

# MUSLIM ADVOCATES

May 7, 2019

Director Nicholas Pladson  
Mr. Gregory M. Gochanour  
U.S. Equal Employment Opportunity Commission  
Minneapolis Area Office  
Towle Building  
330 South Second Avenue, Suite 720  
Minneapolis, MN 55401-2224

Dear Director Pladson and Mr. Gochanour:

Muslim Advocates, a national civil rights and legal advocacy organization, writes to express its concern about the discriminatory and unlawful treatment of Muslim Somali and East African workers at Amazon.com Inc. (“Amazon”) facilities in the Minneapolis area. We write on behalf of our three clients, Ms. A, Ms. B, and Ms. C, who are black Muslim women of Somali origin. While employed with Amazon, our clients have experienced discriminatory treatment, hostile work environment, retaliation, and constructive discharge in violation of Title VII, 42 U.S.C. § 2000e, *et seq.*, and the Minnesota Human Rights Act (“MHRA”), M.S.A. § 363A.01, *et seq.*, on the basis of their race, religion, and national origin. These women are not alone: the conditions described in their charges reflect a broader pattern and practice of unlawful employment discrimination against Muslim, Somali, and East African workers at Amazon.

Title VII protects employees from discrimination on the basis of race, religion, and national origin. 42 U.S.C. § 2000e. Likewise, the MHRA bars discrimination in employment on the basis of race, color, creed, and national origin. M.S.A. § 363A.02. Under Title VII, it is illegal for employers to discriminate against workers in decisions of hiring, firing, assignments, and promotions. *See Winbush v. Iowa By Glenwood State Hosp.*, 66 F.3d 1471, 1479 (8th Cir. 1995) (citing 42 U.S.C. § 2000e–2(a)). Title VII also bars employers from retaliating against workers who protest employment conditions they reasonably believe to be discriminatory. 42 U.S.C. § 2000e-3(a). Title VII further places an obligation on employers to reasonably accommodate the religious practices of their employees. *See Grant v. Fairview Hosp. & Healthcare Servs.*, No. CIV. 02-4232JNEJGL, 2004 WL 326694, at \*2 (D. Minn. Feb. 18, 2004). These requirements are designed to ensure that all employees—regardless of their race, religion, or national origin—are able to contribute to and benefit from their workplace as equals.



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Amazon is an online shopping retailer headquartered in Seattle, WA and is the United States' second largest employer.<sup>1</sup> In large part due to the labor of its fulfillment center workers, Amazon posts billions of dollars in revenue every quarter, with steady growth each year.<sup>2</sup> It has fulfillment centers around the country including several in Minnesota.<sup>3</sup> In Minnesota, Amazon employs thousands of people in a variety of roles; its presence in the state continues to steadily expand.<sup>4</sup> Over the course of four years, Amazon has rapidly become one of Minnesota's largest employers.<sup>5</sup> Many—by some accounts, most—of the workers that Amazon employs for its fulfillment centers are of East African origin.<sup>6</sup>

## A. Amazon Failed to Reasonably Accommodate the Religious Practices of Its Muslim Employees

In Minnesota, Amazon has repeatedly engaged in the types of discriminatory conduct detailed in Ms. A, Ms. B, and Ms. C's charges. In the summer of 2018, Amazon made headlines for its failure to reasonably accommodate the religious practices of its Muslim workers.<sup>7</sup> Amazon offered inadequate space and time for its Muslim workers to pray. Ms. A, Ms. B, and Ms. C's charges allege how employees feared taking time away to pray, since that lost time would reduce a worker's "rate" or how many items a worker packs per hour. Employees who regularly fell short of the rate—simply because they attempted to observe their religious obligations to pray—faced repercussions such as "write-ups" that could lead to termination.<sup>8</sup> Our client, Ms. B, feared a decrease in her rate and its potential for adverse employment action to such an extent that she

<sup>1</sup> Michael B. Sauter and Grant Suneson, *Who is the largest employer in your state? Walmart top in nation with Amazon second*, USA TODAY (Mar. 30, 2019, 7:59 AM), <http://www.usatoday.com/story/money/business/2019/03/30/largest-employer-each-state-walmart-top-us-amazon-second/39236965>.

<sup>2</sup> *Net revenue of Amazon from 1st quarter 2007 to 4th quarter 2018 (in billion U.S. dollars)*, STATISTA (last visited Apr. 11, 2019), <https://www.statista.com/statistics/273963/quarterly-revenue-of-amazoncom/>.

<sup>3</sup> Mike Hughlett, *Amazon now hiring for new sorting facility in Brooklyn Park*, STAR TRIBUNE (Oct. 10, 2018, 9:47 PM), <http://www.startribune.com/amazon-now-hiring-for-new-sorting-facility-in-brooklyn-park/496659861/>.

<sup>4</sup> *Id.*

<sup>5</sup> Shaymus McLaughlin, *Amazon Is Suddenly One of Minnesota's Biggest Employers*, MINNESOTA MONTHLY (Feb. 21, 2019), <https://www.minnesotamonthly.com/lifestyle/amazon-is-suddenly-one-of-minnesotas-biggest-employers/>.

<sup>6</sup> Amazon estimates that under 50% of its workforce in Minnesota is Somali. See Deena Winter, *Amazon workers walk out, protest in Shakopee*, SHAKOPEE VALLEY NEWS (Dec. 14, 2018), [https://www.swnewsmedia.com/shakopee\\_valley\\_news/news/business/amazon-workers-walk-out-protest-in-shakopee/article\\_8f6d0bb6-392c-5e1e-923b-e88633df9f77.html](https://www.swnewsmedia.com/shakopee_valley_news/news/business/amazon-workers-walk-out-protest-in-shakopee/article_8f6d0bb6-392c-5e1e-923b-e88633df9f77.html). However, the Awood Center estimates that the number is closer to 60%. See Karen Weise, *Somali Workers in Minnesota Force Amazon to Negotiate*, N.Y. TIMES (Nov. 20, 2018), [www.nytimes.com/2018/11/20/technology/amazon-somali-workers-minnesota.html](http://www.nytimes.com/2018/11/20/technology/amazon-somali-workers-minnesota.html).

<sup>7</sup> Adam Uren, *Eagan Amazon workers are calling for better conditions*, BRING ME THE NEWS (June 28, 2018), <https://bringmethenews.com/minnesota-news/eagan-amazon-workers-protest-calling-for-for-better-conditions>.

<sup>8</sup> Chavie Lieber, *Muslim Amazon workers say they don't have enough time to pray. Now they're fighting for their rights*, VOX (Dec. 17, 2018), <https://www.vox.com/the-goods/2018/12/14/18141291/amazon-fulfillment-center-east-africa-workers-minneapolis>.



stopped taking breaks to perform ablutions before prayer, break her Ramadan fast, and even stopped going to the bathroom. Although the workers raised the issue of prayer accommodation at the December 14, 2018 rally, their religious needs remain unaccommodated.

The conditions at Amazon facilities—for example, the lack of air conditioning—made it almost impossible for Amazon’s Muslim employees to keep fasting during Ramadan while maintaining the high rate demanded by Amazon.<sup>9</sup> Ms. B received her first write-up for falling below the rate during Ramadan, when she was refraining entirely from food or drink. The charges detail that workers did not receive sufficient time to even timely break their day-long Ramadan fasts; workers also reported being told by Amazon management to quit when they requested time off for Eid al-Fitr, one of the most important Muslim holidays.<sup>10</sup>

## **B. Amazon Has Consistently Failed to Promote Its East African Employees**

Amazon’s failure to treat its Muslim Somali and East African workforce in accordance with Title VII extends beyond its failures to accommodate their religious practices. As detailed in the charges, Amazon has effectively created a two-tiered system. Qualified Somali workers are regularly passed over for promotions in favor of white workers and white workers regularly receive better duty assignments and better treatment than their Somali counterparts solely on the basis of their race and/or their national origin. The breakdown of employees at Amazon’s Minnesota facilities reflects this disparity: despite the high number of East African workers, there are almost no Somalis in management.<sup>11</sup>

## **C. Amazon Retaliated Against Somali Workers for Participating in the December 14 Protest**

In response to the conditions at Amazon facilities in Minnesota, including the continuing issues with religious accommodations and discrimination in promotions and treatment, hundreds of East African workers at Amazon’s Shakopee facility, organized by the Awood Center, assembled outside the facility in protest on December 14, 2018. Ms. A, Ms. B, and Ms. C were outspoken supporters of this protest. Their involvement ranged from encouraging other workers to participate in the protest to speaking to the protestors and the media regarding the conditions at

<sup>9</sup> Emma Sapong, *East African workers demand safer working conditions at Amazon’s Eagan warehouse*, MPR News, <https://www.mprnews.org/story/2018/06/04/east-african-workers-demand-safer-working-conditions-at-amazons-eagan-warehouse>.

<sup>10</sup> Mike Mullen, *Workers: Amazon’s Eagan warehouse is too hot for a Ramadan fast*, CITY PAGES (June 5, 2018), <http://www.citypages.com/news/workers-amazons-eagan-warehouse-is-too-hot-for-a-ramadan-fast/484581651>.

<sup>11</sup> See Sapong, *supra* note 9.



Amazon. Some of their stories were heavily featured in media coverage of the protests. Each of these women was motivated to participate in the protest by their belief that Amazon discriminates against Somali, East African, and Muslim workers on the basis of their race, national origin, and religion, as evidenced through the pattern and practice described above. These protests—and Amazon’s underlying treatment of its East African workforce—received extensive coverage around the country, including from outlets like *The New York Times*, *Vox*, and *Gizmodo*.

As alleged in the charges, almost immediately after their participation in the December 14 action, Ms. A, Ms. B, and Ms. C began experiencing a campaign of retaliatory harassment from Amazon management. The retaliation has taken several forms. Ms. B and Ms. C have repeatedly received more difficult and less favorable duty assignments since the protest. In an intimidation tactic, Ms. B has had her everyday conversations repeatedly video recorded by her supervisors. All three of our clients have received pretextual write-ups, which are a step towards terminations. When our clients attempted to report the improper write-ups to management or to Human Resources, Amazon has uniformly failed to adequately investigate or address their claims. And in retaliation for reporting the initial retaliation, Ms. C even received an additional retaliatory write-up the day she was told that the investigation into her claims had yielded no results. The charges show that Amazon’s message to Somali workers has been clear: since they protested Amazon’s discriminatory actions, Amazon management would now create an environment so harassing and hostile that they would be forced to quit. The charges allege that the harassment grew so severe that Ms. A in fact was constructively discharged. And Ms. C, who had prior to this protest been considered a model employee, has now been told that just one more write-up would lead to her termination.

#### **D. Amazon’s Pattern and Practice of Discrimination Against Muslim Somali and East African Workers Violates Federal Law**

As reflected in Ms. A, Ms. B, and Ms. C’s charges, Amazon’s treatment of its Muslim Somali and East African employees has violated Title VII and the MHRA in several ways. Specifically, Amazon has violated its obligation by failing to provide reasonable accommodations for religious practice, by engaging in blatant discrimination against Somali workers in their assignments and promotion practices, and by retaliating against workers for taking part in protests against this discriminatory treatment.

First, under Title VII, Amazon was obligated to reasonably accommodate the religious practices of its employees. *See Grant*, 2004 WL 326694, at \*2. Providing employees with days off to observe religious holidays and with time to pray is well within the types of reasonable



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accommodation that Title VII contemplates. *See, e.g., E.E.O.C. v. Chemsico, Inc.*, 216 F. Supp. 2d 940, 950 (E.D. Mo. 2002) (denying summary judgment for employer when employer failed to accommodate employee's Sabbath observance); *Mustafa v. Syracuse City Sch. Dist.*, No. 505CV813FJSGHL, 2009 WL 10694775, at \*2 (N.D.N.Y. Feb. 11, 2009) (holding that lower performance reviews because Muslim employee took time for prayer stated claim under Title VII); *Isse v. Am. Univ.*, 540 F. Supp. 2d 9, 38 (D.D.C. 2008) (rejecting summary judgment where defendant denied Somali employee religious accommodation for prayer). Although Amazon was aware of the religious accommodations required by its Muslim employees, it fostered a hostile environment where individuals feared taking time for obligatory prayer and were informed that they should quit if they wanted to observe Eid al-Fitr with their families. By not permitting its Muslim employees to observe fundamental tenets of their faith, and instead cultivating a culture of fear and retribution, Amazon fell far short of its obligations under Title VII.

Second, Amazon's discrimination in promotions and assignments—and its overt preference for non-Somali workers in both—runs directly afoul of Title VII. Title VII prohibits an employer from discriminating in hiring decisions or in the terms and conditions of employment, including in promotions, on the basis of protected characteristics such as race, religion, and national origin. *Winbush*, 66 F.3d at 1479 (citing 42 U.S.C. § 2000e-2(a)). The Supreme Court has found that a policy of discrimination in hiring and promotions can be communicated through, *inter alia*, “the treatment of actual applicants...[and] the racial or ethnic composition of that part of his work force from which he has discriminatorily excluded members of minority groups.” *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977). A Title VII claim may consist of a pattern of disparate treatment with regard to pay, training, opportunities for advancement and job assignments on the basis of a protected class. *See Beckmann v. CBS, Inc.*, 192 F.R.D. 608, 618 (D. Minn. 2000). Despite Title VII's clear requirements of nondiscrimination in promotions and assignments, Amazon persists in overlooking Somali employees for promotion—a disparity reflected in its nearly all-white management—and by habitually assigning Somali workers to the most physically difficult, least desirable tasks.

Finally, when our clients, Ms. A, Ms. B, and Ms. C, protested Amazon's policies that they reasonably believed to be discriminatory and unlawful, they faced a series of retaliatory actions in violation of Title VII. The non-retaliation provision of 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) prohibits discrimination against an individual because they opposed a practice unlawful under Title VII. Engaging in public demonstrations to protest an employer's discriminatory practices is one such statutorily protected activity. *See Green v. McDonnell Douglas Corp.*, 463 F.2d 337, 341 (8th Cir. 1972). Retaliation can take many forms, from a series of actions that falls short of termination to constructive discharge. *See Bassett v. City of Minneapolis*, 211 F.3d 1097, 1105, n. 6 (8th Cir.



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2000), *abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011); *Schwarzkopf v. Brunswick Corp.*, 833 F. Supp. 2d 1106, 1121 (D. Minn. 2011). Moreover, Title VII forbids an employer from subjecting its employees to a hostile work environment because of their race, color, religion, sex, or national origin. *See Al-Zubaidy v. TEK Indus., Inc.*, 406 F.3d 1030, 1039 (8th Cir.2005). The increased harassment and hostile work environment faced by our clients, including false reports of misconduct, increased write-ups, filming, photographing, constructive discharge, and warnings of retaliation form a series of events designed to retaliate against our clients and other Muslim, Somali, and East African workers for their participation in the December 14, 2018 protest against discriminatory practices by Amazon.

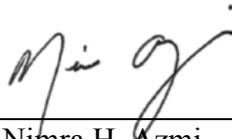
## E. Conclusion

Accordingly, the Equal Employment Opportunity Commission should prioritize the investigation of these charges as systemic violations of Title VII. The EEOC should find reasonable cause to believe that in Minnesota, Amazon has cultivated a hostile work environment and an environment of discrimination against its Muslim Somali and East African workers on the basis of their race, religion, and national origin. The EEOC should further find that Amazon has retaliated against our clients for protesting those discriminatory conditions. Accordingly, it should find reasonable cause to believe that Amazon has violated Title VII.

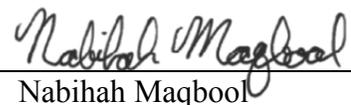
Sincerely,



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