or height of the [hair], interfere with proper wearing of authorized uniform headgear, emergency equipment, or styled to impair the employee's vision. The length[,] bulk, or appearance of hair shall not be excessive, ragged, or unkept [sic].

“b. (Females) Buns, braids and ponytails shall be permitted on top of the head or back of the head, in a neat manner, provided they do not interfere with the proper wearing of authorized uniform headgear or emergency equipment and do not extend below the collar. Braids and ponytails not secured to the top of the head shall meet length standards outlined in [a].

“c. Only traditional (i.e., historically acceptable for military/law enforcement uniformed personnel), haircuts shall be permitted.”

The officer, a practicing Rastafarian, sued in state court, alleging racial and religious discrimination. The defendants removed the action to federal court, which dismissed his action; he appealed to the Fourth Circuit.

The three-judge panel noted that the plaintiff alleged:

1. Women officers are allowed to wear their hair braided and substantially longer than the dreadlocks he wore.
2. Management had not enforced the policy against at least sixteen similarly-situated employees.
3. Management granted religious exemptions to a Jewish employee, allowing him to wear a long beard and peyos (long sideburns), and to a Sikh employee, allowing him to wear a turban and long beard.

Management contended that their grooming policy is constitutional because it is facially neutral and is rationally related to the agency's goals of promoting safety, uniformity, discipline, and esprit de corps among the correctional staff at the facility. The panel agreed, but said the issue was not settled because a regulation is constitutional on its face. The plaintiff alleged it was being enforced in a discriminatory manner.

The panel noted that the “First Amendment ... forbids the adoption of laws designed to suppress religious beliefs or practices unless justified by a compelling governmental interest and narrowly tailored to meet that interest.”

They reversed the dismissal of his religious discrimination claim, but upheld the dismissal of his racial discrimination claim. Seven of the sixteen employees he identified as not disciplined were African-American.

In [*Hicks v. Hudson County Corr. Ctr.*](#), #A-2407-05T3 2007 WL 2428429, 2007 N.J. Super. Unpub. Lexis 1035, 101 FEP Cases (BNA) 1075 (Unpub. N.J. App. Div. 2007), on the other hand, a New Jersey appellate court reinstated a sex discrimination claim brought by a male Rastafarian corrections officer who refused to cut his dreadlocks. Allegations of sex discrimination played a role. Only women officers were allowed to pin or twist their hair to comply with a collar-length hair standard.

The court stated: "... the record does not indicate why female corrections officers are still permitted to pin or twist their long hair to meet the standard, and there is no evidence or data explaining why any safety hazard cannot be reduced to an acceptable level by pinning or twisting the hair or by some means other than cutting the hair. Furthermore, the record does not disclose any detail about the motivation for the Director's changing the grooming policy in 2004. Defendant does not cite to any reports on the relevant safety issue, and there is no reference to any specific incident or study that precipitated the change in policy. Finally, contrary to the impression formed by the motion judge, plaintiff worked in the subject environment from 1994 to 2004, ostensibly without incident."

And in [*Brown v. Keane*](#), #93 Civ. 0045, 888 F.Supp. 568, 1995 U.S. Dist. Lexis 7981 (S.D.N.Y.), a federal trial court allowed a Rastafarian N.Y. corrections officers to wear dreadlock spikes. No nexus was shown, the court noted, between the regulation and safety or security needs.

What about Rastafarians religious use of marijuana? The short answer is that, so long as marijuana use remains illegal under federal law, public and private employees will be able to discipline or fire employees for such use, whether for religious, medical, or recreational purposes.

While the state of Colorado, for instance, has legalized the use of marijuana for both medical and recreational purposes, the Colorado Supreme Court has ruled that a quadriplegic employee who uses marijuana, even with a prescription and even off-duty can be fired for such use. [*Coats v. Dish Network, LLC*](#), #13SC394, 2015 Colo. Lexis 520.

This issue is further discussed in [*Medical Marijuana and Public Safety Personnel*](#), 2011 (11) AELE Mo. L. J. 201. State Supreme Courts in four other states have taken essentially the same position on the issue as the Colorado ruling reported above. See [*Ross v. Ragingwire Tel.*](#), #S138130, 174 P.3d 200, 2008 Cal. Lexis 784; [*Johnson v. Columbia Falls Aluminum Co.*](#), #08 - 0358, 2009 MT 108N, 2009 Mont. Lexis 120; [*Emerald Steel v.*](#)

[*Bur. of Labor & Indus.*](#), #S056265, 230 P.3d 518, 2010 Ore. Lexis 272; and [*Roe v. TeleTech Customer Care Mgmt.*](#), #83768-6, 257 P.3d 586, 2011 Wash. Lexis 393.

The U.S. Supreme Court has also concluded that the federal Controlled Substances Act does not contain a “medical necessity” exception that permits the manufacture, distribution, or possession of marijuana for medical treatment. [*U.S. v. Oakland Coop.*](#), #00-151, 532 U.S. 483 at 49 (2001). [*Twenty-three states and Washington, D.C.*](#) currently allow medical marijuana, while Alaska, Colorado, Oregon, Washington, and Washington, D.C. have legalized recreational marijuana.

❖ **Rastafarian Inmates**

In [*Stewart v. Beach*](#), #12-3013, 701 F. 3d 1322 (10th Cir. 2012), it was against a Rastafarian prisoner’s religious beliefs to comb or cut his hair, which he wore in dreadlocks. When he learned that his mother had cancer, he asked for a transfer to another facility closer to her, which was granted. When he was to be transported to his new facility, an officer allegedly refused to permit him to board the transport vehicle when he declined to comply with a state correctional policy requiring him to comb out his dreadlocks.

The officer’s supervisor then presented the plaintiff with a choice of either cutting his hair or not going through with the approved transfer. The prisoner offered instead to let the officers pat down his hair and use a metal detector to make sure that no contraband was hidden there. The transfer was canceled and the prisoner placed in administrative segregation. He was later transferred, after he cut his hair.

A federal appeals court upheld the dismissal of his lawsuit, finding no violation of his right to religious freedom, despite his argument that he was improperly forced to choose between violating his religious beliefs and going to a prison closer to his ill mother. The officers were entitled to qualified immunity, as it was not clearly established that enforcement of the policy that hair be cut or combed out violated the prisoner’s rights.

In one instance, a Rastafarian prisoner suing over prison hair length regulations achieved a technical victory without receiving much in the way of substantial relief. In [*Shepherd v. Goord*](#), #10-4821, 662 F.3d 603 (2nd Cir. 2011), for instance, a Rastafarian prisoner claimed that a corrections officer violated his religious rights by touching his dreadlock hair without permission. While the jury held in favor of the prisoner, they only awarded nominal damages of \$1. Under 42 U.S.C. 1997e(d)(2) of the Prison Litigation Reform Act (PLRA), the court’s award of attorney’s fees to the prevailing plaintiff were limited to 150% of the damage award, or \$1.50.

The appeals court noted that Congress, in granting a statutory right for prevailing plaintiffs in federal civil rights lawsuits to be granted attorneys' fees, departed from the normal rule in U.S. courts that litigants all pay their own attorneys' fees. It was accordingly also free to put a cap on such fees in cases brought by prisoners.

In [*Johnson v. Collins*](#), #3:07 CV 211, 564 F. Supp.2d 759 (N.D. Ohio 2008), the court found that a Rastafarian prisoner presented a viable claim that his clearly established constitutional right to religious freedom and his federal statutory rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. 2000cc-1(1)(1), (2) were violated by a prohibition on him growing his hair in dreadlocks.

The warden was found to have acted in an objectively unreasonable manner in insisting that the prisoner be prohibited from growing dreadlocks. Further, the court reasoned that a decision by the Ohio Department of Rehabilitation and Correction to provide religious exceptions for hair grooming in its grooming code supported the prisoner's argument that growing his hair into dreadlocks was a legitimate part of his exercise of his religion. The warden failed to show that the dreadlocks would constitute a security problem.

Courts have addressed a variety of other issues about Rastafarian inmates' religious practices. In [*Smith v. Kyler*](#), #08-1731, 295 Fed. Appx. 479, 2008 U.S. App. Lexis 21341 (Unpub. 3rd Cir.), the court found that the Pennsylvania Department of Corrections did not violate the rights of a Rastafarian prisoner by denying his request to hold weekly group Rastafarian services.

The Department required that approved religious leaders or chaplains lead such services, and provides such services to all of the largest major religions. Rastafarians, according to the court, are not a "major" faith group and the Department had budgetary reasons for failing to pay for a Rastafarian religious leader come to the facility to hold group services. It could not afford to provide chaplains for every faith. The plaintiff prisoner was provided with alternatives to group worship services, including keeping religious books and materials in his cell, personal meetings with a religious advisor, and asking for a religious exemption from the facility's hair length regulations.

Understandably, there has been relatively little litigation by prisoners asserting an alleged right to use illegal drugs for religious purposes within the prison walls. Courts have had little trouble rejecting such claims when they have been presented, in light of both legal and security problems that would accompany the presence of such drugs within a facility or even such use by a prisoner on parole.

In [*United States of America v. Israel*](#), #02-1864, 317 F.3d 768 (7th Cir. 2003), the revocation of a Rastafarian prisoner's supervised release after he failed drug urinalysis

tests and admitted smoking marijuana was not violative of his right to freely exercise his religion under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb, since the government had a compelling governmental interest in preventing drug abuse. Additionally, demanding that a convicted felon on parole abstain from marijuana use is a legitimately restrictive means for safeguarding this interest. Accordingly, even under the most restrictive test, the prisoner had no claim for violation of his rights.

❖ **Suggestions to Consider**

The following are some suggestions to consider when examining how to best accommodate the religious freedom free exercise rights of Rastafarian employees and/or prisoners.

1. The Rastafarian religion and its sincere adherents are entitled under federal and state constitutional and statutory law to equal treatment with other religions. Nothing will energize a court more to issue equitable orders such as injunctive relief or the revocation of discipline or termination than accommodating the hair grooming, religious dress, dietary requirements or other religious practices of one religion, while failing to do so for another.
2. That being said, even under the strictest of legal tests, governmental employers operating public safety agencies can, given a compelling justification, substantially burden an employee's religious practices on the job so long as the least restrictive means are used. This means that the employer must be prepared to justify their actions with a well-thought out rationale. The mere fact that "we've always done things this way," or that a religious accommodation raises some concerns will be insufficient. Courts will, however, ordinarily give some deference to uniformly applied policies adopted to promote safety concerns, as when long hair could interfere with a firefighter's breathing apparatus.
3. In the context of Rastafarian prisoners, much of what is expressed above holds true, but obviously institutional security weighs much heavier. At the same time, a wider variety of religious concerns need to be addressed. Employees not accommodated as to prayer services, dietary preferences, dress on the job, etc., after all, are not in custody and are free during their off hours to go attend group worship, prepare and eat the foods their religion requires, dress as they wish. Prisoners are confined within the walls of a facility and the only opportunity that they currently have to exercise their religious beliefs must take place there.

4. In recent days, a number of additional states have either adopted or considered state Religious Freedom Restoration Acts. While early, some of the impetus for this was concerns over religious beliefs about abortion, birth control, etc., some of the recent legislative adoptions were in the context of a response to the U.S. Supreme Court's approval of same sex marriage. But the statutes being adopted broadly adopt a stricter test granting more rights to public employees on the job with regard to religious practices. Every public safety agency needs to keep an eye on such developments in their jurisdiction, to make sure that policies on religious accommodation of employees will comply with current legal standards, which are likely to be expansive.

❖ Resources

The following are some useful resources related to the subject of this article.

- [Diet](#). AELE Case Summaries
- [Hairstyle and Appearance Regulations & Discrimination](#). AELE Case Summaries
- [Personal Appearance](#). AELE Case Summaries
- [Rastafari](#). Wikipedia article.
- [Rastafari movement in the United States](#). Wikipedia article.
- [Religion](#). AELE Case Summaries
- [Religious Garb and Grooming in the Workplace: Rights and Responsibilities](#) (EEOC).
- [RLUIPA.org Comprehensive Resource Site](#)

❖ Prior Relevant Monthly Law Journal Articles

- [Grooming and Appearance Rules for Public Safety Workers Part One - Hair Regulations](#), 2007 (1) AELE Mo. L. J. 201.
- [Grooming and Appearance Rules for Public Safety Workers Part Two - Tattoos, Piercings, Jewelry, Dental Ornamentation, Cosmetics and Religious Headwear](#), 2007 (2) AELE Mo. L. J. 201.
- [Religious Freedom in Correctional Facilities \(II\) --Appearance and Apparel](#) 2007 (4) AELE Mo. L. J. 301.

- [Religious Freedom in Correctional Facilities \(III\): Protection for “Unconventional” Religions?](#), 2009 (3) AELE Mo. L. J. 301.
- [Medical Marijuana and Public Safety Personnel](#), 2011 (11) AELE Mo. L. J. 201

❖ References

- [The Rights of Religious Employees in the Workplace](#), by Alliance Defending Freedom (February 1, 2013).
- [Religious Accommodation in the Workplace, Your Rights and Obligations](#), by the Anti-Defamation League (2012).
- [Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act](#), U.S. Department of Justice Department (Sept. 22, 2010).
- [Chapter 27: Religious Freedom in Prison, A Jailhouse Lawyer’s Manual](#), Columbia Human Rights Law Review (8th Edition 2009).
- [Enforcing Religious Freedom in Prison](#), U.S. Commission on Civil Rights (September 2008).
- Soul Rebels: The Rastafarians and the Free Exercise Clause, 72 Geo. L.J. 1605 (1984).

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